

The State of the European Union

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10

The Politics of Competition and Institutional Change in European Union: The First Fifty Years

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Competition causes suppliers of goods and services to lower prices, raise quality, and innovate. It is crucial for maximizing social welfare in a market economy. Ironically, however, the market by itself does not guarantee competition, unless one makes heroic assumptions about the costlessness of market entry (North 1981; Neumann 2001: 5ff.). As Adam Smith famously warned, ‘people of the same trade seldom meet together...but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices’. Yet it is not just monopolies, cartels, and mergers that can inhibit competition. Government subsidies and special privileges may also distort the market—within a country and even abroad through trade. Competition thus is an inherently political issue, as well as an economic one.

Safeguarding competition, whose economic importance is explicitly acknowledged in Article 3(1)g of the Treaty of Rome, is one of the most prominent governance functions of the European Commission for the EU Common Market. The Commission exercises real, supranational power in this realm.² In sometimes dramatic ‘dawn raids’, the antitrust experts of the Directorate-General Competition (DG Comp) have discovered and broken up illegal market-sharing, price-fixing, and other competition-impeding agreements from sugar and steel pipes to vitamins, video game consoles, and cars. When Volkswagen, for instance, was

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² Title VI of the Treaty of Rome (as amended), which contains the Rules on Competition, still applies only to the EC portion of the EU, but in keeping with the series title, I speak of the EU throughout this chapter. For simplicity, I also refer to specific articles as renumbered in the Amsterdam revision of the Treaty and use ‘DG Comp’ even for the period prior to 1999, when it was called ‘DG IV’. DG Comp’s remit is similar to the shared remit of the Department of Justice’s Antitrust Division and the Federal Trade Commission’s Bureau of Competition in the USA, though EU law establishes an administrative process rather than a judicial one, and DG Comp’s authority extends to government subsidies and other ‘state aids’, over which the US competition agencies have no say.

found in 1998 to have banned its Italian dealers from selling to German and Austrian customers (in whose home markets VW was selling the same cars at a notably higher price), the EU forced them to end the practice and fined VW 90 million euros for violating EU competition rules. Similarly, DG Comp's Merger Task Force has blocked or forced changes in the terms of merger agreements that they considered a threat to competition in the European market.³ The merger of petroleum products giants TotalFina and Elf Aquitaine in 2000, for instance, was allowed only on the condition that the companies sold off a large number of motorway service stations in France, of which they otherwise would have controlled 60 percent. The merger of Pfizer and Pharmacia in 2003 was allowed only conditional on the sale and/or licensing of some of their pharmaceutical patents for products for which competition would otherwise have been severely reduced.

Commission powers in the realm of competition policy extend even to firms headquartered outside of the EU, as evidenced not only by the ongoing EU antitrust action against Microsoft but also by EU intervention in the proposed mergers between General Electric and Honeywell, which was blocked when GE rejected the Commission's conditions for approval. Moreover, the Commission's power is clearly supranational, as most evident in the realm of subsidies ('state aid(s)'). Here, the EU has, for instance, forced the governments of Germany, Austria, and France to stop giving competition-distorting loan guarantees to public banks; it has also made companies like SCI Systems repay subsidies that the Commission found had been paid to them by the Dutch government, in violation of EU rules, for the building of a computer assembly plant.

While some of its decisions are quite controversial and virtually all of them involve fierce conflicts of interest (Ross 1994: 132ff., 176ff.), DG Comp is generally highly respected. Inside the EU, 'the competition portfolio has become one of the most powerful and prized positions in the Commission' (Hix 2005: 244), and its civil service positions are among the most prestigious in Brussels. DG Comp not only enjoys the highest degree of discretion of any DG (Pollack, 2003a: 94f.), it is also very respected among the general public and outside competition policy experts. An international survey of public and private sector specialists in the summer of 2006 identified DG Comp as the most trusted and admired among thirty-eight competition watchdogs (Cavendish 2006). In the realm of state aid, it 'has managed to elicit an unusually high degree of compliance', which exceeds compliance with comparable competition authorities at the national level (Wolf 2004: 88).

It has not always been that way: The DG Comp started out in the early years after the Treaty of Rome as 'a sleepy, ineffectual backwater of Community

³ The Merger Task Force was a separate unit within DG Comp until 2004. Its functions have now been taken over by merger specialists within DG Comp's industry-specific Directorates B through E.

administration' (Wilks with McGowan 1996: 225). It had only 'a handful of "A" grade officials' (Goyder 2003: 531), and 'little prestige' was attached to working there (Cini and McGowan 1998: 24; see also Cini 1996: esp. 461ff.). European-level competition authority thus has experienced a striking and largely unanticipated institutional evolution over the past fifty years. How might we explain such institutional change?

Büthe and Swank (2006) have recently shown that a modified neofunctionalism—understood explicitly as a HI theory of institutional change—provides a compelling explanation for the evolution of merger control authority in the EU. Such a neofunctionalist theory recognizes that institutional change may arise out of intergovernmental bargaining. The critical insight, however, is that institutional change can occur even when the member states oppose it, provided that *subnational actors*, using the political opportunity structures of the supranational institutions, act jointly with supranational actors in pushing for change, each *pursuing their own, selfish interests*. As a HI theory, this modified neofunctionalism also leads us to pay close attention to the sequence of events in the process of European integration (Büthe 2002), such as when intergovernmental bargaining over institutional change followed rather than preceded the change. This chapter extends Büthe and Swank's analysis of the evolution of supranational merger control authority to the other issue areas of EU competition policy: antitrust enforcement and state aid (subsidies). I first discuss the theoretical argument, focusing on the hypothesized causal mechanisms. I then sketch the institutional evolution of EU competition authority in the three areas of competition policy from the provisions of the Treaty of Paris through the most recent developments. As I show, the theory helps explain why competition policy has so decisively shifted to the EU level, as well as when those shifts have occurred. The finding that neofunctionalism explains institutional change over time as well as the variation across issue areas also refutes the common assertion that it cannot predict or explain variation in the evolution of the EU (e.g. Moravcsik 1993: 477).

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