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ENERGY COMMUNITY FORUM

#1 Batteries, the new Airbus

Is competition law an obstacle for creating champions?

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First webinar of the « 2021 Energy Community Forum » organised by Concurrences and Energy Community Forum, in partnership with European Economics and Linklaters.

Dirk Buschle

Dirk Buschle noticed the opportunity for the EU to redefine itself with the Green Deal and the new competition rules. The origin of climate change lies to a great extent in the way energy is produced and used. The call to rebuild the current economy based on carbon since the industrial revolution entails that all industries and sectoral policies must participate

“REGARDING THE CONCRETE TOPIC, BATTERIES: THEY PLAY A CRUCIAL ROLE IN THE ENERGY TRANSITION, AS THEY PROVIDE FLEXIBILITY FOR POWER SYSTEM AND ARE AT THE HEART OF CHANGE IN THE CAR INDUSTRY.”

DIRK BUSCHLE



in the fight against climate change. The question is to what extent competition policy can adapt to that without selling its soul. Given that competition law is an intellectual

construct, and climate change is real, one should assume that competition law will be adaptable. How its traditional objectives and output can best be reconciled with the aim of the Green Deal is subject of the debate.

Regarding the concrete topic, batteries: they play a crucial role in the energy transition, as they provide flexibility for power system and are at the heart of change in the car industry, from the old-combustion motor to electro-mobility. In the face of global competition, the European economy stands much to gain and even more to lose. The Commission identified the dominance of Asian companies as a concern but a few years later, the Alstom/Siemens merger was blocked on the rail market. The subsequent French-German manifesto called for greater flexibility in state aid enforcement and a far-reaching overhaul of EU competition rules to create European champions. The manifesto also noticed that the complexity to implement the IPCEI tool and called for a review of the implementation conditions more conducive to build up a European industry. Behind those questions lie the more fundamental ones of whether Europe needs its battery industry, why and to what extent this industry requires large scale public intervention, and whether and how the European policy toolbox needs to be adapted for this purpose.

Philip Andrews-Speed

Philip Andrews-Speed started his intervention by noting that the major players in the worldwide battery market are all from Asia, except one American company (LG Chem, CATL, BYD, Panasonic and Tesla). Those manufacturers are either partially state-owned or strongly supported by the government through support for research & development and financial incentives to support the consumption of electronic vehicles. However, battery manufacturers have not been stimulated in a top-down manner in their initial phase but rather in a bottom-up manner with government support throughout their development.

The Commission statement to make the EU a world leader in

the production of sustainable batteries is too much and too late. What were European battery entrepreneurs doing twenty-five years ago? Was it so difficult to build up this industry at that time? Building global leadership along the full supply chain is very ambitious. There is a need to support initiatives on certain bits of the supply chain. The development of new battery technologies will not allow for price competitiveness but could use materials that are easier to the source. Recycling batteries would be interesting to become self-sufficient in batteries. Investments in the battery industry should focus on selected initiatives which would be more efficient than trying to be a global market leader.

“INVESTMENTS IN THE BATTERY INDUSTRY SHOULD FOCUS ON SELECTED INITIATIVES WHICH WOULD BE MORE EFFICIENT THAN TRYING TO BE A GLOBAL MARKET LEADER.”

PHILIP ANDREWS-SPEED



Bernd Meyring

Bernd Meyring answered to the question « Should we make an Airbus champion for batteries? ». The two points of similarity with the plane industry are the highly strategic nature and where Europe has fallen behind. But the EU is not having a grassroots approach for batteries as for Airbus, with a large part of the industry working together to develop technologies for which there is a demand and which can disrupt the industry. This is yet the first stage to form

champion. The European Battery Alliance for research and the French and German IOMs to develop batteries and production are the first steps.

“GOVERNMENT BUDGET MAY BE A GREATER CONSTRAINT THAN COMPETITION LAW FOR AN EFFECTIVE EU INDUSTRIAL POLICY.”

BERND MEYRING



Government budget may be a greater constraint than competition law for an effective EU industrial policy. State aid is not an obstacle if projects are cross-border and alliances between different industries are not problematic because they are largely complementary businesses. First, there is a need to build which is pro-competitive and therefore, the competition authorities would unlikely stop those alliances between battery manufacturers. The question of the challenges raised by consolidation such as merger control is premature. Airbus and Siemens/Alstom myths concern strategies that are not at stake in the battery industry. Competition law is not an obstacle to emerging technologies.

The competition was seen as an obstacle for sustainability initiatives of cooperating companies. They are often facing significant uncertainty because of the very essence of competition law, which is about consumer welfare and not sustainability. Over the last two years, competition authorities and practitioners have been trying to get an idea of how consumer welfare could be addressed from a sustainability perspective. All consumers would benefit from more sustainable production and a better environment. But competition law is not used to take this into account, and it is not very clear how to do so even. There is a push to provide more legal certainty. Competition authorities have traditionally been reluctant to engage informal discussion on projects to determine what they would accept or would not accept but things are changing. The Dutch and the German regulators have provided some guidelines and the Commission is working on a project. The competition authorities seem much open to talk about the benefits and restrictions of cooperation, how they would be assessed and what could be changed to ensure legal certainty. There has been a paradigm shift for electric cars and batteries in particular, with great cooperation in a domain where top technology is quite consolidated. A more open environment is needed to involve regulators in a dialogue on topics that are potentially seen as game-changing and essential to our sustainability agenda.

Marc Isabelle

Marc Isabelle noticed that from an economic perspective, competition law is an obstacle for champions in the making. State aid regulatory procedure requires resources and time. This public funding is necessary for companies to decide on their investment and while waiting for the green light, the runway remains open for competitors. Accelerating the process remains a key goal.

“THE IPCEI CURRENT FRAMEWORK IS AN OBSTACLE TO THE CREATION OF CHAMPIONS.”

MARC ISABELLE



The IPCEI regulation has very strict requirements for the supported project. Business as usual cannot be financed by public money and companies need to adapt their projects to promote innovation, defined as « product and processes in a pan-European project which must go beyond the well state of the art ». The IPCEI current framework is an obstacle to the creation of champions. Furthermore, European batteries are unlikely to compete for efficiently Asian counterparts and non-price competitiveness remains out of reach.

Concerning the transposition of the battery policy into the hydrogen sector, the Commission and Member-State try to make the best use of the IPCEI regulation to support strategic value chains such as microelectronics, batteries, connected and autonomous car and hydrogen. The hydrogen value chain is as complex as the battery value chain, but the impetus provided by IPCEI is stronger, with more than 100 companies from 15 different Member-States. The principle of proportionality in State aid entails that the company should receive the strict minimum for its project. Direct grants remain the preferred State aid instrument with 60% of total expenditure but they have the most distortive effects. IPCEI is known to be complicated for companies without interest to be part of it until they are developed or received compensation for the burden of cooperation. In the IPCEI context, spillover refers to the commitment that beneficiaries of State aid must take in terms of disseminating the result obtained from the public-funded project. This would ensure to guarantee that non-participating businesses also benefit from the dissemination of the knowledge created.

Valeska Gottke

Valeska Gottke, first, noted that the European energy storage industry welcomed the European Battery Alliance and the Green Deal. The EU recognised the pivotal role of energy storage technologies in decarbonising energy systems by offering more flexibility in different areas (electricity, heat, mobility) and acknowledged the real nature of energy storage in particular with the introduction of the definition of energy storage in the EU Directive on common rules for the internal electricity market. In Germany, so far, exists unclarity with regards to the legal classification of energy

“THE EU RECOGNISED THE PIVOTAL ROLE OF ENERGY STORAGE TECHNOLOGIES IN DECARBONISING ENERGY SYSTEMS BY OFFERING MORE FLEXIBILITY IN DIFFERENT AREAS.”

VALESKA GOTTKE



storage. With the result, that energy storage is often legally classified as a consumer, which in turn has negative economic consequences. With the implementation of the EU Market De-

sign Directive into national law, this issue should be solved. The energy storage industry has experienced rapid growth in batteries technologies. The European Battery Alliance, launched in 2017, is key in light of the global competition and the importance of this industry, also as a base industry for other future markets such as the digital, IT, telecommunication and particularly the automotive sectors. The experience of the industry with the Battery Alliance to date has been generally positive but a potential drawback of the process is the lack of openness to technologies. Programmes and calls for tender are published as open to different technologies, but they finally want a special type of battery with a defined composition. As a result, some companies with new technology ideas could not be part of the process. Potential difficulties for a government are to observe market trends in real-time, especially in such a highly innovative industry like the energy storage industry, and to ensure a wide-open view on technologies with high potential soon.

The EU approach of setting a focus on sustainability – ecological, social and economic sustainability - is a very important step in creating a strong domestic market. We need to end, on one hand, our dependence on external battery cell supply, and, on the other hand, we need to be able to compete in global markets in terms of prices and quality. With regards to quality, the initiative to build a greener, a circular economy, can help to achieve breakthroughs. The currently low prices of Asian competitors may not remain to be low at all times, one important factor for the low prices are labour conditions that are often found to violate human rights, and the high cost of transport – financially and with regards to CO2-emissions - is significant and could be saved through regional production. The industry generally supports the aim to create a more circular economy, which takes the ecological, social and economic aspects of sustainability into account to strengthen a European market. Government support and subsidies to create a combined effort to build up the battery supply play an essential role. But if we want to build our own “Giga factories Tesla-style”, we need to take other factors of the success into account too. Next to government subsidies and the economies of scale effect and many more, this was possible to bring different kinds of products into the market. Like storage systems at residential or utility level. Now for decades, the energy storage industry in Germany claimed that it would prefer an adjustment of the regulatory framework in such a way that fair and non-discriminatory markets can develop, over government subsidies. That would be, given the energy storage industry, the right step. A step, which can significantly support the future key market of energy storage to develop healthily, competitively and to facilitate market-driven innovation.

Questions & Answers

In response to a question on the difficulty of obtaining public funding for production facilities, Marc Isabelle recalled the purpose of FID to go as far as possible in financing production facilities. If the company can prove that it has technical issues on the production line, this does not fall within the scope of business as usual and can therefore be funded. But once the shift to mass production commercialization realised, public funding can no longer be considered.

A participant asked whether, at the first stage, an investor would think of not investing because of the challenges existing at the next stage of consolidation. Bernd Meyring stressed the difference in the exit scenarios if the investment initiative comes from a related industry actor or another type of investor. In the first case, such as a car manufacturer investing in batteries, the exit scenario would not be a problem as the investor aims at creating an input factor for his product. Investors who want to build something to sell it will think directly about exit scenarios and how merger control and foreign investment rules could block their plan. ■