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**COMPILATION OF THE RESPONSES TO THE UNCTAD
QUESTIONNAIRE**

**Part II: The Relationship between Competition and Industrial Policies in
Promoting Economic Development**

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Albania.....	3
Argentina.....	4
Brazil.....	8
Bulgaria.....	13
Chile.....	16
Colombia.....	21
Congo.....	23
Czech Republic.....	25
Dominican Republic.....	27
Ecuador.....	29
Estonia.....	35
Finland.....	39
Germany.....	40
Greece.....	43
Grenada.....	45
Hungary.....	46
Indonesia.....	49
Japan.....	52
Korea.....	55
Latvia.....	57
Madagascar.....	59
Malawi.....	64
Mauritius.....	66
México.....	68
Nicaragua.....	70
Pakistan.....	72
Panamá.....	75
Perú.....	80
PNG.....	82
Poland.....	84
Russia.....	86
Serbia.....	90
Seychelles.....	92
Sri Lanka.....	93
Sweden.....	95
Switzerland.....	97
Thailand.....	100
Trinidad and Tobago.....	101
Tunisia.....	103
Ukraine.....	107
Uruguay.....	111
USA.....	112

Albania

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?*

N/A

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

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*

Latest time we have a divergence in implementing competition and industrial policy. CC take a decision (no 99, dated 28.12.2008) to eliminate the discrimination between imports and domestic production in fuel sector, but government decided to protect the domestic hydrocarbons industry for just one year and to prohibit the import of the product in relevant market(diesel 350 ppm).

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 prioritized and why?*

N/A

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?*

N/A

Argentina

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

Para responder adecuadamente estas preguntas es necesario tener en cuenta algunas consideraciones sobre la política económica y la estructura industrial de la Argentina, al menos desde la salida de la crisis de 2001 y 2002 hasta la actualidad.

Uno de los pilares del esquema macroeconómico del período indicado ha sido el tener un tipo de cambio relativamente elevado. Esto fue bastante notorio en los meses posteriores a la salida del régimen de la convertibilidad donde se paso de un tipo de cambio de un peso por un dólar a otro imperante en los años subsiguientes 3 pesos por dólar sin que el crecimiento de los precios internos haya aumentado en una magnitud equivalente.

Este esquema macroeconómico que fue sostenido por el Banco Central de la República Argentina mediante compras de dólares que impidieran la revaluación de la moneda doméstica (el peso) modificó notoriamente la situación de los precios relativos internos y externos de la economía, esto es, hizo que importar bienes se tornara relativamente más caro generando incentivos para que fueran producido localmente (efecto de sustitución de importaciones) e hizo que se hiciera relativamente más atractiva la producción de bienes transables internacionalmente en la medida que producto del mismo efecto cambiario se torno más atractivo exportar (los gobiernos del período denominaron a esta política de sostenimiento del tipo de cambio como de “tipo de cambio competitivo”).

El sector típicamente beneficiado por estas reglas de juego macroeconómico fue, sin duda, la industria manufacturera al menos en los años inmediatamente posteriores a la devaluación del peso. El escenario descrito se modificó en alguna medida durante los últimos dos años (2007/2008) debido a presiones inflacionarias originadas en múltiples causas y, sobre todo, en el último semestre de 2008, por la irrupción de la crisis internacional.

En este contexto y desde una perspectiva más cercana a lo que usualmente se entiende por política industrial sectorial, parte de las medidas anticíclicas instrumentadas por el gobierno han sido el estimular la demanda de bienes de consumo durables y de algunos bienes de inversión fabricados en el país (por ejemplo heladeras, cocinas, calefones, automóviles) mediante iniciativas que contemplan la asignación de recursos públicos para abaratar las compras financiadas y acuerdos con los sectores industriales y de comercialización de estos bienes destinadas a alcanzar reducciones de precios. Entre los objetivos explícitos de estas medidas se encuentran el sostenimiento de la actividad industrial y la preservación de fuentes de trabajo en ese sector.

Desde un punto de vista de más largo plazo, las iniciativas de política industrial aún vigentes y más importantes que ha tenido la Argentina han sido, por un lado, desde la

década de los 80, la promoción industrial mediante exenciones impositivas (impuestos nacionales) en diversas provincias con menor desarrollo económico relativo. La segunda iniciativa es el denominado “régimen automotriz”, que originalmente fue negociado entre Argentina y Brasil dentro del proceso de integración económica del MERCOSUR.

El régimen automotriz fue diseñado como un proceso de transición hacia la liberalización del comercio sectorial aunque en la práctica ha tenido sucesivas prórrogas. Básicamente consiste en un acuerdo de especialización productiva mediante el cual las terminales automotrices radicadas en ambos países producen determinados modelos de vehículos en un solo país y desde allí abastecen a todo el MERCOSUR. Esta articulación también supone un comercio sectorial administrado intrazonal, de forma tal, que no se produzcan desequilibrios a favor de algunos de los países y, asimismo, implica compromisos de integración nacional de componentes (autopartes) en los modelos producidos. Asimismo existe un arancel externo común sectorial.

Finalmente, cabe indicar que en Argentina no ha habido una articulación explícita entre las políticas de competencia y las iniciativas de política industrial aunque sin duda algunas de estas últimas políticas tienen implicancias en las condiciones competitivas de los mercados donde se aplican.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Si bien es cierto que no ha habido en Argentina una articulación explícita entre la política de competencia y la política industrial lo cierto es que hay algunos aspectos de esta última a los que de hecho no son ajenos los principios de la competencia. Así, por ejemplo, en el caso del régimen automotriz, si bien conceptualmente podría ser caracterizado como un acuerdo que restringe la competencia, sobre todo si se toma como paradigma un modelo económico completamente liberalizado, no es menos cierto que su perdurabilidad en el tiempo ha servido de base para la radicación de inversión extranjera directa tanto en Argentina como en Brasil, asimismo ha permitido generar una plataforma exportadora hacia terceros mercados y en algunos casos puntuales la producción de modelos o partes de vehículos exclusivamente en Argentina para abastecer todo el mercado mundial.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Resulta bastante complejo determinar el grado de conflicto, complementariedad o sinergia entre la política de competencia y la política industrial dadas las múltiples restricciones que puede enfrentar cada una de estas políticas de acuerdo al país de que se trate, el momento del ciclo económico en que se apliquen, los distintos objetivos y prioridades de la política económica general, a la estructura de la economía donde se

instrumenten las estas políticas, su articulación con la economía mundial, a la competitividad externa de sus distintos sectores de bienes transables, etc.

Hechas estas salvedades hay consenso en que desde un punto de vista conceptual cualquier política pública orientada a promover actividades económicas determinadas se apartaría del paradigma del mercado como asignador eficiente de recursos. No obstante, es igualmente cierto que aún las economías desarrolladas más apegadas a estos principios dentro de sus propias normativas plantean exclusiones en cuanto al alcance de la política de competencia por razones de seguridad, estratégicas u otras.

En esta línea es de destacar que en la Argentina una de las iniciativas de política industrial más importantes de las últimas décadas es el régimen automotriz que surgiera de un gobierno cuyos objetivos de política económica estaban orientados por principios de libre competencia, apertura económica a los flujos de comercio y financieros mundiales, desregulación, privatizaciones, etc.

La conclusión que podría sacarse es que la articulación entre una y otra política debería ser evaluada caso por caso a la hora de tomar medidas concretas en el marco de un modelo y de una orientación de política económica determinados.

Lo ya señalado respecto a la instrumentación del régimen automotriz a través del tiempo refleja concretamente aspectos de estas tres dimensiones de la relación entre las políticas de competencia e industrial. En efecto, dicho régimen fue diseñado como un instrumento que conceptualmente implicaba algún grado de restricción respecto de un mercado regional completamente abierto y competitivo, también fue concebido como un régimen transitorio que se extendió en el tiempo más allá de lo previsto originalmente y al mismo tiempo permitió generar un flujo significativo de inversiones traducidas en aumentos de escalas de producción, mejoras tecnológicas y ganancias de competitividad externa tanto dentro del MERCOSUR como extrazona.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

Lo indicado en la respuesta a la pregunta precedente es válido para contestar el planteo, esto es, la prioridad de cada política debería ser considerada caso por caso y el criterio general para abordar cada situación deberían ser los objetivos generales de la política económica y del modelo económico que se busca consolidar con la misma.

En este sentido la Argentina de hecho ha ido perfilando una postura general para abordar este tipo de dilemas. En su diseño original la actual Ley de Defensa de la Competencia N° 25.156 contemplaba como autoridad de aplicación a un tribunal independiente integrado por miembros surgidos de un concurso público (Tribunal Nacional de Defensa de la Competencia) cuyas decisiones serían autónomas respecto del Poder Ejecutivo Nacional y sólo se podrían apelar ante la justicia. Esto implica en la práctica una separación entre las decisiones del Tribunal y cualquier medida de política económica. Lo que ocurrió tras nueve años de vigencia de la actual Ley es

que dicho Tribunal no se ha constituido, lo cual es un indicador de la poca viabilidad de un diseño institucional con tales características, a la luz de los acontecimientos económicos que se fueron dando en el país durante dicho lapso.

Por el contrario, lo que se ha verificado en forma más o menos explícita es que la política de competencia debe tener algún grado de articulación con la política económica, dentro de la cual también se encuentra la política industrial. Las opciones para llevar adelante esta articulación pueden ser múltiples y pueden tener distinto grado, desde una subordinación total de la política de competencia a otros objetivos, hasta un respeto casi total a los principios de la competencia en la política económica o, por ejemplo, dejar abierta alguna instancia explícita de revisión de las decisiones de política de competencia a las máximas autoridades del Poder Ejecutivo, incluido el Ministro de Economía.

Esta última opción podría ser una alternativa a explorar sobre todo en cuanto a concentraciones económicas que es la esfera de la política de competencia donde las decisiones que se toman tienen mayor impacto en las estructuras de los mercados así como igualmente lo tienen las decisiones de política industrial. En la Argentina, han existido iniciativas en esta dirección durante los últimos años pero no han logrado superar la etapa de tratamiento parlamentario para su posterior sanción, siendo este un requisito ineludible ya que implican una modificación de la legislación de competencia vigente.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

La Ley Argentina no contempla excepciones de ningún tipo.

Brazil

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?*

Brazil does have a national industrial policy, which shares with the national competition policy the goal of enhancing dynamic competitive advantages in increasingly integrated global markets.

The Brazilian government has recognized the need to implement initiatives for increasing the competitiveness of the Brazilian production structure; as a result, a new industrial policy was launched in May 2008, namely, the Productive Development Policy (PDP).

The PDP is developed under the leadership of the Brazilian Ministry of Development, Industry and Foreign Trade and has four horizontal macro targets: (i) to increase investment; (ii) to raise private expenditure in research and development (R&D); (iii) to expand exports; (iv) to make small and medium enterprises (SMEs) more dynamic. These targets are divided in three different levels: (i) systemic actions, focusing on the generation of positive externalities for the whole productive structure; (ii) strategic highlights, consisting on public policy goals chosen in reason of their importance to the long-term productive development of Brazil; and (iii) structural programmes for productive systems, oriented towards strategic targets based on the diversity of the domestic productive structure.

The PDP is a horizontal policy, meaning that it is aimed at promoting incentives for increasing the competitiveness in all sectors of the economy, rather than only in selected sectors. An example of this horizontality worth mentioning is the inclusion, in the macro targets of the PDP, of incentives for the promotion of exports by SMEs; the latter currently represent approximately 20% of the Brazilian GDP. This example also shows that competition and industrial policy in Brazil converge to the extent that industrial policy provides conditions for the increase of competition and participation of SMEs in international markets and, consequently, within the domestic market as well.

Furthermore, competition principles are intrinsically considered by the industrial policy. The instruments of the PDP are divided in four categories comprising, among others, antitrust regulation: (i) incentives (fiscal incentives, credit, venture capital, and economic subvention); (ii) state's buying power (public procurement); (iii) technical support (certification, export/trade promotion, intellectual property, human resources and business capacity building); and (iv) regulation (technical, economic and antitrust).

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

The Brazilian 1988 Constitution establishes that the “free exercise of any economic activity is ensured to everyone, regardless of authorization by government agencies, except in cases set forth by law.”¹ The constitutional economic order is based, among other principles, on the freedom of initiative and freedom of competition. Competition principles are intrinsic in the industrial policy. The elaboration process of the PDP was guided by the awareness that competition principles should be respected, to avoid the lack of effectiveness of the PDP as its implementation can be reviewed by Brazilian competition authorities.

As mentioned earlier, the PDP aims at creating incentives for the increase of competitiveness in all sectors of the economy, rather than in selected sectors. The PDP realizes that, due to the opening of Brazilian markets to foreign competition, it is important to provide tools and incentives for Brazilian industries to innovate and compete efficiently. Therefore, by promoting efficient and competitive industrial structures in the market, the PDP promotes pro competitive goals in line with competition principles.

The PDP respects the specific characteristics of each industrial sector in order to develop its initiatives. Among other goals, it also aims at bringing industrial development to less developed regions in the country. There are cases where industrial policy promotes innovation and economies of scale in a number of sectors, aiming at preparing these sectors for competition in international markets. The policies towards these sectors bring embedded the promotion of competitiveness in a way that does not diverge from the goals of competition policies, nor from the technical analysis of competition authorities. As an example, in the Merger Review n. 08012.010192/2004-77 CADE’s Commissioner Luiz Fernando Schuartz mentioned that the paper and cellulose industry logistics required innovative management models in order to enable them to compete in globalized markets.

This absolutely does not mean that the implementation of the PDP will not be monitored by Brazilian competition authorities: they have complete independence to assess, in a case-by-case basis, whether a merger or a conduct resulting from the implementation of the PDP violates Brazilian competition laws. Convergence between industrial and competition policies depends on the recognition of competitiveness as a dynamic process towards a highly competitive environment which derives from competitive companies.

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.*

The Brazilian Government is working on a policy model that fosters the convergence of industrial and competition policies. Industrial and competition policies aim at achieving the same target, namely, the improvement of overall social welfare. According to section 174 of the Brazilian Constitution, the State is a normative and regulatory agent for the economic activity, and for this purpose it has supervisory, incentive and planning functions. These are clearly complementary

¹ Sole Paragraph – Section 170 of the Constitution.

functions. We can roughly state that competition policy is an element of the supervisory function, while industrial policy is a component of the planning and incentive functions. Analogously to other major State functions, competition and industrial policies shall be considered as complementary. This does not mean that conflicts may not occur in practice, but they have to be analyzed on a case-by-case basis.

In terms of existing synergies between the PDP and competition policies, an example worth mentioning is the increase in the number of exporting SMEs, one of the main targets of the PDP. This policy is in principle harmonious with the goals of competition policy, to the extent it provides conditions for increasing competition and participation of SMEs in international markets and, consequently, also within the domestic market.

Increasing innovation is another example of a target of the PDP in line with competition principles. One of the initiatives comprised by the PDP is to increase resources for the promotion of systemic innovation in all industrial sectors, which is aligned with competition policy principles as innovation is considered relevant for the enhancement of dynamic competitive advantages and, therefore, for the promotion of competition.

A third example of synergies between Brazilian industrial and competition policies is the importance attributed to scale and scope economies in specific sectors. When gains on scale and scope through mergers are quite relevant, the merging entity may promote efficiencies to the benefit of consumers and increase its competitiveness in global markets. This translates in an extra competitor in oligopolistic markets of global dimension, to the benefit of competition.

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 prioritized and why?*

As per written above, the relationship between competition and industrial policies exists and is based on institutional convergence and on the goal of enhancing dynamic competitive advantages. Therefore, there is no prioritization between these policies: industrial and competition policies in general are synergic and not necessarily should be deemed antagonistic. As a consequence, none of those policies should be prioritized in detriment to the other.

As explained in question 3 above, industrial and competition policies can be complementary. Concrete cases, however, demonstrate that sometimes industrial policy may be inconsistent with competition policy, and vice-versa. However, this should be analyzed in a case-by-case basis. The institutional structure is, in any case, mature, efficient and able to deal with these eventual inconsistencies.

Such statement can be illustrated by reference to the consolidation of some industrial sectors. Depending on the industry and on the size of the market, a minimum level of concentration is required to improve efficiency and

competitiveness. This may be the case of global oligopolistic markets in sectors that demand a huge amount of investments for initiating or carrying on its activities. However, this does not refrain competition authorities from protecting competition in the market and imposing conditions and limits to the exercise of market power. Competition legislation in Brazil provides competition authorities with state-of-the-art legal instruments capable of balancing the targets of competitiveness and competition.

Petrobrás, for example, is a leading Brazilian (and worldwide) oil company that is inserted in industrial policy initiatives. These, however, do not hinder the Brazilian Competition Policy System (BCPS) capability of imposing duties to Petrobrás in order to protect the market and safeguard competition. Recently, in Merger Review n°.08012.002820/2007-93 the acquisition of some assets of Ipiranga Group by Petrobrás has been approved by CADE upon the imposition of a set of performance commitments.

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?*

There are no exemptions in the Brazilian Competition Law or other specific laws to favour domestic economic sectors.² Therefore there is antitrust enforcement even when mergers occur in regulated sectors.

However, Article 54 of the Law 8.884 has a special provision that allows mergers to be approved if some requirements also common to industrial policy are met, provided that the transaction is “taken in the public interest or otherwise required to the benefit of the Brazilian economy, provided no damages are caused to end-consumers or end-users”:

“Article 54. Any acts that may limit or otherwise restrain free competition, or that result in the control of relevant markets for certain products or services, shall be submitted to CADE for review.

Paragraph 1. CADE may authorize any acts referred to in the main section of this article, provided that they meet the following requirements:

I - they shall be cumulatively or alternatively intended to:

(a) increase productivity;

(b) improve the quality of a product or service; or

(c) cause an increased efficiency, as well as foster the technological or economic development;

II - the resulting benefits shall be ratably allocated among their participants, on the one part, and consumers or end-users, on the other;

III - they shall not drive competition out of a substantial portion of the relevant market for a product or service; and

IV - only the acts strictly required to attain an envisaged objective shall be performed for that purpose.

² The role of the Brazilian Central Bank when analyzing mergers in the financial sector is being discussed at the moment, according to what is going to be explained below.

Paragraph 2. Any action under this article may be considered lawful if at least three of the requirements listed in the above items are met, whenever any such action is taken in the public interest or otherwise required to the benefit of the Brazilian economy, provided no damages are caused to end-consumers or end-users.”

To this date, however, no decisions have ever been issued based on this provision.

With respect to the financial sector, Bill No. 344/2002 is under analysis by the Congress and provides for the role of the Central Bank when analyzing transactions in that sector. The Central Bank would be responsible for evaluating whether a transaction should be approved to avoid systemic risks in the financial sector. In case of no systemic risks, CADE would be responsible for reviewing the transaction under the Brazilian Competition Law.

As mentioned earlier, there are currently no exemptions to antitrust review under the Brazilian legal system. However, CADE may consider whether the transaction should be analyzed under the umbrella of an industrial policy, on the basis of paragraphs 1 and 2 of Article 54 of Law 8444/94. In this case, it may be taken into consideration that the aims of the industrial policy might be related to the provisions of Article 54 above mentioned. None-the-less, it is important to stress that, to date, CADE has not approved any operation on the grounds of paragraphs 1 and 2 of article 54 of the Brazilian Competition Law.

Bulgaria

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?*

The industrial policy of Bulgaria is in line with the principles of the EU industrial policy. Thus, along with the national priorities, the Bulgarian industrial policy reflects the broader objectives of the Union in this area. Among the main goals of the current industrial policy of the country are:

- Modernization and development of infrastructure, in particular transport and energy networks, as well as ICT infrastructure;
- Promotion of innovation, research and technological development;
- Improvement of the environmental protection;
- Promotion of SMEs and entrepreneurship.

These features of the policy are following the objectives of the Lisbon Agenda set out by the European Council in 2000. They are part of the National Development Plan (2007 – 2013) and the National Reform Programme (2007 – 2009), and as such they are in line with the competition policy objectives, which are laid down in these very same strategic documents. One of the priorities of these documents is creating a competitive environment in network industries.

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

All national laws regulating sector industries (the Law on Electronic Communications, the Energy Act, etc.) contain provisions dealing with competition principles and the establishment of a healthy competition environment.

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*

As mentioned above, the national industrial laws complement competition principles. Both the Law on Electronic Communications and the Energy Act contain provisions specifically dealing with competition principles and the creation of appropriate conditions enabling the development of competition in those sectors.

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 prioritized and why?*

Industrial policy and competition policy are not in conflict with each other. Rather, particularly as a strong industry depends on an open market with free competition, competition policy should form part of industrial policy. “National champions” are not harmful to competition per se, as long as their status is achieved in accordance with the competition rules.

The issue is addressed in the LPC. Art. 26 (2) of the law provides for the possibility for the CPC to authorise a concentration which, while creating or strengthening a dominant position, aims at modernisation of the relevant economic activity, improvement of market structures, better meeting the interests of consumers and overall the positive effect outweighs the negative impact on competition in the relevant market.

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?*

The LPC does not contain any exemption provisions that favour domestic economic sectors. The LPC is applied with equal force both to national and foreign enterprises (independently of their size) which have breached competition rules.

The Bulgarian policy on small and medium-sized enterprises (SMEs) is part of the general European policy in this area laid down in documents such as “The European Charter for Small Enterprises” and certain recommendations of the European Commission which have been incorporated in the Program of the Bulgarian government. The EC’s action guidelines in the recently adopted Small Business Act for Europe are also taken into consideration.

The Bulgarian policy on SMEs is incorporated in the National Strategy for Encouragement of Small and Medium-Sized Enterprises Development for 2007 – 2013.

The Strategy is based on conclusions and recommendations from the Annual report on the condition and development of small and medium-sized enterprises, prepared by the Minister of economy and energy in compliance with the Law on Small and Medium-Sized Enterprises. The Strategy is applied on the basis of Annual programs approved by the Minister of economy and energy.

The main objective is to enhance and effectively employ the potential of Bulgarian enterprises by means of:

- a) Entrepreneurship training and encouraging the spirit of entrepreneurship and entrepreneurial skills

The government seeks to foster a culture of entrepreneurship and entrepreneurial attitude on all levels of education. The objective is that the Bulgarian education systems form entrepreneurial thinking and skills which stimulate young people’s creativity and initiative.

b) Simplifying the normative and administrative reality

The government tries in any way possible to facilitate the process of starting and maintaining a business in the country, abolishing unnecessary administrative barriers and providing the possibility for easy entry into and exit from the market and quality administrative services. As a measure to facilitate businesses, the government has adopted Principles of Better Regulation for 2008 – 2010 aiming at cutting the red tape. Currently, regulatory regimes are under revision in order to lift the unnecessary administrative burden.

c) Facilitating the access to financing

Access to financing is one of the main problems faced by SMEs, thus the government seeks to provide accessible guarantee support for credit security and to create conditions for risk investment. Recently, the Bulgarian Development Bank was established as a successor of the Encouragement Bank. Its mission is to support the development of the Bulgarian economy by promoting export and supporting the implementation of the economic policy of the government in terms of micro, small and medium-sized enterprises.

d) Competitiveness and innovations

Innovative decisions, meeting certain standards and technological renovation are critical for the Bulgarian SMEs. Therefore, the government aims to encourage enterprises to focus on these areas.

e) Developing cluster structures

The joint efforts of small enterprises to find new production decisions need be backed up – this strengthens the relationships between enterprises and improves their market flexibility. As a measure to support SMEs, the government has adopted a Strategy for the development of industrial zones which aims at attracting investments and promoting businesses.

f) Improved access to the Common and External Markets

The government provides its support to the enterprises in their effort to enter the Common and External Markets. The aim is that more Bulgarian enterprises become permanent exporters of quality produce.

g) Protection of intellectual property

The protection of intellectual property is vital for the development of modern enterprises. Bulgarian businesses are protected from violations of their intellectual property rights by laws such as the Law on Patent and Utility Model Registration, the Law on Marks and Geographical Indications, etc. The unfair competition provisions in the Law on Protection of Competition (such as the provision on imitation of goods and services) also aim at protecting intellectual property rights.

Chile

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

No existe una política industrial explícita, sin embargo hay elementos de política industrial en las siguientes cuatro áreas. (i) Innovación: existe una creciente disponibilidad de fondos públicos para innovación, orientada en forma preferencial a potenciar 5 clusters definidos por la autoridad (Minero, Acuícola, Turismo de Intereses Especiales, Alimentos, y Servicios Globales). (ii) Apoyo a la PYME: aquí se pueden mencionar los programas de acceso a financiamiento, capacitación y recientemente el tratamiento preferencial en materia de cumplimiento de regulaciones y simplificación de trámites. (iii) Apoyo a pequeños productores de sectores específicos: en esta categoría cabrían los programas y organismos de los sectores agrícolas y mineros, que combinan objetivos de incremento de productividad y asistencialismo. (iv) Propiedad estatal de empresas consideradas estratégicas: aquí cabría incluir a Codelco, en la minería de cobre y ENAP, en hidrocarburos.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Si bien, por definición, la política industrial consiste en privilegiar el desarrollo de determinados sectores o formas de producción, en el caso de Chile esto se hace sin establecer tratamientos discriminatorios entre empresas de un mismo sector o categoría privilegiada. Asimismo, entre los instrumentos de política utilizados no se incluye el establecimiento de barreras artificiales a la entrada de competidores, ni proteccionismos específicos frente a las importaciones, ni menos aún el otorgamiento de derechos monopólicos. Quizás a modo de excepción deba mencionarse a ENAP, dado que en ocasiones se han reservado áreas para ser exploradas y explotadas por esta empresa estatal, en vez del mecanismo general de licitaciones abiertas a cualquier empresa.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Pueden existir complementariedades, si tomamos de la política industrial el componente de apoyo de la PYME, en la medida que ella consista en facilitar el ingreso (y salida) de competidores en los mercados. El proyecto de ley que “fija normas especiales para las empresas de menor tamaño” que actualmente se tramita en el Congreso es un buen ejemplo de este tipo de complementariedad. También existiría sinergia cuando consideramos que la política de competencia previene y sanciona el abuso de posición dominante y que este abuso cuando es entre empresas habitualmente opera en contra de las de menor tamaño. Un ejemplo son los acuerdos

logrados por la agencia de competencia chilena, la Fiscalía Nacional Económica (FNE), con grandes empresas del retail para que establezcan buenas prácticas con sus proveedores de menor tamaño.

Sin embargo, también hay conflictos entre las políticas de competencia e industrial, como cuando se privilegia a una empresa determinada para que desarrolle una actividad considerada prioritaria por la política industrial. Un ejemplo al respecto es el de Empresa Nacional de Petróleo, ENAP señalado en la respuesta anterior.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

En Chile hay dos ejemplos contrapuestos provenientes del sistema de defensa de la competencia. Algunas décadas atrás, la autorización por parte de la Comisión Resolutiva Antimonopolios a la fusión de las dos únicas líneas aéreas relevantes, estuvo marcada por un mayor énfasis en fortalecer su posición en las rutas internacionales que en los riesgos de comportamiento monopólico en las rutas domésticas. En contraste, un pronunciamiento reciente del Tribunal de Defensa de la Libre Competencia (TDLC, sucesor de la Comisión recién señalada), que negó la fusión de dos grandes empresas del retail, hizo ver que la promoción de empresas líderes nacionales no podía ser excusa para poner en riesgo la competencia en el mercado local.

Las autoridades políticas no han manifestado una postura explícita a favor de una u otra visión, pero todo indica que actualmente tiende a predominar aquella consistente con el pronunciamiento más reciente del Tribunal.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

La legislación en materia de competencia tiene una larga tradición en Chile –desde 1959-, sin embargo no es sino hasta 1973, con la promulgación del DL 211, que la ley define la creación de un sistema de defensa de la competencia propiamente tal. El DL 211 ha sufrido varias modificaciones menores, hasta el año 2004, en que se realizan cambios sustantivos al marco normativo e institucional de defensa de la libre competencia, estableciéndose las bases del sistema hoy vigente.³

³ El DFL 1 del año 2005 del Ministerio de Economía, Fomento y Reconstrucción, fija el texto refundido, coordinado sistematizándolo del DL 211 de 1973. No obstante, sigue utilizándose de modo generalizado el DL 211 para referirse a la ley de defensa de la libre competencia. En lo que sigue, deberá entenderse que toda mención al DL 211 considera la versión actualizada del mismo.

El Art. 1 del DL 211 establece que el objeto de la ley es el “*promover y defender la libre competencia en los mercados*”, en tanto que en el artículo subsiguiente define que se entenderá por ilícito anticompetitivo “... *cualquier hecho, acto o convención que impida, restrinja o entorpezca la libre competencia, o que tienda a producir dichos efectos*” en un sentido amplio, ilustrando algunas conductas anticompetitivas, como los acuerdos colusorios, abusos de posición de dominio y prácticas predatorias.. De acuerdo al DL 211, la concentración en mercados no es anticompetitiva *per se*, por lo que la ley no establece límites o umbrales de concentración ni contempla la consulta obligatoria de operaciones de concentración horizontal –aunque entrega incentivos a la consulta voluntaria por parte de las firmas.

En sus siguientes artículos la ley establece el marco institucional y las facultades y cada uno de éstas: a saber, el rol y atribuciones del Fiscal Nacional Económico (quien actúa en representación del interés general) y la agencia de competencia –la Fiscalía Nacional Económica, FNE-, y del Tribunal de Defensa de la Libre Competencia (TDLC). La ley también define la naturaleza administrativa de las sanciones y las multas máximas que son dobles a fijar a quienes infrinjan estas disposiciones.

Finalmente, es importante señalar que la ley chilena de defensa de la competencia aplica, en sentido amplio, para todas las actividades y sectores de la economía (bienes, servicios, personas naturales, jurídicas, asociaciones profesionales, etc.), considerando tanto al sector público como al sector privado. No existen excepciones ni exenciones legales ni judiciales para la aplicación de la ley.

De esta manera, a diferencia de lo que pudiera ocurrir en otras economías, el ámbito de aplicación de la ley de competencia es amplio. A modo de ejemplo:

- Para el caso de sectores regulados:

Ya ha sido dicho que no existe agente o sector económico excluido de la legislación de defensa de la competencia. Por esta razón, en el caso de los sectores regulados, aún cuando las reglamentaciones específicas que los rigen pueden considerar disposiciones que afectan variables clave para la competencia (como las condiciones de entrada y salida de firmas, o los precios de venta de servicios), la agencia de competencia igual juega un rol. En estos casos, el papel de la FNE es el de examinar dichas normas, velando porque éstas no restrinjan innecesariamente la libre competencia. Cuando la FNE considera que ciertos reglamentos pueden dañar la competencia en el sector, puede acercarse a los reguladores y como una acción de *advocacy*, discutir la razonabilidad de los elementos que fundamentan dichos reglamentos. La FNE también puede abogar por hacer sugerencias directas o solicitar al TDLC que dicte recomendaciones destinadas a la eliminación o modificación de dichos reglamentos.⁴

- Para el caso de empresas públicas (o *state-owned enterprises*):

Cualquier acción anticompetitiva, iniciada por o en contra de empresas estatales están sujetas al DL 211 y a las autoridades de la competencia. De este modo, la ley de competencia no considera un tratamiento especial para las empresas públicas, las que

⁴ El Art. 39 del DL 211 detalla las atribuciones que le corresponden al Fiscal Nacional Económico para defender los intereses que se le encomendaron, en la forma que estime conveniente de acuerdo con el imperio de la ley. En virtud de este artículo, por ejemplo, durante 2008 la FNE emitió informes al TDLC comentando los efectos sobre la competencia de los regímenes tarifarios en telecomunicaciones (telefonía fija) y energía, y se ha reunido con varios organismos reguladores para revisar reglamentos de sus respectivos sectores.

deben ser tratadas del mismo modo que las empresas privadas.⁵ Lo mismo aplica a otros organismos e instituciones del Estado, como puede ser ejemplificado a partir de casos recientes:

a) En un proceso aún pendiente ante el TDLC, el Fisco de Chile fue demandado en su rol regulador de puertos terrestres, conjuntamente con el concesionario, por un privado:

- El Consejo de Defensa del Estado (la entidad encargada de la defensa judicial de los intereses patrimoniales del Estado), alegó falta de competencia del TDLC, argumentando que el Gobierno no sería un agente económico en el sentido que establece la ley de competencia y, como tal, este caso no versaría respecto de una actividad económica, sino respecto del ejercicio de las funciones para las que el Gobierno, a través del organismo regulador específico, la Dirección General de Obras Públicas, había sido mandado
- Una resolución intermedia del TDLC desestimó la reclamación de falta de competencia, toda vez que este Tribunal sostuvo que sus competencias se basan en que, de acuerdo al DL211 -ley que tiene jurisdicción sobre cualquier situación que pueda o tienda a violar la libre competencia en los mercados- no hay excepciones o límites de las entidades de propiedad estatal implicadas en la violación anticompetitiva. El infractor no requiere ninguna calificación especial y puede ser una persona física o jurídica, pública o privada. Además, el DL 211 normaría cualquier tipo de actividad económica, si ésta consiste en el suministro de bienes o servicios, públicos o no, y con independencia de si esta oferta es provista directamente por el Gobierno, o por medio de un concesionario. Dado el carácter de orden público de la ley de competencia, una exención explícita es necesaria para excluir al Gobierno de su ámbito de aplicación, y esta excepción no existe.⁶

b) En una decisión reciente,⁷ el TDLC falló en contra de pequeñas empresas mineras, las que habían presentado una demanda en contra de Empresa Nacional de Minería (ENAMI), corporación estatal en la industria minera. La supuesta infracción anticompetitiva se refería a abuso de posición dominante, precios abusivos de compra y depredación. En este caso, cabe señalar que el TDLC no sólo acogió la causa a tramitación, sino que además basó el rechazo de su sentencia en un análisis de la competencia en el mercado afectado, sin tener en consideración la

⁵ El régimen jurídico que se aplica a las empresas estatales es muy estricto –regulado constitucionalmente- y cuidadosamente equilibrado con los derechos privados a la libertad económica. Así, el Estado puede desarrollar o participar en las actividades empresariales sólo cuando esté expresamente autorizado por una ley aprobada por quórum calificado en el Congreso. En tales casos, las actividades económicas están sujetas a la legislación común aplicable a los particulares, a pesar de las excepciones justificadas en motivos establecidos por la ley, que también debe ser aprobada por un quórum calificado del Congreso. Si el Estado viola las restricciones establecidas para participar en las actividades empresariales, o el principio de subsidiariedad, los particulares afectados pueden utilizar recursos constitucionales para iniciar los procedimientos ante tribunales a fin de obtener reparación.

⁶ TDLC, 20.12.2007, Resolución intermedia de la causa Rol C 127-07 (Demanda de Nutripro S.A. contra Puerto Terrestre Los Andes Sociedad Concesionaria S.A. y el Fisco de Chile (en <http://www.tdlc.cl/DocumentosMultiples/20%20%20122007.doc>).

⁷ TDLC, 02.07.2008, Sentencia N° 70/2008, descargable en http://www.tdlc.cl/DocumentosMultiples/Sentencia_70_2008.pdf. Esta sentencia fue acogida en todas sus partes por la Excma. Corte Suprema, la que en su Resolución del 10 de noviembre de 2008, para la causa Rol N° 4380 – 2008, no acogió las reclamaciones de las demandantes.

naturaleza pública de la empresa demandada (ni tampoco la característica de pequeñas empresas, de las demandantes).

- Para el caso de pequeñas y medianas empresas: El DL 211 no establece ningún tratamiento especial para pequeñas y medianas empresas (PYME), las que no están exceptuadas de sus disposiciones, y son sujeto a ellas al igual que cualquier otra entidad.

Ahora bien, aunque tradicionalmente la equidad en las actividades económicas fue entendida como uno de los propósitos de la legislación sobre defensa de la competencia (lo que llevó a que algunos la percibieran como una herramienta para la protección de las PYME); como concluyó en 2004 la OCDE y la revisión inter-pares del BID, la política de competencia en Chile actúa cada vez más con una mayor orientación a favor de la eficiencia. En este sentido, en algunas de sus sentencias,⁸ el TDLC expresamente ha hecho hincapié en que el objetivo del derecho de la competencia no es la protección de los pequeños competidores, sino de la competencia. Por esta razón, la política de promoción y fomento de la PYME radica en otra institucionalidad pública (el Ministerio de Economía).

⁸ Por ejemplo, la Sentencia N° 65 del 5 de agosto de 2008, estableció en su considerando (108) que “el uso de poder de compra [entendido como poder asimétrías en los poderes de negociación] sólo pueden afectar a la competencia cuando permanentemente influyen en la oferta total de productos en el mercado, a través de la reducción de cantidades, de incrementos en los precios de venta minorista o en la reducción de la inversión en investigación y desarrollo.

Colombia

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

El Consejo Nacional de Política Económica y Social, CONPES, es la máxima autoridad nacional de planeación que se desempeña como organismo asesor del Gobierno en todos los aspectos relacionados con el desarrollo económico y social del país. En tal sentido, se emiten los documentos CONPES, los cuales contienen el desarrollo de las políticas generales del país.

En particular, la política industrial colombiana a nivel nacional se encuentra trazada en varios CONPES, de los cuales se desprende que ésta política comprende materias como política de productividad y competitividad (CONPES números 3439 de 2006 y 3527 de 2008) así como su agenda interna (CONPES número 3297 de 2004), política sectorial de turismo, política nacional de calidad, política de transformación productiva y promoción de Mipymes, las estrategias para consolidar el sistema de propiedad intelectual, competitividad y productividad nacional (CONPES número 3533 de 2008)⁹.

En el marco de la política industrial no se aborda de manera expresa los asuntos de competencia, aunque el contenido de los documentos mediante los cuales se trazan los lineamientos de la política industrial están dirigidos a velar por la observancia de las disposiciones sobre promoción de la competencia y prácticas comerciales restrictivas en los mercados nacionales, todo ello en el marco de la competitividad sobre los cuales versan los documentos CONPES antes referidos números

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Los principios señalados en el artículo 333 de la Constitución Política colombiana y en el numeral 1 del artículo 1 del Decreto 2153 de 1992 se aplican como preceptos rectores que orientan la política industrial de manera transversal.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Entre las leyes de competencia y las políticas industriales existe una total sinergia y complementariedad, ejemplo de ello es lo descrito en el CONPES 3533, el cual señala como una de las estrategias del Sistema de Propiedad Intelectual (SPI), promover la propiedad intelectual como mecanismo para el desarrollo empresarial, con la cual se

⁹ Los documentos CONPES pueden ser consultados en la página web: www.dnp.gov.co.

pretende contribuir en “la preparación de las condiciones para que el aparato productivo colombiano evolucione hacia una competencia basada en la creación, la adaptación tecnológica y la innovación”. Otro caso, es el descrito en el CONPES 3484 en el cual se señala que son mecanismos para mejorar la capacidad y operar en la formalidad la articulación productiva de las microempresas y las Pymes, la conformación de redes de colaboración y promoción de la asociatividad empresarial, generando incentivos para que les permita a las empresas aumentar su poder de negociación en la compra de insumos y en la comercialización de sus productos, incursionar en mercados donde individualmente resulta muy difícil acceder, entre otros aspectos.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

Como se señaló anteriormente, en Colombia la política industrial y la política de competencia guardan armonía y como tal la prioridad es cumplir los objetivos que la política industrial traza cumpliendo las normas de competencia.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

En la legislación de competencia colombiana no hay excepciones que favorezcan sectores domésticos de la economía.

Las excepciones de nuestra política de competencia se encuentran dispuestas en el Decreto 2153 de 1992 y la ley 155 de 1959. La finalidad de dichas excepciones no son otras que las descritas en las normas, como la de defender la estabilidad de un sector básico de la producción de bienes de interés para la economía general, la cooperación en investigaciones y desarrollo de nueva tecnología, el cumplimiento de normas de calidad.

Congo

- De la politique industrielle :

Le Congo dispose d'un schéma directeur de développement industriel sur lequel s'appuie sa politique industrielle. Cependant en absence d'une loi sur l'industrie, on peut dire que la politique industrielle strictement nationale présente des difficultés de repérage et de visibilité. Toutefois, celle-ci privilégie certains secteurs prioritaires de l'économie nationale, à savoir :

- L'agro alimentaire ;
- L'agro industrie ;
- La pêche et l'élevage ;
- Le bois (foret) ;
- Les matériaux de construction ;
- La chimie à travers les dérivés du pétrole.

- Des caractéristiques essentielles de cette politique.

- L'accent est mis sur la valorisation des ressources naturelles locales ;
- La valorisation de ces ressources dans le cadre d'un développement endogène ;
- Le choix des secteurs de base en vue de la satisfaction des besoins du marché domestique et du marché extérieur ensuite.

- De la prise en compte de la politique de la concurrence par la politique industrielle
Le Congo ne dispose pas d'une politique de la concurrence au sens propre du terme. C'est pourquoi, il n'est pas facile d'établir les liens entre la politique industrielle et la politique de la concurrence.

Cependant, certains indices susceptibles de voir émerger une politique de la concurrence existent, notamment :

- L'ouverture des marchés au plan sectoriel;
- La facilitation des échanges et la suppression progressive des barrières aux échanges ;
- La mise en œuvre d'un cadre institutionnel et juridique favorable à la promotion des affaires ;
- L'application ou le respect des normes de production et de gestion de la qualité des biens mis à la consommation.

Les éléments sus cités, corroborent à la volonté gouvernementale d'avoir une politique industrielle, tel qu'on peut le comprendre à travers le cadre juridique dont les textes de base sont rappelés en annexe.

Bien que à un niveau d'existence embryonnaire, le Congo est doté d'un Centre de normalisation et d'un centre de bromatologie. A défaut des normes nationales, le Congo s'appuie sur l'utilisation des normes internationales et communautaires dont il prend partie à travers les différents Accords. Ces normes sont appliquées actuellement dans deux secteurs essentiellement : agro-alimentaire et l'agro-industrie. Tels sont les cas de sucre et des Brasseries.

Par ailleurs, en partenariat avec la FAO, des études d'implantation d'un laboratoire de métrologie sont en cours sous la supervision du ministère du commerce de la consommation et des approvisionnements.

- de la promotion des champions nationaux comme instruments de la politique industrielle:

Le Congo, pays membre de l'OMC, privilégie l'économie libérale à travers son cadre juridique des affaires, qu'il met progressivement en place pour s'intégrer dans les grands ensembles économiques. La Charte communautaire d'investissement CEMAC et le droit communautaire OHADA et bien d'autres textes législatifs et réglementaires cités en annexe, sont des instruments opposés à la « politique des champions nationaux », mais plutôt incitent à la compétition des entreprises.

- Législation en matière de la concurrence

En dépit de ce que le Congo n'a pas encore une loi spécifique de la concurrence, et de l'existence des réglementations sectorielles sur la concurrence, des mesures de sauvegarde de l'industrie locale sont prises en faveur des produits suivants :

- le sucre ;
- la farine ;
- les Boissons gazeuses (bières et jus).

Des exemptions touchant à ces produits sont s'application effective :

- régimes d'exception de prix (homologation) ;
- contrôle des contingentements des importations (quotas)

Ces exemptions obéissent à des préoccupations liées à :

- La protection des marchés des produits de l'industrie locale ;
- La promotion desdits produits.

Par ailleurs, des régimes préférentiels sont accordés aux sociétés importatrices des biens d'équipements et de technologies à forte consommation des intrants locaux bénéficiaires d'une Convention d'établissement avec l'Etat congolais, en conformité avec la Réglementation communautaire de la CEMAC et la législation locale.

Les questions des droits de propriétés industrielles et intellectuelles sont aussi prises en compte dans la politique industrielle par la protection de la marque ou du brevet d'invention.

Czech Republic

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?*

Czech Republic has a national industrial policy, which is divided into several particular sub-policies, covering following sectors: energy and resources, industry and construction sector, foreign trade, business support, consumers protection and internal market issues. Key priorities in the Czech national industrial policy are: Effectiveness, sustainable development, pro-active trading policy and support of R&D. Further, one of the contemporary priorities (also within the ongoing Czech Presidency of EU) is competitiveness and elimination of barriers that distort effective market competition. Ministry of Industry and Trade cooperates actively with the Office for the Protection of Competition while preparing amendments or legislative proposals. Moreover, the Ministry seeks to promote the competitiveness and effective competition in all relevant sectors of the Czech economy.

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

The Ministry of Industry and Trade cooperates closely with the Office for the Protection of Competition on all legislative proposals which may raise competition consequences in particular industrial sectors. Moreover, the Czech Office for the protection of Competition conducts *ex officio* monitoring of industrial regulations and acts relating to the trade and particular sectors in order to prevent an anticompetitive clause either being applied or adopted. While considering the general industrial policy of the Czech Republic, representative of the Office is always present to the preliminary articulation of particular policy to ensure that the competition principles will not be omitted.

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*

The Czech Republic strives to unite effectively both economical interests of industrial policies and competition purposes to establish the most favorable environment for the market development. Ministry of Industry and Trade has not lately observed any conflicts between competition and industrial policies. On the contrary – many complementarities have been introduced e.g. *Operational Program for Business and Innovation*, by the Ministry; a significant number of remarks of the Office relating to the promoting of the competition in monopolized markets and combating the barriers to entry in various sectors had implemented. Another example may be given in cooperation in field of consumer protection as for the Ministry is one of the covering institutions for consumer protection bodies. The Office's statements on market competition functionality and benefits for consumers were implemented in many

memorandums and have been reflected during the ongoing preparation of the new *Consumer Protection Strategic Framework* which is to be released by the end of the year 2009.

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 prioritized and why?*

According to the Ministry of Industry and Trade of the Czech Republic, promotion of national champions should be applied very cautiously. It is not the priority of the Czech Republic to favor any national champion within the economic competition. Thus, it is institutional integration of particular companies resulting into their dominant position in the market rather than the result of preferential industrial policy. The Czech Office for the Protection of Competition has issued numerous decisions in proceedings with the companies, which may be reflected as national champions, without any special kind of treatment for those. The Ministry is aware, however, that there are certain companies of which the state's interests are of a high importance. Regarding the potential clash between the competition policy and national industrial policy the Office is fully independent in its decisions and thus there are no limits or restrictions imposed on its decision practice. Market competition issues are therefore treated equally in all the cases no matter what kind of undertaking is under investigation.

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?*

The Czech competition law does not exclude any particular sector from its scope. The Act on Protection of Competition, as amended, shall be applied equally in all sectors of the Czech economy. Even in case of nation-wide consensus on policy which may accelerate technological progress, R&D etc. respective ministries and government have to respect competition law provisions. Supposing there is a policy which would be contrary to the Competition Act a completely new act or decree enabling doing so should have been adopted, yet this situation has never happened.

Dominican Republic

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

Existe la política industrial a nivel nacional, contenida en la Ley 392-07 sobre Competitividad e Innovación Industrial, enfocada a fomentar y estimular la competitividad de las industrias nacionales, incluyendo las micro, pequeñas y medianas empresas (mipymes), política surgida como apoyo a la apertura comercial y a la agresiva inserción de la República Dominicana en el comercio mundial.

Las principales características de esta política son:

- Facilitación logística
- Apoyo a la innovación y la modernización industrial
- Estimulo a las exportaciones
- Fomento de la asociatividad entre empresas
- Fortalecimiento de las cadenas de valor.

Esta Ley no toca expresamente la política de competencia, no obstante, la Ley No.42-08 de Defensa de la Competencia, es una ley de aplicación general y por tanto, la aplicación y ejecución de la política industrial debe darse en armonía con los principios y disposiciones de esta ley y del derecho constitucional de la libre empresa, comercio e industria.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

El principio fundamental de la Ley de Defensa de la Competencia, es la Unidad de Ordenamiento, según el cual esta Ley es de observación general y de orden público en todo el territorio nacional y aplicable a todas las áreas de la actividad económica quedando, en consecuencia, todos los agentes económicos, incluidos los sectores específicos de la política industrial, sujetos a sus disposiciones, en la forma que establece la Ley; esto es, de manera principal para todos los agentes económicos y de manera supletoria para los agentes económicos regulados por leyes sectoriales que tengan disposiciones en materia de competencia.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Actualmente la Ley General de Defensa de la Competencia no ha entrado en vigor y no hay disponibles ejemplos o casos concretos. Entendemos, sin embargo que en nuestro caso no debe existir conflicto alguno entre las políticas industriales y la ley de competencia, al contrario, debe haber sinergia y complementariedad entre ambas,

dado que un ambiente de libre y leal competencia constituye el mejor y más efectivo escenario para estimular la competitividad empresarial, mientras que en un régimen de mercado monopolístico no hay incentivo para incrementar la eficiencia y la innovación industrial.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

En nuestra política industrial, hasta el momento, no se utiliza la herramienta de fomentar “Campeones Nacionales” y nuestra Ley de Competencia no tiene disposiciones relativas al control de funciones; no penaliza la posición de dominio, per se, sino el abuso que se hace de ella. Por tanto, en esta situación bien podría incentivarse la figura de campeones nacionales, como política industrial, siempre sujetos a la aplicación de la Ley de Competencia, sin que se entre en conflicto con la misma.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

No incluye excepciones.

Ecuador

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

La ausencia de una política industrial, los incipientes resultados de las leyes de fomento a la industria, que quedaron insubsistentes a finales de la década de los años ochenta, además de todas las medidas establecidas en la década de los noventa, no lograron apuntalar a los factores conducentes a reactivar el aparato productivo y su necesidad de transformación orientada a impulsar la competitividad y productividad industrial a través de la diversificación, generación de fuentes de empleo, incorporación de nuevas tecnologías e incremento de la inversión que coadyuve al crecimiento y desarrollo económico sostenible.

Con estos antecedentes y evidenciada la necesidad de contar con políticas públicas explícitas para el desarrollo del sector industrial ecuatoriano, el Gobierno Nacional a través del Ministerio de Industrias y Competitividad elaboró la Política Industrial, aprobada el 13 de noviembre de 2007 por el señor Presidente de la República, la misma que establece principios, estrategias y objetivos, planes de acción, programas y proyectos, y contempla una importante participación y articulación del sector público y privado, además de la academia lo que permitirá iniciar una nueva etapa de industrialización, acorde con los cambios de orden económico, social y político que vive el país.

Esta política se elaboró a partir de un diagnóstico crítico del sector industrial, en el que se identifica los aspectos más relevantes en los que el Estado deberá intervenir para lograr un cambio en el modelo de acumulación actual, apuntalando los factores que impulsen la transformación de la estructura productiva, que promuevan encadenamientos productivos, la generación de mayor valor agregado, la creación de empleo de calidad, que eleven los niveles de productividad, competitividad sistémica y reactiven la demanda interna, procurando el cuidado del ambiente y el uso racional de los recursos naturales.

Esferas a las que se aplica: La Política Industrial es de carácter transversal y sectorial (no excluyente) dirigida hacia sectores industriales manufactureros con potencial de desarrollo y que apuntalen el cambio del modelo de especialización primario – extractivo – exportador del país. Esto significa que se apoyará a todos los sectores que demuestren puedan ser generadores de mayor valor agregado, diversificación, generación de fuentes de empleo, incorporación de nuevas tecnologías e incremento de la inversión que coadyuve al crecimiento y desarrollo económico sostenible.

Principales características: La Política Industrial tiene como característica - objetivo fundamental coadyuvar a cambiar el patrón de especialización primario, extractivo exportador de la economía ecuatoriana hacia el fomento de actividades con ventajas comparativas dinámicas, generadoras de mayor valor agregado, que propendan a la creación de empleo de calidad, impulsen encadenamientos productivos, desarrollen tecnología e innovación que eleven los niveles de productividad, competitividad

sistémica y reactiven la demanda interna, procurando el cuidado del ambiente y el uso racional de los recursos naturales.

Adicionalmente, esta Política se articulará con las políticas de desarrollo, inversiones, social, tributaria, comercial, crediticia, financiera y artesanal¹⁰; coordinará acciones entre las distintas entidades de gobierno, para que las diferentes políticas coadyuven al cambio hacia otro modelo de desarrollo; desarrollará y fomentará la inversión en infraestructura, conectividad y fortalecimiento del capital humano; establecerá una Agenda Interna participativa con los actores involucrados; articulará los esfuerzos entre las universidades, sector privado y sector público; contará con información estadística de base e indicadores que facilite la toma de decisiones y permita el seguimiento y evaluación de la política industrial; fortalecerá la demanda interna e impulsar mecanismos para lograr una inserción inteligente en los mercados internacionales; fomentará el consumo intermedio y final de productos nacionales y la marca país; incorporará mecanismos de desarrollo local y territorial; fortalecerá las instituciones relacionadas con la política industrial para que los planes de acción respondan a objetivos claros articulados al PND; y, promoverá el desarrollo e implementación de Políticas complementarias como: Política de Innovación y de Desarrollo Tecnológico, Política de Desarrollo Artesanal, Política de Competencia, Política de Inversiones y otras;

Los Objetivos Específicos que se pretenden conseguir son:

- a) Incrementar la productividad;
- b) Superar la dependencia estructural del sistema productivo ecuatoriano;
- c) Contribuir con a la meta de alcanzar la soberanía alimentaria y económica;
- d) Propender la incorporación de mayor valor agregado en la producción nacional, la diversificación productiva y de mercados;
- e) Potenciar el crecimiento de la economía social y solidaria;
- f) Ampliar la demanda de empleo de calidad y promover la capacitación de la fuerza laboral;
- g) Reducir las asimetrías de desarrollo territoriales y regionales;
- h) Promover la innovación tecnológica para potenciar un crecimiento endógeno;
- i) Apoyar el desarrollo de sectores industriales prioritarios.

Las Políticas y Estrategias específicas para el sector que se han establecido son:

Política 1: Fomentar sectores, industrias y actividades productivas que generen mayor valor agregado

Estrategias:

- 1.A. Establecer incentivos para atraer la inversión hacia sectores y actividades productivas en base al cumplimiento de metas.
- 1.B. Desarrollar sectores industriales prioritarios para el gobierno.
- 1.C. Promover el desarrollo de la industria nacional en la contratación pública.

¹⁰ Esta en proceso de construcción

- 1.D. Mejorar las capacidades locales para la elaboración de productos con mayor valor agregado.
- 1.E. Promover el desarrollo de la industria nacional a través de la contratación pública.
- 1.F. Promover el desarrollo de sectores y actividades productivas no tradicionales con alto efecto multiplicador en la economía.

Política 2: Promover la asociatividad y el desarrollo de economías de escala que promuevan encadenamientos productivos locales.

Estrategias:

- 2.A. Diseñar e impulsar infraestructura productiva con un enfoque de desarrollo territorial.
- 2.B. Promover la creación y fortalecimiento de encadenamientos productivos.

Política 3: Impulsar a las micro, pequeñas y medianas empresas, artesanos y empresas de economía social y solidaria.

Estrategias:

- 3.A. Implementar mecanismos específicos para incrementar la participación de las MIPYMES, artesanos y empresas de economía solidaria en el Sistema Nacional de Compras Públicas.
- 3.B. Establecer líneas de crédito y productos financieros con condiciones especiales para MIPYMES, artesanos y empresas de economía solidaria.
- 3.C. Generar incentivos para canalizar recursos hacia inversión productiva.
- 3.D. Articular y fomentar la asociatividad y el intercambio comercial a nivel micro-regional, para mejorar la inserción en el mercado internacional.
- 3.E. Incremento de la productividad, ampliación de la oferta de productos con valor agregado y mejora de la calidad de gestión empresarial.
- 3.F. Impulsar el emprendimiento productivo

Política 4: Promover el empleo de calidad y mejorar la calificación de la mano de obra.

Estrategias:

- 4.A. Apoyar la especialización tecnológica de profesionales, técnicos y mano de obra y la polifuncionalidad de los niveles ejecutivos y administrativos en función de la demanda del sector manufacturero.

Política 5: Promover la producción de bienes y servicios de calidad.

Estrategias:

- 5.A. Incentivar la ampliación y diversificación de la oferta de productos y servicios con estándares de calidad para los mercados internos y externos.

- 5.B. Fortalecer el Sistema de Calidad y fomentar el cumplimiento de normativas y reglamentos de calidad nacional e internacional.

Política 6: Incorporar, desagregar, adaptar y asimilar nuevas tecnologías en los procesos productivos.

Estrategias:

- 6.A. Promover la innovación y transferencia tecnológica en la industria.
- 6.B. Impulsar el uso eficiente de energías alternativas en los procesos productivos.
- 6.C. Fomentar iniciativas de investigación y desarrollo de nuevas tecnologías de forma articulada entre el sector público, privado y las universidades.

Política 7: Promover la producción limpia y el cuidado del medio ambiente.

Estrategias:

- 7.A. Procurar un adecuado manejo de desechos industriales.
- 7.B. Fomentar la industria de reciclaje.
- 7.C. Disminuir la utilización de sustancias agotadoras del ambiente.

Política 8: Reducir los costos de transacción para facilitar los procesos de producción, innovación y comercialización.

Estrategias:

- 8.A. Mejorar las cadenas de distribución y la infraestructura de almacenamiento.
- 8.B. Modernizar la gestión pública vinculada al desempeño del sector industrial.
- 8.C. Impulsar las reformas legales e institucionales necesarias y fortalecimiento institucional.

Política 9: Promover en los sectores productivos, la oferta y diversificación de productos industriales y mercados de exportación basados en economías de escala.

Estrategias:

- 9.A. Establecer mecanismos de protección e incentivos para la ampliación de la oferta y diversificación de productos industriales.
- 9.B. Apoyar la búsqueda de nuevos mercados y la consolidación de los existentes.

- 2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Los principios de competencia en el Ecuador están dados por las disposiciones establecidas en la Constitución de la República, específicamente en lo que señalado por los artículos 3 numerales 1, 5; Art. 6; Art. 11 numerales 1, 2, 35, 6 y 9; Art. 16, 17 numeral 3; Art. 52, 53 y 54; Art. 66 numerales 2, 15, 25; Art. 83 numerales 1, 7 y 9; Art. 84, 85 numerales 1 y 2; Art. 88; Art. 133 numerales 1 y 2; Art. 204, 208 numeral 10; Art. 213; 275, 276 numerales 1 y 2; Art. 277 numeral 5; Art. 281 numerales 1, 2, 3, 4, 5, 10 y 11; Art. 283, 284 numerales 1, 2, 3, 4, 7, 8 y 9; Art. 285 numeral 3; Art. 288; Art. 304 numerales 1, 2, 3, 5 y 6; Art. 308 inciso segundo; Art. 344 numeral 1; Art. 335 y 336.

A partir de estas disposiciones constitucionales y los objetivos del Plan Nacional de Desarrollo, la Política Industrial estableció los principios que se detallan a continuación y que procuran, entre otros, precautelar y proteger la competencia y evitar prácticas monopólicas u otras que la restrinjan.

PRINCIPIOS:

- b) Incremento de la productividad y competitividad sistémicas;
- c) Agregación de valor;
- d) Acumulación del conocimiento científico y tecnológico;
- e) Ética empresarial;
- f) Generación de empleo de calidad;
- g) Sostenibilidad ambiental;
- h) Diversificación;
- i) Desarrollo local y territorial;
- j) Equidad;
- k) Democratización;
- l) Participación de todos los sectores de la economía;
- m) Generación de mayores encadenamientos productivos; y
- n) Inserción estratégica en el mercado internacional.

Influencia que ejerce la política sobre la competencia en la política industrial: Es importante recalcar que, en las Líneas Estratégicas de la Política Industrial se evidencia la necesidad de que, para cumplir con el objetivo de cambio de modelo de desarrollo para el cual fue elaborada, es necesario contar con políticas complementarias y líneas de acción gubernamentales en distintos ámbitos, destacándose la de: *“...Promover el desarrollo e implementación de Políticas complementarias como: Política de Innovación y de Desarrollo Tecnológico, Política de Desarrollo Artesanal, Política de Competencia, Política de Inversiones y otras”*.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Sobre la base de la Política Industrial antes mencionada, se diría que existen complementariedades y sinergias al mismo tiempo, toda vez que como principal elemento de desarrollo de la política industrial, está la necesidad de contar con una política de competencia complementaria para mejorar el funcionamiento del mercado,

incrementar la productividad y competitividad sistémicas, establecer una cultura de la competencia tendiendo a mejorar las capacidades de los agentes económicos tales como la ética empresarial, es decir, establecer una línea de conducta de los agentes económicos transparente, no colusorias y que respeten el derecho de la competencia como requisito fundamental de un verdadero crecimiento sostenido, no discriminatorio a favor del todo el mercado, la economía y los consumidores y usuarios en general.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

La Política Industrial apoyará a las empresas con un enfoque transversal, de encadenamientos productivos y de desarrollo territorial equitativo, fomentando tanto a las micro, pequeña, mediana y gran empresa por lo que ésta no podrá ser Incompatible con la política de competencia ya que las empresas deberán trabajar en cumplimiento con los principios que no distorsionen el mercado y que no impidan una sana competencia, evitando y sancionando las prácticas que la restrinjan.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

En el país todavía no existe una ley, por lo tanto no es procedente dar una respuesta de carácter positiva o negativa, dado que en el proceso de aprobación puede incluirse el tema ya seas para dejar fuera al tema de la agricultura, las PYMES, o simplemente que no existan sectores excluidos.

Estonia

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?*

Estonia does not have industrial policy as a separate document nor as a set of policy measures where government is actively involved in business planning. Nonetheless, Estonia does have entrepreneurship support programs that provide assistance to private sector companies in forms of grants, loan guarantees, export credits and some other soft measures.

Business support measures are covered in Estonian Entrepreneurship Policy 2007-2013. The policy targets of this policy are the following:

- b) Development of knowledge and skills
- c) Supporting investments for SME's
- d) Supporting internationalization of Estonian companies
- e) Developing legislative environment

There is no sector focus in Estonian entrepreneurship policy and different policy measures are targeted for all companies, taking their general competitiveness or potential for competitiveness as the main basis for support decisions.

Entrepreneurship support programs are administered through a government founded foundation Enterprise Estonia (www.eas.ee) which is the main implementation body in Estonia for European Union structural funds.

Another government founded foundation; KredEx (www.kredex.ee) is also involved in entrepreneurship development with a number of loans and guarantee measures:

As the bulk of different measures do not have any sector preference and support is given to all companies that fulfil necessary criteria then competition issues are not really a problem here. Also, all entrepreneurship programs comply with the EU's state aid rules.

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

There is no sector focus in Estonian entrepreneurship measures. Nevertheless, legislation applicable for certain sectors (telecommunications, energy) emphasises the importance of adhering to competition principles.

For example network activities in electricity and gas sectors are supervised by the Estonian Competition Authority. The ex-ante principles of regulatory supervision are stipulated in the corresponding sector-specific acts. The ex-post principles are stipulated by the Competition Act. Market liberalization is implemented in both

sectors, with the option of regulated supply prices (price caps) applied in both sectors to a certain degree. Gas supply is liberalized; only household customers have the possibility to buy gas at regulated price if they so choose. Electricity market opening is currently 35% (threshold is 2 GWh annual consumption) and the national deadline for full opening of electricity market is 1st January 2013.

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*

As Estonia does not have industrial policy as such, but our entrepreneurship support measures are focused on SME development and have no sector focus, then there have not been any conflicts between competition and industrial policies. It is also difficult to pinpoint any special synergies in a same reason.

In the electricity and gas sectors these policies have mostly been complementary. The role of the competition authority has increasing importance, for example in fixing and approving methodologies and tariffs for network activities as well as in monitoring the competition situation and taking necessary actions thereof.

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 prioritized and why?*

The question whether to prioritize one of the mentioned policies over the other has not arisen in Estonia. This can be attributed to the particularity of the small size and structure of the Estonian economy, liberal approach to market access to outside competition (Estonia applies very few notable trade barriers) and the apparent lack enterprises that could be considered to be national champions. For example, Estonia has fully opened up the vast majority of the sectors of the economy; only notable exception is the energy sector, where an exception from the European Union's regulatory scheme for electricity markets was obtained until 2013, with gradual, partial opening in earlier years. Also legal framework of transport sector specifies some derogations which appropriate to almost all EU member states (cabotage ban, public transport etc). Therefore the prioritization of one policy over the other has mostly been a really a non-issue in Estonia.

As Estonia is a member of the EU, the promotion of national champions must adhere to the single market principles of the EU Treaty and other relevant EU and domestic legislative acts. Instead of setting the objectives of one policy against another, it could be argued that the promotion of national champions is achievable through other policy means, which do not incorporate interventionist and/or protectionist measures.

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?

Exemption provisions favouring domestic economic sectors in Estonia are extremely rare. The only special regimes in competition legislation (mainly the Competition Act) derive from relevant EU legislation and one can say that they are therefore not designed specially for favouring domestic economy.

Agriculture: For example, according to § 4 (2) of the Competition Act, the prohibition on agreements, concerted practices and decisions by associations of undertakings which restrict competition, excluding agreements on prices or other trading conditions, does not apply to agreements and practices of agricultural producers or to decisions by associations of agricultural producers, which concern the production or sale of agricultural products or the use of joint facilities, unless competition is substantially restricted by such agreements, practices or decisions. This partial exemption derives from the objectives of EU common agricultural policy and relevant EC council regulations¹¹.

Small and medium sized enterprises: Competition legislation does not explicitly provide special protection or special competition rules for SME-s, bar the general *de minimis* rules stipulated in article 5 of the Competition Act (agreements, practices or decisions of minor importance) and exemptions, including block exemptions.

The general *de minimis* rule for vertical and horizontal agreements applies to conduct described in Articles 4 (1) p 4-6 of the Competition Act. The conduct covered by the exemption is exchanging information which restricts competition, agreeing on the application of dissimilar conditions to equivalent agreements and making entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement.

Agreements, practices or decisions are considered to be of minor importance if the combined market share of the total turnover of the undertakings which enter into the agreement, engage in concerted practices or adopt the relevant decision does not exceed:

- a. 15 per cent for each party of in the case of a vertical agreement, practice or decision;
- b. 10 per cent in total for all parties of a horizontal agreement, practice or decision;
- c. 10 per cent in the case of an agreement, practice or decision which includes concurrently the characteristics of vertical and horizontal agreements, practices or decisions

Agreements, practices or decisions are deemed to be of minor importance if the aforementioned conditions are fulfilled during the whole period of effect of the agreement, practice or decision.

¹¹ Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organization of the markets in fishery and aquaculture products
Council Regulation (EC) 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products

In addition, SME-s can rely on governmental decrees on group exemptions, if they meet the established conditions.

Block exemption for research and development agreements: Besides the general provisions of article 6 of the Competition Act, article 7 allows the Government to issue decrees for block exemptions. According to the aforementioned article, block exemption is a general permission granted by a regulation of the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications to enter into a certain category of agreements, engage in a certain category of concerted practices or adopt a certain category of decisions which complies with the conditions provided for in article 6 of the Competition Act and restricts or may restrict competition.

On this legal basis, the Government has issued a block exemption¹² for horizontal agreements which concern conditions of entering into specialization and research and development agreements which are modelled on the corresponding Council and Commission Regulations¹³.

¹² Governmental Decree no 196 of 18.06.2002 "Grant of Permission to Enter into Horizontal Agreements which Restrict or May Restrict Free Competition (Block Exemptions)

¹³ Council Regulation No 2821/71 on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices

Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements

Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements

Finland

The Ministry responsible for industrial policy in Finland is the Ministry of Employment and the Economy.

Germany

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?*

Individual entrepreneurial responsibility, freedom of contract between business partners, unrestricted competition and a (well-)functioning price system are the cornerstones of a market economy. They should not be invalidated by state intervention.

The chief function of industrial policy is therefore to set framework conditions to maintain the competitiveness of industry and increase growth, employment and innovation potential. The Federal Government is in constant dialogue with several sectors of industry and their social partners. The aim of such talks is to identify problem areas and to elaborate mutual solution approaches. In important and strategic industrial sectors such as aviation, aerospace and the maritime industry, the Federal Ministry of Economics and Technology acts as a coordinator between politics and industry. A regular exchange of views about the current economic situation and necessary economic-political measures also takes place with other sectors of industry and the respective trade unions.

For quite some time now the relevant legal framework for industry has been shaped to a considerable extent in Brussels. A key element of European industrial policy are the initiatives on individual sectors. By involving industry and other stakeholders in the process, the Commission and Member States assess the situation in a particular economic sector and develop a strategy to improve the sector-specific framework conditions. This need not involve costly financial programmes or protectionist measures, the chief aim being to better adjust the regulatory environment to the needs of the companies in the respective sector. The automobile industry, mechanical engineering and the chemical industry are examples of sectors in which sector initiatives have been and continue to be implemented.

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

The aim of competition policy is to guarantee and sustain as much as possible effective, unrestricted competition in the interests of consumers and all companies irrespective of the business sector, size and legal form. Effective competition is an essential requirement for growth and employment in our national economy. Competition encourages innovation, an optimal allocation of resources, consumer sovereignty as well as a fair distribution of financial resources, while at the same time limiting economic power.

In Germany the Act against Restraints of Competition (ARC) protects competition as one of the fundamentals of the economic system. Cartel prosecution, merger control and abuse control form the three central pillars of the Act. The ban on

cartels and control of concentrations between undertakings serve to preserve competitive market structures and prevent the creation of market power. Under abuse control the conduct of powerful companies is monitored to make sure that this is fair towards other market participants.

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*

Companies which have proved successful against rivals in national and European markets are normally best equipped for international competition. Germany therefore relies on the power of competition in open markets and a liberal trade policy rather than protectionist measures, including external trade protection. Competition is never an end in itself. Effective competition ensures the efficient use of resources both nationally and internationally and permanently low price levels. It forces permanent innovation and investment and creates prosperity and a wide offer of goods and services for the consumer. Competitive companies ensure that industry is competitive. Therefore, competition policy and industrial policy in many ways share a common goal.

If, in exceptional cases, a conflict arises between competition law and industrial policy in the handling of a corporate merger, the Federal Minister of Economics and Technology can, if necessary, make use of the so-called ministerial authorisation. At request he can clear a concentration which has been prohibited by the Bundeskartellamt if in an exceptional case the restraint of competition is outweighed by advantages to the economy as a whole following from the concentration, or if the concentration is justified by an overriding public interest. For example, in 2002 the merger between the German energy suppliers E.ON and Ruhrgas, which had been prohibited by the Bundeskartellamt, was cleared by ministerial authorisation on the grounds that the new big enterprise would improve the national security of supply.

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 prioritized and why?*

If, in exceptional cases, a conflict arises between competition law and industrial policy in the treatment of a corporate merger, the so-called ministerial authorisation can be used as an appropriate balancing instrument if the competition concern is outweighed by grounds of public interest (e.g. security of supply, see answer to question 3 above).

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?*

Only very few sectors are exempted from the provisions of German competition law. These include parts of the health sector and the water industry. The reason for this is the significance of these areas for the secure supply of high-quality services to the public.

Greece

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

The official tool of industrial policy in Greece is the Development Law 3299/04 (Government Gazette 261 / A / 04), as it was amended by the Law 3631 / 08 (Government Gazette 6 / A / 08), which supports investments in primary, secondary and tertiary sector, except for industrial sectors such as production of concrete agricultural products, included in List I of European Community Treaty, steel industry, synthetic fibres industry and shipbuilding, ship-repairing, mainly due to European policies and restrictions. The above-mentioned Development Law has also exemption provisions as regards support to investment plans of public enterprises and organizations and their affiliates, where the public acquires more than 49% of their stock capital.

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

The Development Law includes specific provisions for large companies with monopoly character, which control national infrastructure networks. For these companies, any modification of their stock capital, including merger, sale, or tear off a sector need the previous approval of the Minister of National Economy by a Ministerial Decision.

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.*

Any company supported by the Development Law has the obligation to maintain its stock synthesis unmodified during a 5-year period after the Ministerial Decision of Completion of its investment plan. Any possible change of a company stock capital needs further approval of the relevant Ministry, reassuring, in this way, the conformity to the competition policy and the non-monopolistic character of any supported enterprise.

4. *Promoting 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 two policies should be prioritized and why?*

As it is mentioned, in the Development Law the merger control and modification of a company stock capital seem to be extremely important for the Greek legislator, because it is under the strict Ministerial approval. So, we can easily assume that the right application of competition policy is more prioritized in comparison to industrial policy.

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?*

The competition law does not include any such exemptions. It is noted that the Greek Development Law provides that specific investment plans of high technology, including intellectual property rights, are under qualification from the General Secretariat of Research and Technology, providing, also, the relevant Certificate by the National Organization of Industrial Property. Concerning the agricultural products, there is specific Common Ministerial Decision of the Minister of Economy and the Minister of Agricultural Development and Foodstuff, that defines the financial support to industrial production and commerce of specific products, in compliance with the Treaty of European Community. Finally, for SMEs, there is a specific provision for additional aid up to 15% of the initial public support percentage, changing with the various geographical areas in Greece and their GDP per capita.

Grenada

Grenada does not have a National Industrial Policy

Hungary

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?*

Hungary is on the way of applying such an industrial policy that serves the aims of improving the competitiveness of several, and not only industrial sectors of the national economy. Industrial policy should be the combination of investment, innovation and technology and competition policy, that relies on different specific policy instruments when realizing its aims.

Today's Hungarian industrial policy faces two major challenges. On the one hand, it has to contribute to the improvement of the competitiveness of the industry addressing issues like structural reorganization, environmental, labour, consumer protection at the same time. On the other hand, it has to be compatible with the integrated policy of the European Union.

As a member state, Hungary sets its industrial policy objectives in compliance with aims accepted by the European Union' Lisbon Strategy. This framework-type industrial policy of the EU places the utmost importance on investing in knowledge-oriented activities. Hungarian industrial policy has little leg-room, but aside from adopting the governing principles of the EU, it also puts emphasis on enabling direct investments (such as providing for infrastructure-development). At the same time, goals like the increase of added value, the development of human resources as well as the support of research and development must be more forcefully articulated than they have been so far. Moreover, industrial policy should address also issues like mobilizing private business capital, increasing the transparency of state aid policy, challenges facing SME's by increased competition due to accession, as well as guaranteeing the stability of the macro-economic and the regulatory environment.

The options for determining policy tools are delimited by the following important factors:

- a) There has been no general strategic document accepted yet that would harmonize different sectoral policies. However, there are very important strategic policy instruments guiding the development projects of several important sectors (e.g. National Energy Policy for 2007-2020, General Transport Development Strategy, Information Society Strategy, Broadband Development Strategy, National Development Policy and Plan.)
- b) Stricter fiscal policy influences the means for industrial developments.
- c) The majority of resources for developments are determined by the priorities of National Development Plan and the co-financing engagements of the EU funded programmes and projects thereof.
- d) When applying state aid the competition rules of the European Union have to be respected.

(source:www.khem.gov.hu)

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

Ideally speaking, as a generally prevailing principle the framework of industrial policy should be determined by competition policy. However, public policies unrelated to competition policy are not always pro-competitive, and may even serve to realise explicitly anticompetitive goals. These can be influenced by competition advocacy activity of competition authorities.

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*

Conflicts: state aids for infrastructure development projects not compatible with competition rules

Synergies: industrial structural reorganization projects leading to market opening and strategic planning and incentives facilitating investments to markets bringing more competition and consumer welfare (e.g. Information Society Strategy)

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 prioritized and why?*

When the promotion of national champions is inconsistent with competition policy, generally speaking, in a market economy the latter should prevail. Competition policy does not regard competition as an end in itself, but rather as a tool for welfare and efficiency, and it incorporates plausible efficiency considerations. Therefore, deviation from it would disproportionately restrict competition or threat with such a restriction causing inefficiencies and welfare losses. While “perfect” industrial planning in theory could achieve a better result, in practice its conditions are not given, that is the reason why in market economies the presumption that market forces and competition, rather than industrial planning are best in allocating resources is hold.

For similar reasons, when there is an inconsistency between merger control and industrial policy, the former should prevail (i.e. anticompetitive mergers should not be permitted on an industrial policy basis).

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?

There are no such types of special exemptions in Hungarian competition law, regardless of the fact that European community law does contain some exemptions mentioned in the question (e.g. for agriculture).

Indonesia

6. *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?*

Yes. The sector economy that was protected by industrial policy was the sectors which control people's basic needs, like oil and gas or telecommunications. In accordance with article 33 Indonesia Fundamental Law, these sectors was protected in order to be able to give as much benefit as possible for people's welfare. Competition policy became an important part in Indonesia national industrial policy. Competition was arranged through 2 methods, first was through the implementation of the competition law and second was to put competition principles into each of industrial sector regulation. At this time, all industry sectors were already obliged to apply the competition principle for the procurement of goods and services through the implementation of tender.

7. *How are the competition principles embedded in the specific sectors of the industrial policy?*

The main competition policy in Indonesia was arranged through several laws, which are: Law No. 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 19 of 2003 concerning State Owned Enterprises and Law No. 40 of 2007 concerning Limited Company. Through these various competition policies, KPPU put efforts to harmonized the competition law's principles with industrial policy's principles, to avoid the conflict in their implementation. At this time, several sectors in Indonesia did some reviews towards their regulations. Through this new revised regulation, they attached the competition principles. Some of the laws are:

- A new telecommunication law adopted in 1999 (Law No. 36 of 1999) has paved the way for the progressive introduction of competition in all markets.
- A new oil and natural gas law (Law No, 22 of 2001) was passed in introducing downstream competition and market pricing.
- The enactment of road Law (Law. No. 38 of 2004) ends the monopolistic position of the state-owned toll-road company, and since that the toll-road industry is widely open for private sector.
- A recently promulgated Shipping and Forwarding Law No. 17 of 2008 ends the monopolistic position of the state-owned company (as port operator). Port and terminal operator now is widely open for private sector in cooperation with the local government.

To strengthen the internalization efforts of competition principles, KPPU was formed to be the competition agency that was assigned to enforce the competition law in Indonesia. While to supervise the business activities in industrial policy sector, several agencies were established in several sector, such as Indonesia broadcasting

commission, Indonesian Toll Road Agency and Telecommunication Regulatory Agency.

8. *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*

Up to this time, KPPU tried to avoid the occurrence of any conflict that could emerge from the implementation of competition law and industrial policy. In order to do that, KPPU tried to enhance the co-operation and co-ordination with the regulator of the industry sectors. KPPU also initiated a co-operation with the regulator to compile some Joint Guideline about competition principles. For example in the telecommunication industry, at this time KPPU and the telecommunication regulator sector was compiled a Joint Guideline concerning the concept of business competition and competition principles in telecommunication sector.

9. *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 prioritized and why?*

As a developing country, Indonesia has the priority to promote the domestic (national) industry by giving them a special protection through industrial policy. This protection will continually give until the relevant industry could be able to be independent and could be compete fairly. This kind of method was carried out to ascertain that the national industry would not be eroded and would not be inferior from the foreign industry, which together with the opening of free trade era, was being easy to invest their capital and investment in Indonesia. Therefore, the Indonesian National Industry will continually become the host in his own country. Up to this time, Indonesia did not yet direct a certain industry to become national champion. With the socialization about competition principles that being stimulated by KPPU, it was hoped that the creation of nation champion was not contradicted with the competition law.

10. *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?*

Law No. 5/1999 Article 50 state that excluded from the provisions of this law shall be the following:

- e) actions and or agreements intended to implement applicable laws and regulations; or
- f) agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; or

- g) agreements for the stipulation of technical standards of goods and or services which do not inhibit, and or impede competition; or
- h) agency agreements which do not stipulate the resupply of goods and or services at a price level lower than the contracted price; or
- i) cooperation agreements in the field of research for the upgrading or improvement of the living standard of society at large; or
- j) international agreements ratified by the Government of the Republic of Indonesia; or
- k) export-oriented agreements and or actions not disrupting domestic needs and or supplies; or
- l) business actors of the small-scale group; or
- m) activities of cooperatives aimed specifically at serving their members.

While Article 51 stated that monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large and branches of production of a strategic nature for the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institutions formed or appointed by the Government.

Japan

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?*

Ministry of Economic, Trade and Industry (METI) is dealing with various policy issues for economic structure reform, improvement of industrial technologies, external economic policy that coordinates with domestic economic policy, environment, energy, SMEs, protection of intellectual property, etc.

In light of the globalization and increasing international competition in recent years, from the perspective of industry policy, it is important to strengthen international competitiveness of enterprises by promoting competition through appropriate and fair trade practices.

Compliance with the AMA is important for achieving appropriate and fair trade practices. Then with regard to the regulations under the AMA, the section in charge of industrial policy of the METI expresses its views or makes proposals to the competition authority.

For instance, the section of the METI has made proposals regarding organizational restructuring for enhancing the freedom of choice of corporate structures by domestic companies, and speedy and transparent review of business combinations under the AMA for creating environments that companies easily conduct reorganization, such as mergers and business transfers.

In addition, Competition Enhancement Office of the METI conducts assessment of competition condition concerning material markets (competition assessment of markets), receives comprehensive consultations and notifications regarding disputes among entrepreneurs to support to resolve the disputes (support of dispute settlement), and plans necessary industrial policies to enhance the market function.

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

When competitive systems are introduced to regulated industries which limited the entry of newcomers in such sectors as electricity, gas, telecommunications transportation, etc., the JFTC has surveyed the competition conditions in these industries from the viewpoint of promoting competition when it is necessary to make policy recommendations in conducting its work, and has actively made policy recommendations in cases when it found the room for improvement.

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*

Today, the importance of improving competitive environments and promoting competition in the market is widely acknowledged to strengthen competitiveness of firms and industries. The JFTC and relevant ministries are in close contact and coordinate with each other in such a manner that policies to be determined under relevant business laws of specific industries are drawn up and implemented in a manner consistent with the policies worked out under the AMA.

The JFTC published the “Guidelines Concerning Appropriate Electric Power Dealings” in 1999 with the Ministry of Economy, Trade and Industry (METI), the “Guidelines Concerning Appropriate Natural Gas Dealings” in 2000 with the METI and the “Guidelines for Promotion of Competition Policy in the Telecommunications Business Field” in 2001 with the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT).

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 prioritized and why?*

Competition policy and industrial policy are carried out to achieve their specific purposes. However, they do not always oppose to each other and have been coordinated as necessary.

For instance, during the long economic slump after the burst of the bubble, the Government of Japan adopted "Basic Policy for Corporate and Industrial Revitalization" to revitalize the economic resources held by enterprises with excessive debt and to solve the issue of excessive supply structures, and decided to adopt all consistent policy measures for the corporate and industrial revitalization. At the same time, taking into consideration that business combinations are often used to solve the structural oversupply, the JFTC published the “Guidelines for merger investigations on the cases concerning Corporate and Industrial Revitalization” in April 2003. The guidelines indicate that the JFTC can shorten the examination period of prior consultations regarding cases that satisfies certain conditions, e.g. falling under the Safe Harbors among those concerning Corporate and Industrial Revitalization.

In relation to the promotion of national champions, some argue that international competitiveness should be taken into account in reviewing business combinations. The JFTC gives due consideration to actual condition of global competition and comprehensively determines whether problems under the AMA exist. In light of the globalization of the economy, to further improve the predictability of the review of business combinations as well as the transparency and the speed of the its procedure, the JFTC made necessary revisions to the “Guidelines to the Application of the Antimonopoly Act Concerning Review of Business Combination” in March 2007. The JFTC clearly explained when the geographic range of the market is defined beyond the territorial border and clarified the method and period of assessing import pressure in the guidelines.

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?*

In Japan, the exemptions to competition law are based on the provisions of the AMA itself or on the provisions in other individual laws.

Exemptions under the AMA itself are stipulated in Article 21 (Exercise of intellectual property rights), Article 22 (Acts of a partnership which conforms to the requirements such as the purpose of the partnership in mutual support among small-scale entrepreneurs or consumers) and Article 23 (Resale price maintenance (RPM) contracts on a commodity designated by the JFTC and the copyrighted works).

Provisions for the JFTC's involvement are stipulated regarding exempted cartels based on individual laws. In general, the formation of such cartels requires an approval by the relevant minister subject to an agreement with the JFTC or a consultation/notification to the JFTC. As of the end of FY2007, there are 14 such individual laws, e.g. the Insurance Business Law.

The JFTC had been conducting studies about the RPM exemption system on copyrighted works (books, magazines, newspapers, records, music tapes and music CDs). As a result, in March 2001, the JFTC decided to maintain this system for the time being, since many people were against the abolition in consideration of the cultural aspect of copyrighted works and the potential damages to the Japanese socio-economy the abolition would cause, and national consensus was not reached with regard to the abolition.

Korea

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?*

In principle, each Ministry in charge of a certain industry establishes an industrial policy and there are competent authorities responsible for managing national industrial policies and coordinating differences between industrial policies. For example, policy for information and communications industry is set up by the Ministry of Knowledge and Economy; policy for environmental industry by the Ministry of Environment; policy for medical industry by the Ministry for Health, Welfare and Family Affairs and then these policies are coordinated by the Office of Prime Minister or the Ministry of Strategy and Finance. Therefore, it is hard to say that Korea has an industrial policy designed to nurture a specific strategic industry from the nation-level perspective.

The government manages an industrial policy through deregulation and investment in R&D projects, which tend to cost a company huge risk and capital. Nowadays, most industrial regulations seem to be increasingly weakened or on their way to be abolished. But regulations in industries where much public interests are at stake, including finance, telecommunications, broadcasting and energy remain intact, which often conflict with competition policy.

In general, technical and economic regulations are enforced by government agencies responsible for the concerned industry. Yet, antitrust regulations are usually enforced by competition authority or through consultation between the competent administrative authority and competition authority.

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

According to Article 63 of the MRFTA, where government ministries in charge of a certain industrial policy wish to enact or amend laws or regulations, or to take certain measures for individual enterprises, they shall consult on their potential effect on competition with competition authority (The Korea Fair Trade Commission). With this requirement, Korea has embedded the competition principles in its industrial policies.

While handling cases related to abuse of market dominance, mergers, and cartels, if it finds a regulation anti-competitive, competition authority actively submits its recommendations to the relevant authority for improving the concerned regulation.

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*

Case 1: The Telecommunications Business Act governing affairs related to telecommunications aims to protect users' and public interests and create fair competition environment. A merger between undertakings engaged in telecommunications businesses is subject to review by the competent authorities, the Korea Communications Commission and the Korea Fair Trade Commission. Once a merger review is requested, the KFTC presents its opinions on the potential anti-competitive effect of the concerned merger, but whether the KCC is bound by the review remains controversial.

Case 2: The Broadcasting Act also requires the KCC and the KFTC to review mergers between broadcasting companies.

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 prioritized and why?*

Since the 1980s, Korea has focused on market opening and fair competition. To this end, with the aim of incorporating the competition principles into sector-specific industrial policies, it has been carrying out privatization consistently.

It is a difficult job to prioritize any one policy over the other between industrial policy and competition policy. In recent years, whether competition policy is enforced at an industry-specific level or at the national economy level, much emphasis has been put on competition policy.

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?*

Korea's competition law is applied to all industrial sectors, except for cases perceived as legitimate exercise of rights such as copy rights and patent rights pursuant to other relevant laws.

Latvia

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?*

Industrial Policy in Latvia is developed by taking into consideration development directions of EU policy at the same time identifying and solving the topical issues for the local industrial enterprises in co-operation with the organisations representing industrial enterprises. The industrial policy is closely related to innovation, as well as entrepreneurship, education and other spheres of the policy.

On June 28, 2007, the Programme on Promotion of Entrepreneurship Competitiveness and Innovation for 2007–2013 developed by the Ministry of Economics was approved. The Programme includes measures for promotion of development of innovation, business, small and medium-sized enterprises and industries.

Industrial policy in Latvia is mostly horizontal, there are no officially defined priority sectors. The overall objective is to promote those sectors and areas of economic activity that are export oriented, knowledge intensive and create high value added.

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

The Law on Control of Commercial Activity Aid (adopted on 19 December 2002) regulates state, municipal and European Community financial aid which creates or may create restrictions to competition. Any industrial policy support programmes are in line with the aforementioned law to ensure that the competition is not distorted.

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*

The Competition Council does not dispose any information about particular cases of conflicts or synergies in industrial or competition policy.

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 prioritized and why?*

Competition policy should be prioritized to prevent possible setting of dominant positions and lessening of competition, however possible entrees from other neighbouring countries had to be taken into account as well as market share or financial situation of acquired enterprise.

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?*

There are any specific exemption provisions in our competition law in favour of any domestic economic sectors. SMEs may use mitigated competition provisions in respect of horizontal or vertical agreements, if their market share is under determined threshold.

Madagascar

1. *Votre pays a-t-il une politique industrielle nationale? Quels domaines/secteurs de l'économie sont couverts par la politique industrielle nationale? Quelles sont les caractéristiques essentielles de cette politique industrielle nationale? Comment est abordée la politique concurrentielle par votre politique industrielle?*

La Lettre de Politique Industrielle (LPI) 2007-2012 se donne pour mission d'accompagner la mise en œuvre du « Madagascar Action Plan » (MAP), en particulier de l'engagement n° 6 ambitionnant de parvenir rapidement à une économie à forte croissance de façon plus concrète. Elle vise à :

- fournir les conditions fondamentales pour améliorer l'environnement des affaires et faciliter les succès ;
- encourager la création et l'utilisation des meilleures idées, pratiques, technologies, techniques et méthodes les plus modernes pour répondre aux défis de la mondialisation, faire preuve de haute productivité et capitaliser sur les avantages compétitifs.

A cette fin, le gouvernement entend engager les grandes lignes de politique suivantes :

- concernant l'environnement des affaires et la promotion des investissements : attirer les investisseurs et faire du secteur privé le moteur principal du développement de son économie ;
- concernant la base nationale du secteur privé : induire une industrialisation à grande échelle visant à libérer le potentiel entrepreneurial national et stimuler le développement des entreprises locales, des PME, des MPE et de l'artisanat ;
- concernant l'intégration de Madagascar à l'économie mondiale : relever les capacités technologiques et commerciales des entreprises à vocation exportatrice, à travers des programmes de restructuration/mise à niveau industrielle et de mise en place des infrastructures technologiques, dans le cadre d'une nouvelle stratégie industrielle visant à pénétrer des marchés d'exportation avec des produits à plus forte valeur ajoutée ;
- concernant les filières d'action privilégiées : privilégier l'action de développement et favoriser l'implantation de nouveaux projets d'investissement, au niveau d'un certain nombre de secteurs porteurs considérés comme hautement prioritaires pour leur effet d'entraînement.

Ces secteurs sont le tourisme, l'agrobusiness (huiles essentielles, biocarburants, etc...), l'industrie légère d'exportation (vêtements, chaussures, montres, jouets, articles de sports, etc...), les mines, les infrastructures et équipements collectifs (routes, aéroports, ports) et les technologies de l'information et de la communication (TIC).

Dans la stratégie nationale de développement, le Gouvernement a placé la plus grande priorité sur des politiques qui contribuent au développement des pôles de croissance et au renforcement de la capacité d'exportation de ces derniers. A cet égard, quatre secteurs (zones franches industrielles, mines, tourisme et secteur crevettier) ont fait

l'objet d'une attention particulière. Le projet « Pôles Intégrés de Croissance » – PIC - a été rapidement mise en place, dans le but d'accélérer le développement économique national en soutenant l'émergence de pôles pour tirer le meilleur parti des régions à fort potentiel de croissance et en stimulant le partenariat public-privé pour développer les activités stratégiques des pôles.

Les mesures de sauvegarde et d'accompagnement nécessaires sont nécessairement limitées dans le temps et ne doivent en aucun cas chercher à garantir aux entreprises une marge bénéficiaire, des parts de marché ou une emprise sur le marché car les subventions en général retardent les ajustements et l'innovation au lieu de les promouvoir.

2. *Comment est-ce que les principes de concurrence sont implantés dans les secteurs spécifiques de la politique industrielle?*

La politique industrielle relève d'un fonctionnement institutionnel assez différent de celui de la politique de concurrence. Ainsi, l'Etat conserve un rôle beaucoup plus important par les moyens qu'il met en œuvre et par sa place dans les mécanismes de décision. Dans sa démarche d'adhérer à la logique concurrentielle de la mondialisation, outre l'intégration régionale, Madagascar prône une politique de développement adaptée à sa culture et à ses spécificités. L'évolution vers l'économie industrielle doit répondre aux lois de l'économie de marché, et d'importants efforts ont été déployés afin de préserver ou d'accroître la concurrence sur les marchés intérieurs, tout en facilitant une restructuration industrielle efficace.

En fait, les principes de la politique de concurrence gagnent en importance parmi les éléments qui contribuent à l'élaboration et à l'application d'une vaste gamme de politiques économiques, notamment la politique industrielle, certains aspects de la politique économique internationale, la réforme de la réglementation dans certains secteurs et les droits de propriété intellectuelle. Dans chacun de ces domaines, la politique de concurrence s'inscrit dans le cadre d'initiatives gouvernementales de plus large portée, liées à l'efficacité de l'adaptation structurelle et à une meilleure gestion de l'économie.

La politique industrielle désigne l'ensemble des mesures auxquelles l'Etat a recours pour favoriser une structure industrielle efficiente : par exemple, l'appui direct aux activités de R-D, les programmes de formation professionnelle et les mesures fiscales ou autres qui visent à faciliter une adaptation structurelle efficace. En ce sens, pour répondre au rôle que doit jouer une politique de la concurrence par rapport à la politique industrielle, la politique de concurrence constitue en soi un élément clé d'une politique industrielle efficace car elle renforce les incitations à l'innovation et à l'amélioration systématique des produits et des procédés de production.

3. *A votre avis, existe-il des conflits et/ou des complémentarités/synergies entre les politiques/lois industrielles et concurrentielles? Veuillez donner au moins deux exemples concrets et essentiels pour chaque situation.*

La politique de concurrence doit jouer un double rôle vis-à-vis de la politique industrielle. D'une part, la politique de concurrence contribue directement à l'efficacité de la politique industrielle grâce à la préservation de la rivalité entre les entreprises et aussi favoriser une adaptation structurelle efficace. D'autre part, dans une économie fondée sur les forces du marché, elle doit continuer de s'opposer aux interventions fondées sur la politique industrielle qui ont pour effet de diminuer la concurrence sans justification valable sur le plan de l'efficacité et de la performance de l'économie.

Dans les secteurs de l'agriculture et des télécommunications, la politique de concurrence a indubitablement joué un rôle clé dans le renforcement des effets avantageux de la déréglementation. Par conséquent, l'ouverture de ces industries à la concurrence a pu avoir une incidence bénéfique directe sur la compétitivité d'industries utilisatrices clés. Dans chacun de ces secteurs, les réformes de la réglementation résultent de l'effet combiné des facteurs suivants : des mutations technologiques considérables, une diminution des préoccupations suscitées par les tendances au monopole naturel et des changements fondamentaux survenus sur la scène internationale dans le contexte des politiques y afférents (tels que les récentes négociations commerciales multilatérales de l'Uruguay Round, qui ont une incidence sur le secteur agricole). De plus, chacun de ces secteurs contribue de façon déterminante au caractère concurrentiel des autres industries.

Certains secteurs, particulièrement ceux qui étaient auparavant administrés par l'État ou qui sont des « monopoles naturels », sont assujettis à une réglementation particulière, c'est-à-dire qu'un organisme de réglementation les contrôle et cherche en général à introduire graduellement de la concurrence sur le marché. Les répercussions de la politique industrielle concernant l'énergie électrique et hydraulique suscitent un intérêt particulier. Depuis plusieurs années, ces secteurs se caractérisent par une sous-capacité endémique et l'instabilité financière. Certains y voient la preuve de l'échec du processus de désengagement de l'État. On peut cependant avancer que les difficultés que ces secteurs connaissent ne sont pas imputables en soi à leur mise en concession, mais plutôt aux décisions qui ont été prises par les dirigeants. Les réformes entreprises actuellement visent l'élargissement de la concurrence dans le domaine de l'énergie électrique, notamment par la séparation structurelle des fonctions à caractère monopolistique, en scindant l'exploitation du réseau de transport d'électricité et celle des installations de production.

Ces dernières années, l'un des principaux objectifs de la réforme des politiques a consisté à réduire le nombre de secteurs assujettis à une réglementation directe, tout en maximisant les possibilités pour les forces concurrentielles du marché de fonctionner à l'intérieur des régimes réglementaires qui furent maintenus.

4. *Promouvoir des champions nationaux comme un outil de politique industrielle peut être en contradiction avec la politique concurrentielle alors que le contrôle des fusions comme un outil de politique concurrentielle peut être en contradiction avec la politique industrielle. A votre avis, à laquelle de ces deux politiques doit être attribuée la priorité et pourquoi?*

La politique industrielle peut limiter la concurrence et nuire aux consommateurs par l'utilisation de certains moyens : coopération étroite entre des entreprises qui

devraient normalement se faire concurrence, fusions renforçant le pouvoir de marché, politiques sélectives d'achat ou de vente, instauration de barrières à l'entrée et de restrictions à l'importation, distorsions de marché suscitées par des aides ou des subventions de l'Etat... La politique industrielle peut prescrire par ailleurs des mesures de politiques économiques dont l'objet est de faire bénéficier, à savoir une industrie ou une entreprise donnée, de certains avantages ou appuis spéciaux. A Madagascar, de telles mesures de politique industrielle ont parfois mené à la promotion de champions nationaux et/ou à la création délibérée de monopoles par voie de réglementation ou d'intégration verticale réunissant des entreprises réglementées et/ou non réglementées.

Les propositions de mesures en faveur des champions nationaux sont souvent associées à une entreprise ou à un secteur considéré comme stratégique pour l'économie nationale ou confronté à des pressions d'ordre financier. L'État peut soutenir la croissance d'une entreprise ou d'un secteur en considérant que pour réussir sur le marché concerné, il est nécessaire d'atteindre une taille critique qui ne pourra être obtenue par le biais des mécanismes de marché traditionnels ou qu'il existe des marchés sensibles qui requièrent au moins un acteur national viable.

Certains aspects de la politique industrielle qui soutiennent des champions nationaux peuvent manifestement être contraires aux objectifs d'efficience des marchés et, en empêchant de les atteindre, peuvent donner à penser que des politiques de ce genre ont souvent pour effet d'entraver le fonctionnement des mécanismes du marché et de promouvoir indûment les intérêts de groupes précis au sein de la collectivité.

L'un des principaux apports de la politique de concurrence au bien-être économique national consiste à remettre en question le bien-fondé de telles orientations de la politique industrielle, qui peuvent avoir des effets anticoncurrentiels.

5. *La loi sur la concurrence de plusieurs pays contient des dispositions de dispense qui favorisent certains secteurs économiques nationaux, comme l'agriculture et les petites et moyennes entreprises (PMEs), ainsi que l'accélération du progrès technologique, y compris les droits de propriété intellectuelle. Quels types de dispositions de dispense contient votre loi sur la concurrence et dans quel but politique?*

Le droit de la concurrence à Madagascar confère à l'autorité responsable le pouvoir d'exempter les entreprises au cas par cas. Les exemptions sont accordées par le Conseil de la concurrence (encore à instituer) qui est tenu de répondre dans les six mois suivant la saisine.

Les pratiques portant atteinte à la concurrence sont interdites : la loi précise que les collusions et les ententes expresses ou tacites sont prohibées dès lors qu'elles ont pour objectif de fixer les prix, limiter l'accès au marché, limiter ou contrôler la production, les débouchés, les investissements ou le progrès technique, et répartir les marchés ou les sources d'approvisionnement. Sont également prohibées toutes les pratiques d'abus de position dominante susceptibles de menacer l'équilibre d'une activité économique. Sont toutefois exclues du champ d'application de la loi des pratiques

portant atteinte à la concurrence qui ont satisfait aux conditions cumulatives suivantes :

- la pratique en cause a pour objet ou effet l'amélioration de la production, de la qualité, de la distribution de biens et de services ou du bien-être du consommateur, ainsi que la promotion du progrès technique, technologique ou économique ;
- elle réserve aux utilisateurs une partie équitable du profit qui en résulte ;
- elle n'impose pas de restrictions qui ne sont pas indispensables pour atteindre les objectifs visés ;
- elle ne donne pas aux entreprises participantes la possibilité d'éliminer la concurrence pour une partie substantielle des produits ou services considérés.

La loi sur la concurrence prévoit le contrôle des opérations de concentration au titre de la prévention des pratiques anticoncurrentielles. Ce contrôle concerne toute concentration de nature à créer une position dominante sur le marché. L'une au moins de deux conditions doit être remplie : soit les entreprises faisant l'objet de la concentration dépassent ensemble plus de 30 % de parts du marché des biens ou des services substituables (seuil de compétence exprimé en parts de marché), soit le chiffre d'affaires hors taxes des entreprises concernées dépasse 10 milliards d'Ariary (seuils exprimés en chiffre d'affaires). Les opérations de concentration sont soumises à l'approbation préalable du Conseil de la concurrence, qui constate si elles sont ou ne sont pas admissibles.

Il est à souligner que certains secteurs restent peu ouverts à la concurrence. C'est le cas de l'eau et l'énergie électrique où la société d'eau et d'électricité (JIRAMA) détient le monopole de la distribution d'eau potable et d'électricité et d'une partie de la production de l'électricité. Le secteur des assurances reste très réglementé et non ouvert à la concurrence extérieure. Le monopole de l'Etat persiste en principe sur le tabac. Le Code des assurances exige que les risques situés à Madagascar soient assurés auprès de compagnies résidentes. Dans le secteur financier, le fonctionnement de la bourse des valeurs est contrôlé par la Commission Financière des Banques, autorité publique indépendante disposant de l'autonomie financière dont la mission est de veiller au bon fonctionnement du marché boursier, de contrôler l'information financière et de sanctionner les infractions à la réglementation en vigueur.

Malawi

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?*

Yes, sectors covered include (i) Manufacturing sector (ii) Transportation services (e.g. rail, lake, road, air) (iii) Utilities e.g. telecommunications, electricity, water, Sewerage, (iii) Industrial facilities e.g. industrial parks and estates and factory shells, warehousing, cold storage facilities at strategic points e.g. international airports.

Key features include co-operation with the country's neighbours and development partners, to rehabilitate all transport routes, implementation of a national policy on transportation reviewing of legislation relating to transport services and encouraging private sector participation in the provision and maintenance of infrastructure.

The policy covers competition policies by government efforts to put in place clear policies and legislation that foster a competitive environment for business enterprises.

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

Transportation: putting up deliberate policies whereby the private sector participation is encouraged in order to encourage competition and as a way of increasing efficiency of service of delivery in the relevant market.

Water: There is an element of monopoly in the water sector. However, government effected the decentralization of tapping and distribution of water by establishing commercial oriented regional water boards to meet the growing demand for water.

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*

There are complementarities; the competition policy encourages efficiency production and distribution of goods and services which firms can attain through enhanced technological base, on the other hand the industrial policy recognizes the need to encourage technological capacity development to ensure competitive edge for the country's products.

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 prioritized and why?*

The competition policy should be prioritised considering that most industries in the country involve a few number of players and with the global economic change, mergers are one of the most important ways firms can use to manipulate competition.

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?*

See part 1, second part of answer to Q4. The purpose of the non-application is to protect consumer welfare; to strengthen the efficiency of production and distribution of good and services; to secure the best possible conditions for the freedom of trade; to facilitate the expansion of the base of entrepreneurship.

Mauritius

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?*

The vision of the government is to develop a strong, diversified sustainable and globally competitive industrial sector. The Government of Mauritius is aiming to adjust and upgrade the economy towards high value-added, capital intensive and knowledge-based sectors. The country is being repositioned as an investment destination for high-tech products and services that can be exported. The main thrust of the industrial strategy has been to promote the consolidation, modernization, expansion and diversification of the industrial base.

The Ministry of Industry, Science & Research is currently in the process of formulating a new National Industrial Strategy to respond to new challenges confronting the sector.

The areas of economy covered in the national policy include mainly the manufacturing of textile products, fish and processed seafood, jewellery & diamonds, furniture and other sectors such as processed food, Informatics Communications and Technology. New growth poles include the land-based oceanic industry, non-sugar high value added agro-processing, marine, aquaculture, pharmaceutical/phyto-pharmaceutical, clinical trial outsourcing/clinical data management. Moreover the use of renewable energy and recycling technologies during processing are being encouraged to develop a sustainable industrial economy.

Enhancing competition, upgrading quality, moving up market, innovation and design development, reducing response time, expanding and diversifying exports, attracting investment in high tech sectors and promoting sustainable industrial development remain the key features for future industrial development.

Besides the Cotonou Agreement, the phasing out of the Multi-Fibre Agreement and tariff liberalization following WTO negotiations are putting competitive pressures on domestic enterprises geared towards exportation. They are also faced with harsher competition following free trade agreements within COMESA and SADC. New market avenues are being tapped for advantageous provisions for trade. Only few Mauritian firms benefit under the Africa Growth and Opportunity Act (AGOA). The Third Country Fabrics derogation now allows greater flexibility in sourcing of fabrics, thereby creating opportunities for exports of high value garments made from quality yarn/fabrics imported from countries like India.

Mauritius has adopted a liberal investment policy within a framework of a mixed economic system. Given the small size of the market, monopolies, duopolies and oligopolies are bound to occur. However, Government policies aim at combating monopolistic conditions through import liberalization, tariff reduction, consumer protection and promotion of competition.

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

There is generally no restriction on investment in industrial activities.

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*

Industrial policies are in favour of competition in the industrial sector.

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 prioritized and why?*

Mauritius promotes diversification within the manufacturing sector. There is control on mergers through the Competition Law.

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?*

N/A

México

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

La CFC no tiene conocimiento de la existencia de una política industrial plasmada en documentos públicos.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

La CFC no tiene conocimiento de la existencia de una política industrial plasmada en documentos públicos.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

La CFC no tiene conocimiento de la existencia de una política industrial plasmada en documentos públicos.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

La política industrial de promoción de empresas líderes nacionales es incompatible con la LFCE, ya que implica el establecimiento de ventajas a favor de ciertas empresas, así como la creación de barreras artificiales a la entrada de nuevos competidores.

Este tipo de políticas reducen la competencia y la eficiencia de los mercados, toda vez que implican el fortalecimiento de una empresa para que pueda ser competitiva en el extranjero pero a costa del bienestar de los consumidores nacionales, de esta forma existe una transferencia de beneficios de los consumidores hacia las empresas líderes. Además, la reducción de la eficiencia tiene impactos negativos sobre la productividad y la competitividad de la economía en su conjunto, por lo que disminuye el bienestar de la población.

Por lo anterior, la política de competencia debe tener prioridad debido a que implica mayor competitividad y eficiencia del aparato productivo en su conjunto, con los

consiguientes beneficios a la población en términos de mejores precios y más opciones de mejor calidad.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

En México, el artículo 28 Constitucional señala que no constituyen monopolios las funciones que el Estado ejerce de manera exclusiva en áreas consideradas estratégicas: correos, telégrafos y radiotelegrafía; petróleo e hidrocarburos; petroquímica básica; minerales radioactivos y generación de energía nuclear; electricidad y las actividades que expresamente señalen otras las leyes federales.

Asimismo, este artículo dispone que no constituyen monopolios los sindicatos ni las asociaciones de productores que venden en los mercados extranjeros productos nacionales que sean la principal fuente de riqueza de una región o que no sean artículos de primera necesidad.

Finalmente, la Constitución tampoco considera como monopolios los derechos de propiedad intelectual.

La LFCE reproduce estas excepciones. Sin embargo, señala que los agentes económicos y las dependencias y organismos señalados arriba estarán sujetos a lo dispuesto por la LFCE respecto de los actos que no están expresamente comprendidos en la protección constitucional.

Nicaragua

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

Nicaragua dispone de una “Política de Desarrollo Industrial para Nicaragua” de mayo de 2008, su implementación está a cargo de la Dirección General de Industria y Tecnología del Ministerio de Fomento Industria y Comercio, contado con el apoyo del Programa de las Naciones Unidas para el Desarrollo (PNUD) y que incorporó nuevos elementos a las propuestas de Política Industrial elaboradas anteriormente que resultaron del Primer Foro de Política Industrial realizado en Noviembre de 2007; una propuesta de política industrial preparada por la Asociación de Productores y Exportadores de Nicaragua presentada en 2006 y por la Cámara de Industrias en 2001. Una de las características de la política industrial nicaragüense es su carácter horizontal, abarca todos los sectores económicos, comprendidos en tres segmentos: Las grandes empresas; Pequeñas y medianas empresas; las microempresas y talleres artesanales; que comprende agroindustria; la industria del vestuario y productos textiles, industria del cuero calzado y productos de cuero, industria de la madera, industria de materiales de construcción, otras industrias.

Otra característica de gran importancia de la política industrial en Nicaragua es la sinergia y el consenso con que fue construido y la institucionalidad que le fue otorgada; contó con la participación decidida de los actores del sector público y privado y es considerada como una política de estado con visión de nación. Para ello es necesario contar con la institucionalidad adecuada que propicie la ejecución de acciones concertadas; los primeros pasos en esa dirección por parte del MIFIC se dieron al realizar el Primer Foro de Política Industrial en Noviembre de 2007, organizar como resultado el Grupo Asesor de Política Industrial con participación del sector público y privado, crear la Dirección General de Industria y Tecnología a inicios de 2008 para dar la institucionalidad al tema e incorporar los avances de la Política de Desarrollo Industrial en su Plan Institucional para 2008 y el Plan de Desarrollo Humano de Nicaragua para el período 2008-2012 en Marzo de 2008.

Otra característica es que contiene un conjunto amplio de medidas y programas que afectan el sector: un esquema general de política económica, organización, instituciones, política tecnológica, política comercial y financiamiento, política de infraestructura, principios de competencia y sistema educativo.

La política de competencia, dentro de la política industrial es abordada como un tema transversal; en ellos se pueden mencionar dos temas que son propias de la Ley de competencia, siendo estos (i) reducir al máximo posible los tiempos y costos de los trámites derivados de regulaciones para la instalación, operación y cierre de empresas y (ii) Promover la organización, transparencia y la competencia en los mercados.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

El plan de implementación de la política industrial, contempla en el inciso 7 el acceso al mercado y el aumento a la competencia; por otra parte la estrategia de implementación (inciso 5.3) contempla la creación de nuevas empresas industriales productos y procesos capaces de producir nuevos bienes para satisfacer las cambiantes necesidades de los mercados, en un entorno en el cual el avance de la tecnología y la globalización trae consigo la desaparición y sustitución de unos productos por otros nuevos y la modificación de los patrones y hábitos de consumo, con lo cual se introduce la competencia en el mercado.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Existen sinergia en tanto la política industrial y la política de competencia actúan hacia objetivos comunes y en consenso con las políticas macro económicas

Se complementan cuando ambas políticas se encaminan hacia la búsqueda de la eficiencia la transparencia y competencia en los mercados en bienestar del consumidor en particular y de la sociedad en general.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

Consideramos que las economías pequeñas, altamente concentradas deben priorizar la política de control de concentraciones económicas, a fin de evitar una mayor concentración del mercado, que a su vez facilita la coordinación y colusión de los agentes económicos en perjuicio de los consumidores. Sin embargo esta política debe aplicarse con un profundo rigor técnico a fin de lograr el balance entre los costos y beneficios de las concentraciones y fusiones, a fin de promover el desarrollo económico del país.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

En Nicaragua el artículo 4 de la Ley 601, Ley de Promoción de la Competencia establece las exenciones de aplicación, referidas a cinco temas, a saber: 1- Derechos de propiedad intelectual; 2- Armonización de estándares técnicos, de calidad, adopción de marcas colectivas y desarrollo tecnológico; 3- Prestaciones laborales; 4- Promoción de exportaciones; 5- Acciones de Estado para asegurar la Salud y Seguridad Alimentaria y Nutricional.

Pakistan

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?*

Pakistan has a broad national industrial strategy but no industrial policy *per se* in which the Government has selected particular industries for preferential treatment. Some sectors like dairy, marble, stone, gems and jewellery, hunting and sporting arms, horticulture and pharmaceuticals with export potential and domestic value addition may qualify for temporary support measures. Other important policy areas covered include development of national industrial parks, technology up gradation and skill development¹⁴.

Tariff concessions/exemptions remain a widely used industrial policy instrument to promote investment, industrialization, and exports. Further concessions were introduced in 2006, especially relating to tariffs. Various exemptions/concessions, including for designated/authorized persons, were superseded by an expanded list in June 2006.¹⁵

Many exemptions/concessions are also directed at end use, covering specific activities (e.g. only phosphatic fertilizer manufacturers may import phosphoric acid tariff exempt), or users, especially manufacturers-cum-importers, though conditions are often attached, such as minimum in-house production facilities. Some are firm specific, time bound or are applied retrospectively.¹⁶

Exemptions/concessions were extended and deepened in the 2007/08 Budget to assist manufacturing as part of the Government's "Second Generation" tariff reforms.

Competition aspect is covered with reference to export competition and reducing the cost of doing business so as to make enterprises more competitive. Most exemptions/concessions are on imported inputs (raw materials, plant and equipment), and often require that these inputs are not produced locally, in order to maintain protection for local producers, but final goods are also covered.

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

N/A

¹⁴ Pakistan is providing trade and other incentives to these industrial sectors. These incentives are based on the recommendations generated by a USAID-funded project — Pakistan Initiative for Strategic Development and Competitiveness.

¹⁵ Customs Notification SRO No. 655(I)/2006, No. 567(I)/2006; and No. 575(I)2006; and Government of Pakistan (2006c), p. 7.

¹⁶ These are generally to rectify errors in the tariff, the Customs notifications or occasionally to comply with court decisions

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*

Pakistan's industrial policy aims at accelerated industrialization, raising manufacturing's share of GDP to 30% by 2030 (19.1% in 2006/07), and diversification away from textiles and clothing. Mostly, Government's industrial policy interventions remain directed at protecting infant and pioneer industries, using escalating tariffs and domestic support measures (e.g. tax concessions). At times industrial policy interventions may support declining industries in order to protect employment. The aim of competition policy is to boost enterprise productivity, bring about ease of entry/exit into the markets and provide a level playing field to the enterprises. Therefore, from a purely competition law viewpoint, such industrial policy measures could be termed as selective and discriminating. CCP is empowered to make recommendations suggesting amendments or review of any policy measure, law or rules to make it consistent with competition policy norms so as to make policies consistent. For instance, CCP gave its views in the privatization process of a state-owned fertilizer plant. As a result, the highest bidder could not get the plant because it would have further strengthened its already 'dominant' position in a particular kind of fertilizer market. Deepening complementarities/synergies between competition law and industrial policy will take some time to evolve in Pakistan.

Interventions have also occurred in the form of ad-hoc measures adopted by the Ministry of Industries (MOI) – particularly when there is an abrupt cement price increase. MOI holds meetings with cement manufacturers and All Pakistan Cement Manufacturers' Association asking them to reduce price. CCP considers that price setting should be left at the market forces and competition among manufacturers should be the decisive factor to bring equilibrium. Although such interventions by the MOI may bring temporary relief in prices; such measures may also provide an opportunity to cement manufacturers to legitimize their 'cartel like' behaviour on the grounds that it implies a nod from the Government.

It is also the case that by altering the structure of tariff incentives unpredictably, with uncertain effects on resource allocation, the concessions/ exemptions may potentially counteract economic efficiency and competition, for example, by raising tariff escalation and increasing/ widening effective rates of protection for domestic producers. While most exemptions or concessions are available to private firms, some SOEs benefit, exclusively, from tariff exemptions/concessions. For instance, Pakistan Steel Mills, which operates as a private company, can import iron ore and "concentrates non-agglomerated" duty free. Similarly, only the private company M/s Pakistan PTA Ltd could import paraxylene and acetic acid duty free to make pure terephthalic acid until end-June 2008. Assessment of competition implications of such industrial policy instruments at the micro level would only be possible once CCP fully builds up its operational and research capacity.

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 prioritized and why?*

As per Competition Ordinance, 2007, promoting national champions is not inconsistent with competition policy unless and until those champions are involved in anti-competitive practices such as abusing their dominance.

Merger control needs to be prioritized on grounds of efficiency and competition dividends in the long run. Each merger case is examined with respect to its specific circumstances; it provides ample room to the competition agency to attach conditionalities if so required to promote competition.

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?*

Kindly see response to Question No. 4 to Part I of this Questionnaire for exemptions.

Panamá

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

Actualmente Panamá no cuenta con un documento formal de política industrial a nivel nacional, sin embargo si contamos con lineamientos claramente establecidos que buscan impulsar, promover y fortalecer nuestro sector productivo nacional, dentro del cual se encuentra incluidos esfuerzos de promoción y fortalecimiento del sector industrial.

Dentro de este contexto, nuestra política se enfoca en primer lugar, en crear las condiciones necesarias para que el crecimiento económico se traduzca efectivamente en oportunidades para el desarrollo humano, integral y sostenido de la población, y en segundo lugar, en procurar que el desarrollo humano de los panameños le ofrezca al país los medios necesarios para alcanzar un crecimiento económico a la vez, sostenido y sostenible. Por lo anterior, el plan de acción que se adelanta debe, necesariamente, traducirse en beneficios para la sociedad en general y no para un sector específico.

En este sentido, estos esfuerzos se ven orientados hacia la promoción del desarrollo de una cónsona política comercial, que impulsa el fortalecimiento de nuestro sector externo, lo que conlleva apoyar al sector productivo para ayudarlo a ser competitivo y eficiente y continuar estimulando el crecimiento de nuestros servicios y de nuevos cluster de desarrollo. En donde lo más importante ha sido desarrollar e impulsar nuestros sectores con una visión internacional, donde la promoción y fortalecimiento del sector externo y de nuestras exportaciones, se constituye en herramienta clave para la generación de empleos, disminución de la pobreza y promoción del bienestar general. En este sentido, el Gobierno ha implementado una política comercial que promueva la apertura estratégica de mercados, la atracción de inversiones locales y extranjeras y la diversificación de nuestra oferta exportable.

Esta política visualiza el uso de herramientas de integración comercial, tales como la negociación del Tratado de Libre Comercio (TLC) como mecanismos facilitadores y generadores de oportunidades, empleo y bienestar en Panamá, así como un instrumento de apoyo para la promoción de inversiones y el fomento de la competitividad de todos los sectores. Para lo anterior, hemos logrado concretar negociaciones de acuerdos comerciales con más de 7 países, como son: Chile, Honduras, Singapur, Costa Rica, Estados Unidos, entre otros lo que se está traduciendo en un aumento de las inversiones y en el fomento de la competitividad, impulsando la transformación e innovación en los sectores industriales, agrícolas y empresariales. Dentro de este contexto, nuestras acciones buscan procurar alcanzar mecanismos de integración y de mejoramiento de las relaciones comerciales con importantes socios comerciales y estratégicos, que eliminen o limiten el “efecto frontera” a fin de que nuestro sector productivo tenga un mercado meta mucho más grande que nuestro reducido mercado interno, procurando así mayores opciones para los consumidores locales, y ampliando las alternativas u oferta dentro del mercado local, a fin de mantener a Panamá a la vanguardia de las economías de la región.

Consideramos que como parte de nuestra política de fomento e impulso a nuestros sectores productivos, también se han incluido acciones concretas con miras a fortalecer la política de competencia; así por ejemplo, los acuerdos comerciales de tercera generación que hemos concretado, logran abarcar un área de acción mucho más amplia, estableciendo y reconociendo la defensa de principios importantes dentro de otras áreas de acción como es el caso de los temas de competencia. Y es que el entendimiento nacional reconoce que no solo es importante para el país fortalecer al sector productivo nacional, sino que también debemos adoptar medidas que hagan que estas acciones de liberalización y de crecimiento externo se traduzcan en beneficios para la sociedad en general.

Específicamente, como parte de las acciones que adoptamos para lograr el mejoramiento de la capacidad productiva de nuestros sectores, se ha logrado implementar programas específicos diseñados de acuerdo a las necesidades de los diferentes sectores, tales como laboratorios de calidad, inteligencia de mercado, identificación de oportunidades, mejoramiento del embalaje y empaque con análisis de mercado. En adición, hemos logrado implementar una reforma estatal de instituciones, las cuales se caracterizaban por ser obsoletas, pesadas y prácticamente inoperantes. Por lo que hemos logrado contar con entidades más eficientes, que logren disminuir los “costos de transacción” para el sector productivo, a fin de convertirlas en verdaderas entidades facilitadoras del desarrollo económico del país con una visión social.

Como hemos visto, la política de competencia no es ajena, ni puede ser tratada como un elemento distante de nuestra política de desarrollo, sino que en todo caso, es considerada como un elemento fundamental de la misma, ya que si no logramos que los beneficios adquiridos sean traspasados y sentidos por la sociedad en general, un importante objetivo se ha dejado de obtener, y es ahí donde la política de competencia juega uno de los principales roles dentro de esta línea de acción. El Gobierno Nacional eligió una política que impulsara la competencia de nuestros sectores y se ha comprometido con una propuesta económica que logre encauzar y armonizar la capacidad creadora de las fuerzas del mercado con las prioridades del desarrollo humano, integral y sostenible por hacer un país competitivo

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Nuestra política de competencia aplica de forma general a todos los sectores que comprenden la producción nacional. De esta forma se busca promover la mayor participación de actores en el sector productivo, enfocando grandes esfuerzos hacia los mercados de exportación y fortaleciendo la competitividad de los mismos, procurando contar con mayor oferta para el consumidor local.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Consideramos que si existe complementariedad entre las leyes de competencia y las políticas industriales, y por esto, la política nacional que se implementa busca maximizar dicha sinergia. En este sentido, los lineamientos en que se fundamenta las políticas actualmente en lugar buscan promover la base tecnológica del país, fortaleciendo la competitividad de las empresas y fomentando una cultura innovadora y emprendedora, logrando ampliar la base productiva del país. Con esto en mente, procuramos contar con nuevos, mejores y numerosos jugadores o participantes dentro del mercado, ofreciendo una mayor oferta para los consumidores (diversidad de bienes y servicios). De igual forma, procuramos facilitar las inversiones en el sector productivo, lo que de igual forma se traduce en beneficios para el mercado en su conjunto.

Pero así como nuestras acciones han optado por encontrar el punto de equilibrio entre las políticas de fomento a la producción nacional y las de competencia, también se reconoce que puede existir conflicto entre las mismas. Así pues por ejemplo, tenemos que se podrían adoptar acciones que promuevan la conformación y mantenimiento de monopolios y/o oligopolios de ciertas industrias en el país, protegiendo dicha rama de producción a través del establecimiento de altos aranceles de importación y limitando la posibilidad de creación de otras industrias en el mismo sector.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

La adopción de líneas de acción como puede ser el fomento de campeones nacionales o de ciertos controles en el área de competencia podrían ser considerados como contradictorios entre sí, pero para poder hacer una evaluación justa y correcta sobre la aplicación de ambas, se debería verificar y analizar en conjunto con otra serie de medidas que pueden o no afectar la adopción de uno u otro lineamiento, como son las políticas de apertura comercial y de liberalización, así como el establecimiento de regulaciones sectoriales que puedan existir y que generen barreras a la entrada o altos costos de participación en un determinado mercado. Por lo anterior, consideramos que ambas políticas pueden coexistir en el país, sin necesariamente excluir la aplicación de una u otra. Así pues, consideramos que un eficiente control de fusiones no necesariamente conlleva la imposibilidad de que actores establezcan alianzas estratégicas y mejoren su producción de bienes o prestación de servicios, sino que más bien debe ir dirigido a evitar que dicha unión genere aquellos efectos negativos dentro del mercado que impidan o limitan la competencia dentro del mismo.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

La Ley de competencia de Panamá tiene excepciones y exclusiones. A continuación transcribimos los artículos de la Ley 45 de 2007 que incluyen esto:

Artículo 3. Monopolios y actuaciones oficiales. Esta Ley no se aplicará a las actividades económicas que la Constitución Política y las leyes reserven exclusivamente al Estado y no hayan sido otorgadas en concesión. En lo que no concierna a tales actividades económicas reservadas, las instituciones y dependencias del Estado y los municipios están obligados a acatar las disposiciones contenidas en la presente Ley.

El Estado velará por que en sus decisiones y actos administrativos se resguarden los principios de libre competencia y libre concurrencia económica, señalados en esta Ley. A tal efecto, todos los municipios, instituciones autónomas o semiautónomas e instituciones estatales en general podrán solicitar concepto a la Autoridad de Protección al Consumidor y Defensa de la Competencia, en adelante la Autoridad, cuando en el ámbito de sus decisiones se pueda afectar la libre competencia o la protección al consumidor.

Se exceptúa de la aplicación de las disposiciones de la presente Ley cualquier acto, reunión, acuerdo, arreglo, convenio o fórmula, o cualquier otro mecanismo o modalidad que promueva el Estado con agentes económicos, cuando dicho mecanismo o modalidad se realice con miras a salvaguardar el interés público.

El interés público deberá ser declarado por el Consejo de Gabinete, para lo cual se podrá solicitar opinión del Consejo Asesor.

Artículo 4. Exclusiones. No se consideran prácticas monopolísticas:

- Las convenciones colectivas de trabajo que celebren las organizaciones sindicales de trabajadores asalariados con un empleador o con un grupo de empleadores, para obtener mejores condiciones laborales.
- El ejercicio de los derechos de propiedad intelectual e industrial que la ley reconozca a sus titulares, los que conceda durante un tiempo determinado a los titulares de los Derechos de Autor y Derechos Conexos para el ejercicio de sus derechos y los que otorgue a inventores para el uso exclusivo de sus inventos.

...

Artículo 6. Excepción. Se exceptúan de la aplicación de la presente Ley los actos, los acuerdos, las alianzas, las asociaciones, los convenios, los contratos o cualquier otro que realicen agentes económicos, que tengan como objetivo el incremento, el ahorro o la mejora de la producción y/o distribución de bienes o servicios o fomenten el progreso técnico o económico y que generen beneficios para los consumidores o el mercado, siempre que consistan en:

- El intercambio de información técnica o de tecnología.
- El establecimiento y/o aprovechamiento conjunto de infraestructura, equipos, recursos o facilidades de producción y tecnología.
- El establecimiento y/o aprovechamiento conjunto de facilidades de acopio,

- almacenaje, transporte y distribución.
- Que el producto de dichos actos sea exportado.

Las excepciones planteadas en el artículo 3 se hacen para salvaguardar el interés público, esto debe ser declarado por el Consejo de Gabinete.

Las exclusiones planteadas en el artículo 4 se deben a leyes especiales relacionadas con el Código de trabajo y con la Ley de propiedad intelectual.

Las excepciones planteadas en el artículo 6 se hacen para incentivar la eficiencia y para fomentar el progreso técnico y/o económico para los consumidores y/o el mercado.

Perú

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

N/A

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

N/A

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

N/A

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

La ley de competencia del Perú tiene como objetivo promover la eficiencia económica en los mercados para el bienestar de los consumidores, de ahí que, en opinión del INDECOPI se debe priorizar la aplicación de las normas de competencia frente a una política industrial de campeones nacionales. En similar sentido se debería proceder ante la alternativa de una política de control de fusiones frente a una política de campeones nacionales. Sin embargo, cabe resaltar que en el Perú sólo existe control de fusiones en el sector eléctrico.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

En la actualidad el Decreto Legislativo 1034- Ley de Represión de Conductas Anticompetitivas no contempla cláusula de excepción alguna para favorecer algún sector de la economía. En tal sentido, todos los sectores se encuentran bajo el ámbito

de aplicación de la ley de competencia salvo en aquellos casos en los que exista regulación sectorial específica (ver respuesta a la pregunta 4 de la Parte I)

PNG

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?*

Papua New Guinea has an industrial development policy. The key features of the policy are: Government policies to encourage the development of PNG's non-mining sectors including manufacturing, renewable resources such as agriculture and fisheries, and business services to promote economic self-sufficiency.

The policy promotes the non-mining sectors of the economy to ensure that economic growth can be sustained after the depletion of mineral resources. Implementation of industrial policies remains the responsibility of the various statutory authorities which are established for that purpose within the Ministries of Commerce and Industry (DCI) and Ministry of Foreign Affairs, Trade and Immigration (DFATI). Responsible statutory authorities in the country are:

- Investment Promotion Authority (IPA)
- Small Business Development Corporation (SBDC)
- Industrial Centers Development Corporation (ICDC), and the
- National Institute of Standards and Industrial Technology (NISIT) through which quality control procedures can be addressed. New ventures can rely upon NISIT for research assistance and information on development and transfer of technology.

DCI is responsible for the formulation, co-ordination and monitoring of industrial development policies and relevant program implementation. It aims to be the catalyst for development and the private sector's partner in progress by:

- Assisting with the provision of a conducive economic environment;
- Promoting international competitiveness;
- Providing an effective and coordinated infrastructure and service support system; and,
- Mobilizing and organizing people, institutions and resources to achieve the Government's objectives and goals for industrialization.

Generally, DCI is responsible for policy formulation while actual program development and implementation is carried out by statutory authorities within the department.

The main thrust of the Government's economic development and industrial policies is aimed at increasing the value and volume of value-added products. The policies focus on the industries and business, particularly private sector investments to create employment and achieve economic growth.

(Source: <http://www.ipa.gov.pg/index.php>)

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

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*

N/A

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 prioritized and why?*

N/A

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?*

N/A

Poland

The Polish government has adopted “The concept of horizontal industrial policy in Poland” on 30th July 2007. Polish horizontal industrial policy aims to support economic growth in sectors other than strategic (such as defence and energy) and sectors under restructuring processes (coal mining and shipbuilding). The policy will concentrate on horizontal activities: continual improvement of framework conditions of industrial activity and furthering competitiveness of industry sector. It encompasses sectors like: biotechnology, chemicals, information and telecommunication technologies, furniture, construction, pharmaceuticals etc. The Strategy is in line with the EU document “A new industrial policy: Making the EU a more attractive place for industry”.

When it comes to the industrial policy concerning strategic sectors it is reflected in a range of documents such as “Poland’s energy policy till 2025”. At present restructuring processes are being implemented in coal mining and shipbuilding and the assumptions are stated in sectoral strategies “Strategy of hard coal mining industry activities in Poland for 2007-2015” and “Strategy of hard coal mining industry activities in Poland for 2007-2015”. Strategy of hard coal mining industry activities - adopted by the Council of Ministers on 31 July 2007 - aims at achieving by mining entities a situation, where they can conduct their activities on the basis of generally applicable law without the need of state support and restricting special legal solutions for the sector to a necessary minimum. Goals and priorities of the strategy are in line with the general objectives of the Lisbon Strategy, in particular with one of the four priorities of the updated LS, which assumes guarantee of secure and constant energy supplies and which requires ensuring better coordination between the European power grid and the gas pipeline system, better power market regulation and more competition. Measures provided for in the Strategy are first of all measures leading to acquiring profitability and financial independence of individual coal companies by 2015 and gradual phasing out of public aid for restructuring of the coal mining sector. Additionally, the governmental document on directions concerning granting state aid in 2007-2013 aims at maximally reducing the negative influence of state aid on competition.

Moreover, further liberalisation of regulated sectors is also foreseen in another governmental document “Competition policy strategy for 2008-2010”. The factors taken into account while drafting the document include: everyday practice of the President of the OCCP, signals from the market, plans and strategies of other bodies and authorities (sector regulators), market analyse and, observations of the current EU policy in regulated sectors. In this document a further liberalisation of regulated sectors (telecommunications, energy, transport, postal services) is foreseen.

It has to be noted that the OCCP do not see much substance in arguments that competition policy is an obstacle to national industrial policy. NCAs when implementing competition policy ensure that national markets are competitive, thus national companies (continually striving to be better than their competitors) are ready to face the competition when they extend their operation on foreign markets or the competition from foreign companies entering national markets. And furthering competitiveness (of industry sector) is national industrial policy’s prime goal.

The Polish Act on Competition and Consumer Protection in its Article 2 states that the Act is without prejudice to the rights vested pursuant to the provisions concerning protection of intellectual and industrial property rights, in particular the provisions on the protection of inventions, utility model and industrial rights, topography of integrated circuits, trade marks, geographical indications, copyright and rights related to copyright. Moreover pursuant to Article 3 of the Act: the provisions of the Act shall not apply to impediments to competition admitted by virtue of separate legal acts.

Russia

On November 17, 2008 the Government of the Russian Federation adopted a “Concept of Long-term Social and Economic Development of the Russian Federation until 2020” the main objective of which is to determine ways to ensure in long-term perspective (2008-2020) the stable growth of welfare of the Russian citizens, national security, dynamic development of economy, strengthening Russia’s positions in the global community.

This Concept contains tasks for development of social aspects and different sectors of economy, including raising of competitiveness of the Russian products on the global market. This envisages structural changes of industries and industry’s diversification. The major objective is moving to the high-technology-based economy. The notion of necessity of competition threads the whole Concept. Therefore the balance of competition policy and industrial policy is seen with unaided eye.

What is more the Federal Antimonopoly Service (FAS Russia) provides on an annual basis the Report to the Government “On Competition in the Russian Federation” that addresses major challenges for competition development in all the sectors of economy, including oil and gas, power energy, transport, retail, construction and many others. Along with describing the current situation the Report contains specific actions to be undertaken to eliminate the threats for competition development and aimed at pro-competitive development of different sectors of the Russian economy. This Report is available online on the official web-site of the FAS Russia.

Along with this Report the FAS Russia together with the Ministry of Economic Development has elaborated the Program for Competition Development in the Russian Federation (to be adopted shortly), which covers the issues of threats to competition and means for their elimination, competition development in the sensitive and socially-important sectors of economy. Moreover, this Program contains proposals on competition policy improvement.

All the above mentioned documents determine the strategy of pro-competitive development of the Russian economy and ensure the balance of competition and industrial policy in Russia.

Moreover, the Russian Ministry of Industry and Trade has been elaborating a number of industrial sectors policies that determine the strategy of their development for the certain period of time. For instance these policies include:

- Development Strategy for aviation industry till 2015
- Development Strategy for electronic industry till 2025
- Development Strategy for shipbuilding industry till 2020, etc
-

All of them have been adopted in compliance with the Russian legislation and procedure which means that all the interested state agencies are to agree on them. The FAS Russia has taken an active part in introducing competition principles to all of these documents.

The great load of the FAS Russia activity concerns natural monopolies regulation (gas and oil sector, railways, post, etc) aimed primarily at achieving the balance of consumers and natural monopolies interests that ensures availability for consumers of the sold goods and effective functioning of natural monopolies.

The FAS Russia has a number of successful implementations of reforms of monopolistic sectors in order to ensure their pro-competitive development, such as the one in power energy sector (which is considered to be the best one in the world from the competition perspective), telecommunications, railways, oil and gas sector, air transportation, etc. Usually in order to implement such reforms basic structural and institutional reorganizations are being conducted, fundamentals of the sector legal base meeting the market conditions are being formed, functions of state management and economic activity are being separated, a system of state regulation complying with the new conditions is being created.

Other tools of this state economic regulation is formation of rules on non-discriminatory access to the infrastructure of the natural monopolies and continuous activity on separation of potentially competitive and naturally monopolistic sectors which is based on the fact that natural monopolies were initially created as vertically integrated companies. It should be underlined that according to the law on natural monopolies constraint of economically justified transfer of the spheres of natural monopolies to the competitive market is prohibited.

The FAS Russia is also concerned with the growth of the price pressure on economy by natural monopolies due to their non-effectiveness. In order to settle this problem the FAS Russia suggests introducing significant amendments to the legislation on natural monopolies aimed at reduction of their costs, at toughening of state control over them (one of the options is to introduce the procedure of confirmation and agreement by all the state authorities of investment programs of the natural monopolies).

What is more the FAS Russia is truly concerned with threats to the competition development that are posed by creation of state corporations in various sectors of economy, which was explicitly described in the 2007 Annual Report of the FAS Russia to the Government of the Russian Federation. State participation in such entities leads to distortion of competition on the relevant markets.

To eliminate these concerns the following measures are considered by the FAS Russia as appropriate:

- a) Enhancement of competition control over public entities. Despite that public entities are created as non-commercial organizations they conduct economic activity and get profit, this is why they are fully applicable to the competition law. The competition authority has a right to get access to any information of public entities.
- b) Restitution of powers (bill drafting, supervising, control and enforcement) from all the public entities back to state and setting of legal prohibition for such delegation of functions.
- c) Expansion of using tender mechanisms by public entities under purchase of goods, works, services from private Russian companies. Practice of holding

auctions for public procurement has shown high effectiveness of these market mechanisms.

d) Ensuring transparent functioning of public entities for which is necessary to: determine clear criteria of assessment of their activity, introduce according to the principles of the administrative reform the system of indicators of their work, toughen requirements to report, modernize system of state statistic supervision over public entities and companies controlled by them..

e) Introduction of moratorium on creation of new public entities until organizing effective system of monitoring and control over activity of already existing entities, as well as their demonstration of their results.

f) Adoption of regulation envisaging fixed amount of the state financial resources given to the public entity to eliminate opportunity of permanent state financial support to the public entities.

The Russian Federal Law №135-FZ “On Protection of Competition” does not contain any sectoral exemptions. However according to the provisions of the Article 13 of this Law the Government of the Russian Federation has the right to determine the cases of permissibility of agreements and concerted practices meeting the conditions stated in items 1 and 2 of part 1 of the present article (perfection of production, sale of goods or stimulation of technical, economic progress or raising of competitive capacity of the Russian goods in the world market; obtaining by consumers of benefits (advantages) which are proportionate to the benefits (advantages) obtained by the economic entities in the result of actions (inaction), agreements and concerted practices, transactions, other actions) (general exemptions).

Presently the Government of the Russian Federation is considering the adoption of the Resolution “On adoption of the list of block exemptions in respect of agreements (concerted actions) between economic entities” elaborated by the FAS Russia. This Resolution contains three block exemptions in respect of agreements:

- between buyers and sellers of products;
- between banks and insurers;
- on scientific and technical cooperation and joint use of the gained results of such cooperation.

However in order to ensure competition development in different sectors of economy the FAS Russia introduces competition principles to various sectoral legal acts (Water Code, Forest Code, laws on fishery, power industry, finance, etc).

Talking about the balance between the merger control and promotion of the so-called national champions as the tools of competition and industrial policies respectively, each case is considered carefully by the FAS Russia. And should the companies justify their merger as bringing more social and economic benefits the FAS Russia has no grounds to refuse it, according to the law.

For instance, the merger of OJSC “Volgaburmash” and OJSC “Uralburmash”, which are virtually the single representatives of Russia in drill bits production for oil and gas and mining industries respectively on the world market of drill bits, was thoroughly considered by the FAS Russia. Having analyzed this market the FAS Russia gave its satisfaction on this merger. The FAS Russia came to the conclusion that this market in

Russia, as well as in the whole world, is characterized by high concentration of production. The group of consumers of these two plants doesn't practically overlap. And the merger of these plants would have a number of benefits in respect of enhancement of their positions on the global market. This merger would allow getting an access to cheap credit resources in order to increase capacities and to invest into the development of new products. Moreover there would be an opportunity to get a synergetic effect from optimization of logistics, raw supply discounts and savings from research and development. As a result of the analysis the FAS Russia anticipated enhancement of competition by foreign producers. Moreover after the merger the Russian Holding could be rated on the 6th place in the world and occupy 13% of the global market under the scope of production and under the diversity of its product line the Holding could be on the 3rd place in the world which is consistent with the long-term strategy of development of Russia stated by the Government of the Russian Federation and will allow Russia to have an equal right in adopting new product standards on the market in future. The overall economic effect from reduction of costs is estimates as US \$12,9mln annually.

Another illustrative merger case is the merger of OJSC "NLMK" and "VIZ-Steel" Ltd., two major producers of transformer steel, which was also satisfied by the FAS Russia due to its social and economic benefits for Russia. 90% of the produced transformer steel is exported and should the Russian companies lose their competitiveness on the foreign market the production of transformer steel will be ceased. The presence of Russia on the global market of high-technology metal products is considered to be as one of strategic priorities. At the same time taking into consideration that the European Commission does not limit the geographical borders of the transformer steel market by the territory of one country, the market of transformer steel in Russia is competitive. The major peculiarity of the Russian market is the horizontal integration of transformer steel producers due to the fact that their joint efforts aimed at development of scientific and technical base, development and introduction of new technologies provide for their competitiveness both on the domestic and global market of electric steel.

To sum up, the FAS Russia is not against creation of national champions but only in those sectors where it is justified and necessary for enhancing competitiveness of Russia on the global markets. What is seen as a means to restrain their negative impact are severe sanctions that are provided by the turnover fines, an opportunity to determine collective dominance on the market and the established procedure of compulsory separation of company's activities.

Serbia

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?*

Strategic document called: “The Industrial Policy of the Republic of Serbia” is in the preparation phase.

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

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*

There is no need to choose between industrial policy and competition policy, if the competition policy is understood and implemented the correct way.

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 prioritized and why?*

Promotion of the national companies, that make positive results in the market, should be in line with the competition and state aid rules. The whole idea should be development of a healthy competition, without punishing the strongest contestants in the market, and their support in further growth of an industrial activity. In the same time, that should be a good example for other contestants in the market.

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?*

The Law on Protection of Competition, in Article 9, provides for individual exemption from prohibition, that is, exemption of particular agreement or the part of such agreement (hereinafter: individual exemption). Such individual exemption is not related to any economic sector but it may be approved under the condition that the agreement i.e. its part “contributes to improvement of the production or distribution, that is, to promotion of technical or economic progress, while allowing consumers a fair share of resulting benefits, and imposing only such restrictions which are

necessary for the attainment of these objectives, and does not afford the possibility of eliminating competition in respect of the substantial part of subject goods or services”.

Seychelles

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?*

The national industrial policy is not in place yet and is in the process of being drafted. However, it aims to cover, manufacturing and processing companies with emphasis on promoting exporting companies and companies involved in value addition of goods, however, the policy is aimed at companies with more than 10 employees. In this proposed industrial policy it is being proposed that the concessions are phased out.

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

There will not be specific sectors per se and given that it is still in the process of being drafted to concrete examples can be given.

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*

No conflicts, given that the Industrial Policy is under review, it will be made to complement the Competition Law.

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 prioritized and why?*

No past experience as the Competition Law has not been introduced yet.

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?*

Not been implemented yet.

Sri Lanka

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?*

Yes, the economic policy framework of the government of Sri Lanka provides broad guidelines and directions for a sustainable industrial development and promotion of local industries. It emphasizes increasing income generation and employment creation through the opening of untapped domestic market opportunities and the promotion of value-added local raw material, resource based export industries and also emphasizes on broad basing the industry with a view to creating increased industrial activities in the regions. In facilitating this process, the government of Sri Lanka stands ready to provide support services as well as infrastructure requirements to provide industrialists to establish factories in rural areas. In keeping in line with the government's economic policy framework, the Ministry of Industrial Development adopts several approaches in promoting industrial development in the country.

- Enhancing the competitiveness of selected thrust areas
- Regional industrialization through promotion of Industries at provinces.
- Regional Industrial Estate Development
- Environment Friendly Industrialization
- Productivity improvement in industry sectors

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

One of the core objectives identified in almost all sector specific legislation in force in Sri Lanka is the 'promotion of competition'. Apart from that Sri Lanka being the most liberalized trade regime in Sri Lanka, the private sectors' predominance is a salient feature in the industrial sector. Therefore one can safely assume that competition principles are embedded in all the sectors of the industrial policy, which is an integral part of overall trade policy.

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*

In the absence of a specific competition policy regime by way of a national competition agency in Sri Lanka, a comprehensive analysis of the conflicts and complementarities between industrial and competition policies is somewhat impractical. However, as a general comment, it could be observed that there can be both conflicts and complementarities between industrial and competition policies. For example in Sri Lanka, before the privatization of the insurance industry, the public sector had two giants in that industry. However, after the privatization of the industry

one publicly owned insurance company was acquired by a leading player in the private sector, As a result the competition in the insurance market was narrowed down in Sri Lanka initially. But, the entering into the market of several new players eventually helped to expand the market.

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 prioritized and why?*

In a comparatively small market like Sri Lanka, there is a rationale for prioritizing the 'meager control' over the promotion of national champions. In a small market, the total number of suppliers of an industrial product available in the market could be very few. In a context, if the existing few suppliers are allowed to merge themselves that could further reduce the number of market players and available jeopardizing consumer interests.

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?*

As already mentioned there is no specific national competition policy regime in Sri Lanka and Sri Lanka's competition policy is somewhat scattered around the sector specific regulatory agencies. However, the government of Sri Lanka, form time to time has resorted to various legislative and administrative measures to favour domestic economic sectors such as agriculture through tariff and para - tariff measures. Similarly, certain regulatory measures such as determining maximum retail/wholesale prices of agricultural commodities such as Rice currently in force tend to favour even Rice producers though the primarily target of beneficiary was the Consumer.

Sweden

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?*

The Government has not adopted a national industrial policy covering certain areas/sectors of the economy. The policy is more concerned with the positive general fostering of a creative enterprise environment, rather than focusing on certain markets. Competition policy plays a natural and integral part of this approach.

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

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*

N/A

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 prioritized and why?*

In consistency with the answer to question 1) it is the opinion of the Swedish Competition Authority that merger control should be prioritized as a competition policy tool rather than promoting national champions. Noting that the Government has not adopted a national industrial policy covering certain areas/sectors of the economy, but rather sees the benefits of fostering a creative general enterprise environment, reinforces this view.

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?*

The Swedish Competition Act covers all sectors of the economy. It contains exemption provisions that favour certain aspects of cooperation in the agricultural market. This exemption has been deemed to enhance consumer welfare rather than deteriorating it.

The Competition legislation also contains block exemptions and an exemption for SMEs, all in conformity with EC legislation.

Switzerland

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?*

Switzerland does not pursue an explicit industrial policy in the sense referred to in Question 1. Although we are aware of arguments such as the “infant industry” or “cluster” argument, we still believe that it is a risky or even unrealizable task for the government to select in advance certain sectors, products or companies that are supposed to be successful in a competitive market in the future. A competitive and undistorted market is probably the best way to select companies and sectors that are promising also in an open and internationalized market.

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

See answer to Question 1.

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*

Even though Switzerland does not pursue an industrial policy in the sense referred to in Question 1, it does not mean that government has no role at all in creating a sound framework for industry. On the contrary, we believe that it is the State’s and especially the competition authorities’ task to work towards financing and regulations that are not distorting competition so that the most efficient companies and sectors are successful in the market.

Sometimes, industrial policy is conceived as an instrument to protect existing companies structures in rapidly changing markets. Such a policy is costly and that other means are more successful in the long run to generate wealth in a globalizing market. Instead of supporting selected companies or sectors, it is the Swiss view that the State should create a framework that is beneficial in general for economic activity and competition.

- A low tax level for all companies and sectors is very beneficial for attracting new companies in strong international competition.
- A low level of administrative burden allows companies to save time and money, to adapt to new challenges and to get a competitive advantage over their competitors.
- A flexible labour market is the most important tool to allow companies and workers to adapt efficiently to new economic challenges and developments.
- Unemployment insurance combined with further training and education allows unemployed people to adjust to market needs.

- Contributing to non-sector specific research and regulations that promote innovative activity are important measures as well.

Measures such as a low tax level, a low level of administrative burden, a flexible labour market, unemployment insurance combined with further training and education for the unemployed as well as contributing to non-sector specific research and regulations encouraging innovation are important tasks for the Government. They can be designed so as not to distort competition and if so, we believe that such a policy will usually be economically more successful than a policy that tries to pursue targeted industrial policy.

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 prioritized and why?*

Switzerland does not promote selected national companies. Switzerland is an open country for foreign investment and hosts dozens of large multi-national companies. Switzerland does not significantly influence companies in merging or not merging or collaborating with selected or national companies. It rather focuses on creating a pro-competitive framework benefiting the economy as a whole.

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?*

No sector is generally exempted from the Cartel Act. However, Article 3 (1) of the Cartel Act reserves provisions that exclude certain goods or services from competition on a market, in particular provisions that establish an official market or price system (in particular in the field of agriculture) and provisions that entrust certain enterprises with the performance of public interest tasks, granting them special rights (for instance in the field of energy).

The Cartel Act does not apply to effects on competition that result exclusively from laws governing intellectual property. However, import restrictions based on intellectual property rights do fall under the Act.

The Cartel Act applies to both public and private enterprises, and SMEs are not exempted from the Cartel Act. However, in 2005, the Competition Commission enacted a Communication on agreements having a limited impact on the market, which specifically targets SMEs. The Communication sets certain conditions under which an agreement is deemed justified on grounds of economic efficiency in case of agreements aiming at improving the competitiveness of SMEs, insofar as they only have a limited effect on the market.

Finally, according to the Cartel Act the government may, in exceptional cases, authorize agreements affecting competition and practices of enterprises having a

dominant position that have been found unlawful by the competition authority, or mergers that have been prohibited by the competition authority, if they are necessary in order to safeguard compelling public interests. However, the Swiss Government has so far never made use of this possibility.

Thailand

2 Relationship between competition and industrial policies in promoting economic development

Pursuant to the Thai Constitutional directive on the promotion of free and fair economic system through the market mechanism ensuring the development of economy, the government promotes competition in sectors by industrial policy and competition policy which go along with each other and function synergistically to achieve the goal of sustainable economic growth of the country. The industrial policy is aimed to strengthen the competitiveness of Thai industries by increasing efficiency and reducing cost of production, improve quality and standard of product, etc. On the other hand, the competition policy is aimed to promote free and fair competition by strictly enforcing the Trade Competition Act in order to prevent anti-competitive practices such as abuse of market power and unfair competition.

Trinidad and Tobago

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?*

Yes. The policy covers the period 2001-2005 and is currently being updated.

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

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*

N/A

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 prioritized and why?*

N/A

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?*

Pursuant to Section 3(1) of the Fair Trading Act the exemptions are as follows:

- a) Combinations or activities of employees for their own reasonable protection as employees;
- b) Arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- c) The entering into of an agreement in so far as it contains a provision relating to the use, license or assignment of rights under or existing by virtue of any copyright, patent (other than patent rings) or trademark;
- d) Any act done to give effect to a provision of any agreement referred to in paragraph (c);

- e) Activities of professional associations designed to develop or enforce professional standards of competition reasonably necessary for the protection of the public;
- f) Activities expressly authorized or required under any treaty or agreement to which Trinidad and Tobago is a party;
- g) Companies which fall within the purview of the Telecommunications Authority Act, 2001;
- h) Banks and non-bank financial institutions which fall within the purview of the Securities Industry Act, 1995; or
- i) Such other business or activity declared by the Minister by Order subject to affirmative resolution of Parliament.

Tunisia

1. *Votre pays a-t-il une politique industrielle nationale ? dans l'affirmative, quels domaines/secteurs de l'économie sont visés par cette politique? Quelles sont les caractéristiques essentielles de cette politique? Comment votre politique industrielle tient-elle compte de la politique de la concurrence?*

La Tunisie a une politique industrielle nationale qui s'intègre dans la politique économique d'ouverture et qui vise un certain nombre d'objectifs nationaux à savoir :

- le développement économique et social
- la création d'emploi
- le développement régional
- la promotion des exportations
- la protection de l'environnement
- l'innovation technologique

Cette politique est concrétisée par un code d'incitation aux investissements qui accorde des avantages à l'investissement dans tous les secteurs quelque soit son origine et notamment le secteur industriel.

Ces avantages sont modulés en fonction des objectifs de la politique industrielle cités précédemment.

Au niveau de la politique industrielle elle-même, il y a des objectifs spécifiques grâce à des réglementations sectorielles.

Comme les avantages accordés à l'industrie ont un caractère général et uniforme et non discriminatoire quelque soit le statut de l'investisseur public/privé, national/étranger, la politique industrielle n'accorde pas des privilèges à des secteurs au dépend des autres et par conséquent elle n'introduit pas des exemptions ou des distorsions par rapport aux principes du droit de la concurrence.

2. *Comment les principes de la concurrence sont-ils intégrés dans les secteurs spécifiques de la politique industrielle ?*

Des stratégies sectorielles sont adoptées pour le développement des grands secteurs, ces stratégies s'appuient sur les aspects organisationnels, les incitations, l'environnement, l'infrastructure...

L'objectif recherché par ces stratégies dépend de l'importance et de la sensibilité du secteur du point de vue notamment de sa contribution dans la production, l'emploi, la balance commerciale, la sécurité du pays...

Des spécificités réglementaires sont admises dans ces secteurs permettant d'éviter les fragilités et assurer leur développement à long terme.

Ceci étant, les réglementations sectorielles n'excluent pas, malgré les règles de fonctionnement, la concurrence au niveau des secteurs notamment la liberté d'investissement, la liberté des prix et l'accès à ces secteurs.

Le gouvernement intervient parfois dans les conjonctures exceptionnelles pour réguler le fonctionnement par des mécanismes appropriés.

Il est également à signaler que, malgré l'existence d'une réglementation sectorielle, les pratiques anticoncurrentielles sont interdites dans tous les secteurs à l'exception de celles prévues explicitement par la loi.

3. A votre avis, existe-t-il des divergences et/ou des complémentarités/synergies entre les lois /politiques industrielle et celles de la concurrence ? veuillez donner au moins deux exemples concrets significatifs dans chaque cas.

La politique industrielle favorise les champions nationaux, elle peut prétendre aux mêmes objectifs que ceux de la politique de concurrence à savoir l'efficacité économique, l'allocation optimale des ressources, l'innovation technologique, l'intérêt national... Les mesures, loi et réglementations qui soutiennent les champions nationaux, souvent associés à une entreprise ou à un secteur considéré comme stratégique pour l'économie nationale ou ayant des difficultés pour faire face à la concurrence, peuvent aboutir, à long terme, à l'inefficacité ou à une mauvaise allocation des ressources ou à la hausse des prix due à une situation de monopole.

Toutefois, L'État doit soutenir, parfois, les petites entreprises nationales ou les secteurs émergents ou stratégiques qui risquent d'être mis en difficulté s'il n'atteignent pas une taille critique ou en raison du retard technologique par rapport aux concurrents étrangers qui ont souvent la taille et la maîtrise technologique requises. L'écart de la compétitivité entre les entreprises peut avoir des raisons objectives et historiques qui ne peuvent pas être ignorés en évoquant la théorie des avantages comparatifs.

En effet, outre l'objectif recherché par la concurrence, à savoir l'efficacité, la baisse des prix, l'amélioration de la qualité, la plupart des pays retiennent d'autres objectifs tels que l'emploi, la promotion des exportations qui doivent être pris en considération dans toute la politique économique.

La crise actuelle a montré que plusieurs pays ont plutôt favorisé le protectionnisme au détriment de l'ouverture.

La politique industrielle peut avoir le même objectif que la politique de la concurrence : bien être. Bien qu'elle peut paraître contradictoire. C'est le cas notamment de la restriction provisoire de l'importation de certains produits pour venir en aide à un secteur en difficulté, permettant ensuite d'améliorer l'offre.

De surcroît, le cadre législatif en Tunisie assure une complémentarité et une cohérence entre les lois sectorielles et celle de la concurrence. En effet tous les textes de lois sont examinés par les autorités de concurrence pour assurer cette cohérence les

projets. Les projets de textes législatifs sont soumis aux comités ministériels auxquels assiste le ministre du commerce qui émet son avis sur les projets de textes qui ont une incidence sur la concurrence dans un secteur donné.

En outre, le conseil de la concurrence est obligatoirement consulté, par le gouvernement, sur les projets de textes réglementaires tendant à imposer des conditions particulières pour l'exercice d'une activité économique ou d'une profession ou à établir des restrictions pouvant entraver l'accès au marché.

4. *La promotion de champions nationaux en tant qu'instrument de la politique industrielle pourrait être incompatible avec la politique de la concurrence, alors que le contrôle des concentrations en tant qu'instrument de la politique de la concurrence pourrait être incompatible avec la politique industrielle. A votre avis, à laquelle de ces deux politiques devrait-on donner priorité, et pourquoi?*

En Tunisie comme ailleurs, la loi relative à la concurrence et aux prix, pour assurer le bon fonctionnement de l'économie, a prohibé les pratiques pouvant porter atteinte au jeu de la concurrence. Ces pratiques, à savoir les ententes, les abus de domination ou les prix abusivement bas, sont contrôlées et le cas échéant sanctionnées par les institutions « arbitrales » susvisées. On est ici en présence d'un traitement contentieux « ex post » des pratiques anticoncurrentielles.

Concernant la compétition et la conquête des parts de marché par fusion ou absorption, la loi tunisienne a prévu, comme toutes les lois relatives à la concurrence dans le monde, des règles préventives et déclaratives, dans un souci d'éviter ou au moins de minimiser les effets potentiellement anticoncurrentiels des situations de domination du marché. Cette approche permet d'aborder efficacement les responsabilités du contrôle des concentrations.

En effet, avec ce contrôle, on est en présence, en quelque sorte, d'un traitement administratif, ex ante, des pratiques anticoncurrentielles. Ceci permet de mesurer, s'agissant d'hypothèses sur le futur fonctionnement du marché, l'impact des opérations de concentration sur le fonctionnement du marché un tel contrôle doit obéir à des principes décisionnels de très haute responsabilité.

Un système de notification obligatoire a été mis en place pour les opérations de concentration dépassant l'un des seuils alternatifs suivants : la part des entreprises réunies dépasse durant le dernier exercice 30% des ventes, achats ou toutes autres transactions sur le marché intérieur pour des biens, produits ou services substituables ou sur une partie substantielle de ce marché ; le chiffre d'affaires global réalisé par ces entreprises sur le marché intérieur dépasse 20 millions de dinars. La création ou le renforcement de positions dominantes sont des éléments indicatifs pour examiner le projet ou l'opération de concentration mais il s'agit d'un contrôle « ex ante » des éventualités d'une atteinte à la concurrence et l'on doit se garder de tout excès dans le refus de l'opération de concentration, de tout excès dans la prévention.

Ici, le principe de précaution doit être un principe de certitude sur la question de l'opportunité de refuser ou de limiter l'opération, d'autant qu'au fond, l'article 5 de la loi reste là pour, le cas échéant, constituer une base répressive, ex post, des pratiques anticoncurrentielles, avérées cette fois. L'intérêt de l'encadrement est cependant incontestable et peut résulter du fait que la notification peut être assortie d'engagements, destinés à atténuer les effets de la concentration sur la concurrence, et de veiller à ce que les opérations de concentration contribuent au progrès technique et économique et à la consolidation ou à la préservation de la compétitivité des entreprises face à la concurrence internationale.

L'exercice du contrôle des concentrations doit donc intégrer, dans ses principes de régulation, l'encouragement des entreprises nationales à renforcer leurs capacités de compétiteurs ou de résistance sur le marché mondial. La réflexion préalable sur les conditions de fonctionnement du marché intérieur après fusion, doit toujours s'accompagner d'un raisonnement sur le degré d'ouverture au marché international et sur les capacités des entités regroupées sur ce marché. Ce contrôle est confronté à un double souci: préserver la concurrence interne et encourager en quelque sorte « des champions nationaux », d'autant plus que l'économie tunisienne est basée sur les petites et moyennes entreprises.

5. Les législations en matière de concurrence de nombreux pays contiennent des dispositions d'exemption qui favorisent certains secteurs économiques nationaux, comme l'agriculture, les petites et moyennes entreprises (PME) ainsi que l'accélération du progrès technique, notamment les droits de propriété intellectuelle. Quels types d'exemptions votre législation prévoit-elle et dans quel but ?

La loi tunisienne relative à la concurrence et aux prix ne prévoit ni des dispositions relatives à des exemptions sectorielles de portée générale ni des règles de Minimis pour les contrats conclus par les PME.

Toutefois, cette loi prévoit, dans son article 6, que « ne sont pas considérées comme anticoncurrentielles, les ententes et les pratiques dont les auteurs justifient qu'elles ont pour effet un progrès technique ou économique et qu'elles procurent aux utilisateurs une partie équitable du profit qui en résulte ».

Il en ressort que les exemptions en Tunisie sont soumises à l'autorisation du ministre chargé du commerce après avis du conseil de la concurrence et ce au cas par cas. Ces exemptions sont justifiées par leur apport au progrès technique ou économique et au bien être du consommateur.

Toutefois, pour certains secteurs comme l'agriculture et l'artisanat il y a des dérogations à l'application des règles de concurrence afin de soutenir certaines activités (exp ; les groupements interprofessionnels qui peuvent agir sur le niveau de la production, sur l'approvisionnement et la fixation des prix dans certaines activités agricoles).

Ukraine

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?*

The main principles of industry development in Ukraine are determined in the Concept of the State Industrial Policy approved by the President of Ukraine Order dd. February 12, 2003 No. 102/2003 and the State Program for Industry Development for 2003-2011 approved by the Cabinet of Ministers of Ukraine Resolution dd. July 28, 2003 No. 1174 (hereinafter referred to as “the Program”).

The said Program determines a complex of measures and tasks for development individually for each of the main industry sectors, including:

- machine building;
- rocket-and-space complex;
- ferrous and non-ferrous metallurgy;
- chemical and oil-chemical industry;
- light industry;
- production of wood and manufacture of wooden products;
- fuel and energy complex;
- fuel and energy complex;
- industry of construction materials;
- food industry.

The Program sets out its objective as creation of competitive industrial complex capable of solving the main tasks of social and economic development and establishment of Ukraine as a high-technology state in conditions of integration and globalization.

According to the Program, one of the industry development areas is increasing the competitive capabilities of industry.

Increase in the competitiveness of industrial production is viewed as a comprehensive category depending, on the one hand, on increase in the efficiency of the industrial complex, and on the other hand, on further liberalization of economy, formation of full-scale competitive environment and creation of equal conditions for business activity.

Even after establishment of Ukraine as a country with market economy and its entering the WTO, the second aspect remains especially relevant in the framework of the measures to be taken for acquisition of fully legitimate membership of the EU.

Creating conditions for the industry’s competitive capabilities growth and subsequent acceleration of its integration into the global economic system is provided for by way of reforming of the industry management system and acceleration of institutional

transformations, and by way of increasing the efficiency of the state property management and development of competitive environment.

One of the main tasks of the Program aimed at increasing the efficiency of industrial production, expanding the volume of state-of-the-art competitive industrial products manufacture, establishing the grounds for formation of progressive export structure, and contributing to development of the internal market, constitutes in improvement of the industrial complex structure.

Development of competitive environment is a logical follow-up of economy reforming and development of the market relations. Its essence is in formation of full-rate competitive environment in the commodity market s, creation of equal conditions for business operation.

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

The Program recognizes the fact that in spite of enterprises of various branches having declared themselves (due to many types of industrial products) as competitive entities of the external market, however, their positions are not sufficiently stable because of internal problems, specifically, lack of investment resources and fluctuations of the global market conditions. These problems aggravated in conditions of the current global financial and economic crisis.

To support such enterprises, the main efforts shall be taken in the framework of pursuing the industrial policy. Performance of the set tasks shall be ensured through the system of branch development programs.

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

N/A

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 prioritized and why?

Documents determining the grounds for industrial policy in Ukraine presently do not contain any provisions corresponding to the concept of "national champions".

In accordance with the legislation of Ukraine on protection of economic competition, the coordinated actions of business entities, which caused or may cause non-admission, removal, or limitation of competition, may be allowed by the relevant bodies of the Antimonopoly Committee of Ukraine, if their participants prove that such actions contribute to:

- improvement of production, purchase, or sale of goods;
- technical, process, and economic development;
- development of small or medium entrepreneurs;
- optimization of export or import of goods;
- development and use of unified technical conditions or standards for goods;
- production rationalization.

Such permit cannot be issued by bodies of the Antimonopoly Committee of Ukraine, if competition is considerably limited in the entire market or in any considerable part thereof.

Also, the legislation of Ukraine provides for an opportunity of the Cabinet of Ministers of Ukraine granting a permit for concentration, which was not permitted by the Antimonopoly Committee of Ukraine with the view of its leading to monopolization or considerable limitation of competition in the entire market or in any considerable part thereof, if positive effect for public interests of the said concentration prevails over the negative consequences of limitation of competition (if limitation of competition predetermined by concentration is required for achievement of the objective of concentration and poses no threat to the market economy system).

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?*

The competition legislation of Ukraine contains no provisions implying incentives to business entities in any area of economy. At the same time, the competition legislation of Ukraine contains a number of exceptions in respect of imposing responsibility on business entities provided for performance of anti-competitive coordinated actions, specifically:

- a) any voluntary coordinated actions of small or medium entrepreneurs in respect of joint purchase of goods, which do not lead to considerable limitation of competition and contribute to increase in the competitiveness of small or medium entrepreneurs;
- b) coordinated actions in respect of supply or use of goods (excluding cases, when they cause considerable limitation of competition, limit access to the market for other business entities, cause economically unreasonable increase in prices or lack of goods), of a participant of the coordinated actions sets the limit for another participant of the coordinated actions on:

- use of their supplied goods or goods of other suppliers;
- purchase from other business entities or sale to other business entities or consumers of other goods;
- purchase of goods being by their nature or under trade and other fair practices in business operation beyond the scope of the subject of the agreement;
- formation of prices or other terms of agreement on sales of supplied goods to other business entities or consumers;

c) agreements on transfer of intellectual property rights or use of the intellectual property to the extent they limit the economic operation of the party to the agreement, to which the right is transferred, if such limitation do not go beyond the legal rights of the subject of intellectual property right.

Uruguay

1. *¿El país cuenta con una política industrial propia? ¿A qué esferas o sectores de la economía se aplica esta política? ¿Cuáles son las principales características de la política industrial nacional? ¿Qué influencia ejerce la política sobre la competencia en la política industrial?*

No existe una ley de política industrial. Existen políticas sectoriales de apoyo a algunos sectores y coyunturalmente (principalmente agrícola). La política industrial se manifiesta principalmente a través de exenciones tributarias para fomentar la inversión.

2. *¿Cómo se reflejan los principios de la competencia en los distintos aspectos de la política industrial?*

Al igual que en los restantes sectores, legalmente no hay diferencias.

3. *A su juicio ¿hay conflictos, complementariedades o sinergia entre el derecho y la política sobre la competencia, por una parte, y el derecho y la política sobre la industria, por otra? Sírvanse dar al menos dos ejemplos concretos y significativos de cada situación.*

Desconozco.

4. *La promoción de empresas líderes nacionales como instrumento de la política industrial puede ser incompatible con la política de competencia, mientras que el ejercicio de un control sobre las fusiones en virtud de la política de la competencia puede ser incompatible con la política industrial. En su opinión ¿a cuál de las dos políticas se debería tener prioridad y por qué?*

Es una cuestión política.

5. *En las leyes de competencia de muchos países se prevén exenciones destinadas a favorecer a algún sector de la economía nacional, como la agricultura y las pequeñas y medianas empresas, o facilitar la aceleración del progreso tecnológico, como en el caso de los derechos de propiedad intelectual. ¿Qué tipos de exenciones se contemplan en la legislación de su país sobre la competencia y con qué objetivos de política?*

Ninguna, con excepción de los monopolios establecidos por ley y únicamente en su ámbito.

USA

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?*

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 industrialization 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 catalyze maturing sectors or to stimulate advancing sectors.”¹⁷

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 favoring specific industries have been implemented, at both national and subfederal levels, that some might see as constituting industrial policy. Nevertheless, competition policy, not industrial policy, is the main organizing 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?*

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*

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

¹⁷ 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.

the Department of Defense's Defense 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.

Conversely, government efforts to "stabilize" 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."¹⁸

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 prioritized and why?*

We believe that the latter (merger control) should be prioritized. Nor is merger control the only antitrust tool that should be prioritized -- 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.¹⁹

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?*

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

¹⁸ 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*.

¹⁹ 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.