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The Attali Report: An Italian point of view

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Editorial

The Attali Report: An Italian point of view

Abstract

The Report of the Attali Commission addresses a number of issues that restrict the growth opportunities of the French economy. The Report covers many policy areas and only 31 of its 316 suggestions are directly aimed at increasing competition. This brief paper – a foreword - provides some comments on the proposals to concentrate the antitrust powers in a single Authority and on the liberalization measures proposed for pharmacies, retail trade, the professions and taxi services. Most of the suggestions made by the Commission are to be welcomed. However, their successful implementation is very much related to the relief provided to those that suffer the most from the resulting increased competition. Such relief may be necessary in order for the proposed reform not to be blocked by strong and loud protests, as it already happened for taxi services. Some suggestion on the political economy of competition oriented reform is provided.

Le rapport de la Commission Attali s'est penché sur la libération de la croissance de l'économie française. Ce rapport propose un grand nombre de mesures économiques mais seules 31 de ces 316 propositions sont directement destinées à accroître la concurrence. Ce bref article sous forme d'éditorial se limite à commenter les propositions tenant à la création d'une autorité unique de concurrence, la libéralisation du commerce de détail, des officines de pharmacie, des professions libérales et des taxis. Le succès de ces mesures dépendra avant tout des mesures de compensation. De telles compensations apparaissent en effet nécessaires afin d'éviter que de trop fortes protestations ne viennent entraver ces réformes, comme cela est arrivé pour les taxis. L'auteur de cet éditorial propose quelques pistes de réflexion sur les aspects politiques des réformes proposées.

The Report of the Attali Commission has the ambitious objective, as its title suggests, to free the growth of the French economy*. The aim of the Report is therefore much wider than promoting competition. Only 31 of its 316 suggestions are directly aimed at increasing market rivalry. The rest addresses a variety of issues, including taxation, health care, labour market regulations, education, infrastructure policy, social cohesion, the functioning of public administration, industrial policy. While the bulk of the suggestions are clearly pro-competitive, there are a few that nonetheless would introduce unjustified restrictions in the economy. For example, proposal 316 requires the European Union to adopt a list of strategic industries, whatever this may mean, to be protected from the possibility of foreign acquisitions. There is no empirical evidence that protectionism leads to higher growth. To the contrary.

On antitrust, the Commission suggests the concentration of all enforcement powers in a single Authority, eliminating the division of tasks between the Conseil de la Concurrence (now responsible for antitrust enforcement) and the DGCCRF (now responsible for merger control)[1]. The proposed change would bring the French institutional setting into line with that of the European Commission, as well as of 25 of the 27 member States of the EU[2]. The proposal is to be welcomed because it fosters consistency in the application of the law: the analysis of market power in merger control is not significantly different from that adopted in abuse of dominance cases and many ancillary restrictions in mergers fall under the substantive provisions on restrictive agreements.

Will the suggestion to create a single Authority be adopted? I am not very optimistic. Bureaucracies fight very fiercely for keeping any competence they have. Technical arguments are usually not enough for winning that resistance. In Italy, the Chairman of the competition Authority advocated for years that antitrust enforcement in banking be moved from the Central Bank to the Authority itself. Only when charges were filed against the Governor of the Bank (quite an unlikely event to count on!) the long awaited move took place.

In the case of France, unification of merger control with antitrust enforcement is coherent with a characterization of merger control as a technical matter subject to judicial review. And indeed, although existing French provisions impose a double standard in merger control (a competition analysis and an economic and social assessment) most mergers are currently analysed under a competition standard only. In this respect, the proposal of the Commission to introduce a political angle in merger control is an addition that is not reflected in the existing practice. Furthermore, only a few member States (Germany and Spain) allow ministers to authorize otherwise prohibited mergers, while this is not the case in the majority of member States or at the Community level. If exceptions were necessary in merger control, and I do not believe they are, they should be strictly identified in the law. The reference in the Report to general interest considerations which would allow the Minister to authorize an otherwise prohibited merger is far too lose and vague and would entail an excessive degree of political discretion.

Besides antitrust, the competition chapter of the Report addresses issues in retail trade, the professions and taxis. On pharmacies, another sector addressed, the suggestions to eliminate the pharmacy exclusivity on over the counter drugs is to be welcome and so is the proposal to eliminate the restriction that pharmacies be owned by pharmacists.

In the field of retail trade, the Commission appropriately recommends that entry authorizations should not depend on administrative considerations on the possible evolution of supply and demand (as currently provided by the Raffarin law) and that only urban planning should be taken into account. The same principles are suggested for hotels, restaurants, film distribution and gasoline distributors where all entry restrictions based on minimum distances should be abolished.

As a result of these liberalization measures, market shares of large surfaces would probably increase, leading to greater strain on small shops. On this the Commission suggests that if at the local level the need to sustain the operation of small shops would arise, one possibility could be to have these shops also provide public services and in particular postal services. Although this proposal sounds quite attractive because it could allow economies of scope to be exploited, it may create additional resistance in the liberalization efforts of postal services, further delaying the entry of competition in a vital sector of the economy. The bundling of small shops and the provision of public services should be achieved by opening up to competition these services, not by continuing with regulatory restrictions and privileges.

Where the Report is definitely right and convincingly so is in the proposal (that unfortunately was not made in Italy) to abolish the 1996 Galland law that prohibits sales below cost. The law has been unable to stop rebates to large surfaces. It has nonetheless made it impossible for these rebates to be passed on to consumers since most of them are calculated only at the end of the year and are outside the relevant invoices. The law that prohibits sales below costs, instead of increasing competition to the benefit of consumers, has reduced it.

With respect to professional services, the Commission suggests the abolition of minimum tariffs and the elimination of restrictions on advertisement, along the lines of what has recently been accomplished in Italy. However, the Report concedes that advertisement be subject to the ethical codes issued by the professions themselves. My contention is that existing rule on misleading advertising, both at national and European level, are sufficient to ensure that consumer interests are adequately safeguarded, while any additional restriction risks impairing competition and is not justified.

On notaries the Commission suggests to open up the market and to introduce a system by which high revenue notaries would subsidize low revenue ones. There are no market failures that a competitive market system could not overcome in notary services. Price need not be regulated. Only entry should be subject to quality control. Furthermore many of the exclusivities enjoyed by notaries are probably unjustified and could easily be eliminated. If, as a result of liberalization, in some small village notary services would not be available (a quite unlikely result), potential customers could in any case travel a little farther and find a notary. The system of cooperative transfers envisaged by the Commission in order to redistribute revenues across notaries can be highly distortive and may drastically modify the relevant incentives.

Finally, on taxis the Commission is right in suggesting the development of alternative for hire services. Indeed in all sectors of the economy competition mainly originates from innovation and product differentiation. Taxis are no exception. Only when there are "new" interests to keep markets open, we may hope to overcome the protest of the "old" that demand a strict control on entry. The "voitures de petite remise" are only 100 in Paris, while there are 50 000 in London. Increasing their number and liberalizing the way they operate may indeed reduce prices and increase quality to the benefit of the population at large. However the protectionist interest of existing taxi drivers is too strong not to be addressed specifically. Many other reformers before the Commission, including minister Bersani in Italy in 2006, did not consider that the liberalization of taxi services brings with it a reduction of prices and a strong reduction in the value of the medallions. These medallions are very important for taxi drivers. They represent their health and old age insurance and their retirement fund. Liberalization cannot be achieved without a credible commitment to reimbursement for existing taxi drivers.

And indeed in Ireland where liberalization of taxi services led to a reduction in the value of Dublin taxi licence from 150 000 EUR in 2000, to 6 300 in 2007, the Irish government first gave a licence for free to each existing taxi driver[3] and then instituted a reimbursement fund. In Italy and in France the proposal to liberalize taxi services, not having carefully considered the reimbursement issue, rapidly collapsed because of the protests of stakeholders.

I believe that the suggestions of the Report could be readily exported in the rest of Europe and in Italy in particular. The simplification of levels of government, the introduction of better regulation principles, the benchmarking of local services, the strengthening of the education system are all measures that, if adopted, would substantially benefit the Italian economy, as well as Europe at large. Competition plays a prominent role in the Report and in many instances the suggestions of the Commission are the same a competition authority would formulate. Since in France the Conseil de la Concurrence does not have the power to advocate in favour of competition without a request from another administration, the Attali Commission Report clearly fills up a gap in the system (and indeed the Commission suggests conferring upon the Conseil the power to issue advocacy reports by its own initiative).

In a few areas competition considerations appear unduly neglected: competition is not even mentioned in the energy chapter or in local services. Furthermore, banking and insurance, two industries where high switching costs tend to limit the positive effects of competition, are not treated in any detail. Finally, the Commission places excessive emphasis on industrial policy[4]. I have already commented on the idea of protecting strategic industries. The Report also envisages a number of measures in favor of small and medium size enterprises: a minimum share in public procurement and specifically designed tax rebates. While the objective of promoting SMEs is indeed to be appreciated, the instruments suggested may be distortionary since they tend to impede or delay the size increase of the beneficiaries. A greater effort at identifying more competition compatible measures would have been preferable (for example, eliminating regulatory obstacles to entry, if they exist).

In any case, the Attali Report, given the few months it took to prepare, the breadth of the subject matter it addresses, the boldness of most of its proposal, is a great accomplishment that many newly elected Presidents should follow worldwide in order to receive an independent and well reasoned guideline for action. Good practical ideas for reform are the "essential facility" of good government.

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* Available on the official web site of the said commission: http://www.liberationdelacroissance.fr/index.php?accueil

1 On this issue, see the contributions from Professor Laurence Idot, Counsel Robert Saint-Esteben and Judge Valérie Michel-Amsellem, published in Concurrences 2-2008.

2 See: Fabien Zivy, *Quel schéma institutionnel pour la régulation de la concurrence ?* , Concurrences, N° 4-2007, pp. 50-63 ; for an other point of view, see : François Souty, *Répartition des pouvoirs entre autorités de concurrence : Approche comparée dans le G7*, Concurrences, N° 2-2007, pp. 201-208

3 This necessity of rewarding existing taxi drivers by given them each a free medallion was first proposed by professor Franco Romani back in 1988.

4 On industrial policy, see in this issue of Concurrences 2-2008: Rainier d'Haussonville, Jean-Paul Tran Thiet, EU French Presidency: Between industrial strategy and competition policy, what road for Europe?

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