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The Relational and Structural Power of the EU in Competition Policy: Addressing Asymmetry

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Abstract

Although there is a wide consensus among academics and practitioners that EU competition policy has non-negligible external implications, actual assessments of the power of the EU in this field varies significantly according to one's definition of power. Arguably, the existing literature puts too much emphasis on the exercise of coercive measures in individual competition cases and therefore over-evaluates the power of the EU. This paper addresses asymmetry between the relational and structural aspects of the Union employing both quantitative and qualitative data.

EU competition policy has solid legal basis and is highly supranational. Power sources of the Union are not only its large market size but also its comprehensive law with extraterritorial reach, considerable agency capacity and ability to act cohesively externally. Quantitative data underlines remarkable regulatory activities of the EU even against third-country based firms despite its relatively limited resources. Besides, an analysis of controversial trans-Atlantic cases, namely Boeing-McDonnell Douglas and GE-Honeywell indicates that the EU is increasingly acting as a single block against third states. In contrast to these pieces of evidence illustrating the EU's enormous relational power comparable to the US's, observations on EU structural power provide a moderate picture. In fact, the structural power of the EU is visible but not as strong as that of the US in terms of designing of multilateral institutions, and global standard-setting. Overall, only by recognizing this asymmetry between relational and structural aspects can we start to produce fruitful debate over EU regulatory power in competition policy on the global stage.

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Introduction

In the last two decades, the international dimension of competition policy has proven a politically salient issue. Competition cases involving transnational business activities across dozens of jurisdictions often result in contradictory decisions by national and regional competition authorities. Controversies over such cases can be regarded as the exercise of power by states and businesses, although these events may stimulate international cooperation for conflict prevention. Likewise, the authorities compete and cooperate at levels of standard-setting and designing of multilateral institutions on competition. This is also a way of exerting power, often done in a less visible way. One crucial and yet under-researched public actor in such processes of inter-jurisdictional competition and cooperation is the European Union (EU).

How one assesses the power of the EU on the global stage depends upon how he or she understands the concept of power. Arguably, the existing literature on EU competition policy puts too much stress on the analysis of the EU's coercive, direct influence in individual cases vis-à-vis third-country based enterprises. Classic examples in which the European Commission exhibited its ability to regulate even huge, politically powerful US-based multinational companies include antitrust cases such as International Business Machines (IBM) in 1984 (Raine 1985), Microsoft in 2004 (Takigawa 2005: Marsden 2007), and merger cases such as Boeing / McDonnell Douglas in 1997 (Damro 2001) and General Electric (GE) / Honeywell in 2001 (Morgan and McGuire 2004). While all of them are politically salient cases which triggered inter-governmental frictions, from a methodological perspective a selection bias seems serious here. In fact, this narrow focus on the exercise of coercive measures in individual cases may well lead to mis-evaluating the power of the EU. For example, some recent articles even refer to the Microsoft and GE / Honeywell cases to support their argument that the EU is an emerging regulatory empire (Zielonka 2008: 480; Suzuki 2009: 158). By contrast to this extreme view, a few researchers who pay attention to a structural aspect of actors' capacity such as the designing of international institutions highlight that the EU is not as powerful as it asserts to be (Damro 2006a; Wigger 2008). Given such unbalanced and unintegrated scholarly debate, it is now essential to draw a more comprehensive picture of EU power in competition policy in relation with outside states and their companies. For this purpose, we should pay particular attention to structural power as well as relational power.

The distinction between relational power and structural power should be clarified at this stage to avoid any confusion. What Susan Strange calls relational power is a conventional and perhaps still the most common understanding of power, which was defined by Robert Dahl (1957: 202-203) as the ability to 'make others do what they would not otherwise do'. In contrast to this actor-centered behavioural definition, structural power is the power of achieving one's preference over outcomes, deliberately or unintentionally, as a consequence of the actor's presence itself (Strange 1996: 25-27). This power is 'structural' in a sense that one's preference is achieved indirectly by affecting international structures. This uploading process of national interests and values to the international level is relevant because such preferences would become less particularistic, or at least less visible, and gain legitimacy when embedded in international institutions, be it formal or informal. It should be also stressed that structural power is broader than relational power. The idea of relational power links power to intentionality. By contrast,

structural power is a concept which takes into account not only deliberate actions and their direct effects, but also unintended and sometimes unconscious consequences[1].

To recapitulate, this research is structured around the following research question: how powerful is the EU in competition policy vis-à-vis third states and non-EU-based companies in terms of relational and structural power? The author argues that while the EU has become as strong as the US in this policy regarding relational power, it is premature to conclude that the former is challenging long-lasting US dominance. Empirical observations below show that the structural power of the EU is visible but still limited concerning global standard-setting and institution-building. Without recognizing this asymmetry, it would be unfruitful to discuss the regulatory influence of the EU in competition policy on the global stage. It should be noted that this article shall evaluate EU power in comparison with outside public actors. Transnational actors such as multinational companies are regarded as the regulated rather than stakeholders given the limited space and limited accumulation of literature on this topic.

This article is organized as follows. The next section will provide an overview of EU competition policy concerning competences and decision-making procedures. The second section will begin by identifying sources of regulatory power, and then proceed to operationalizing a key concept, the 'regulatory capacity', in the context of competition policy. The third part will analyse the relational power of the EU in competition law enforcement employing both quantitative and qualitative data. Quantitative data concerned are to be provided so as to measure the relational power of the EU *toward businesses* in comparison with other major public actors. A degree of external cohesiveness of the EU *vis-à-vis third states* will be also examined referring to transatlantic merger cases. The fourth part is dedicated to debate over the structural power of the EU. This article will conclude by summarizing major findings, and identifying potential venues for future research.

I EU competition policy: contents and competences

Since the scope of competition policy varies significantly across jurisdictions, it is necessary to introduce that of the EU before theoretical debate. Also, as for other EU policies, competence allocation among EU and Member States institutions is essential to understand legal context and identify major institutional actors. EU competition policy consists of four major areas, namely restrictive practices such as cartels (Art. 101 of the Treaty on the Functioning of the European Union (TFEU)), abuse of dominance (Art. 102), state aids (Art. 107-109), and mergers which include acquisitions and joint ventures (Council Regulation 139/2004; Commission Regulation 1033/2008). The EU has exclusive competence in this policy (Art. 3 (1) TFEU). In fact, it is one of the most supranational EU policies (Gerber 1994: 105-109: McGowan and Wilks 1995: 142; Cini and McGowan 2009: 41). In individual cases, the Directorate-General for Competition (DG COMP. Previously DG IV) of the European Commission investigates, advisory committees consisting of national representatives consult, and the college of EU Commissioners decide on a simple

[1] This is precisely where structural power defined by Susan Strange goes beyond Stephen Krasner's argument, which narrowly understands an institutionalized international structure as a deliberate projection of hegemon's preferences (Guzzini 1993: 456-457).

majority basis whether a case examined is compatible with the European internal market or not. In practice, the Commission decides on a unanimous basis in most cases. Importantly, the Council of the European Union and the European Parliament have no competence over individual cases. It is DG COMP which warns undertakings to stop anti-competitive business practices, initiates a formal procedure, investigates businesses, and requests them to provide relevant information. The European Commission has competence to impose penalty fees, structural remedies and / or other conditions for clearance, if necessary, on undertakings based on DG COMP opinions (Council Regulations 1 / 2003 Art. 17–26; 139 / 2004 Art. 11, 13-15).

In the adoption of EU Regulations and Directives, the Commission proposes, and the Council decides by Qualified Majority Voting after consultation with the European Parliament (Art. 103 and 109 TFEU). In terms of competence, state aid control is an exception[2]. Nevertheless, it primarily concerns intra-EU activities, and therefore its inter-governmental character does not significantly affect external activities of the EU, the focus of this research. As for the legislature and the executive, supranationality characterizes the judiciary in this policy. All secondary EU legislations and Commission decisions on law infringements can be brought to the General Court (GC. Formerly, Court of First Instance) and the Court of Justice of the European Union (ECJ). There is a wide consensus in academia that judicial activism played a key role in the evolution of EU competition policy (McGowan and Cini 1999: 178-180). While this article does not focus on the integration process, a pivotal role of European courts in policy development is worth mentioning here. The ECJ and GC not only scrutinize Commission decisions, but also 'shape' policy (Gerber 1994: 108-109): a good example is the adoption of extraterritoriality doctrine discussed in the next section.

Despite such exceptionally supranational institutional setting, the role of national competition authorities and courts should not be forgotten. There is a certain division of labour among European and national competition watchdogs. Concerning mergers, the boundary is defined by the 'Community dimension' criteria[3]. As Council Regulation 139/2004 states in Article 1 (2), a proposed market 'concentration' (i.e. merger) has a Community dimension and is therefore exclusively an EU matter only when (a) the combined aggregate worldwide turnover of all the undertakings concerned is more than 5,000 million Euros, and (b) the aggregate Community-wide turnover of each of at least two undertakings concerned is more than 250 million Euros, but (c) each of the undertakings concerned does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State[4]. Regarding restrictive practices and monopoly, so-called 'interstate trade clauses' are key in deciding the border between EU and national control. Both Article 101 (1) and Article 102 TFEU state that the EU shall take action only when anti-competitive business agreements and practices affect 'trade between Member States'.

The enforcement system of EU competition law experienced the Modernization Reform in 2004. With decentralization at its core, this reform aimed for assuring effective enforcement even after the eastern enlargement

[2] The Commission is entitled to monitor Member States' aids such as subsidies to particular industries, but there is a derogation rule under which Member States could overturn Commission decisions under exceptional circumstances (Art. 108 (2) TFEU).
[3] While it should be renamed as the Union dimension after the Lisbon Treaty, the Community dimension is still used in practice.
[4] There are also clauses in the Regulation which leaves room for a flexible distribution of cases between the EU and Member States authorities (Cini and McGowan 2009: 134).

in 2004 and 2007. However, in practice, the Commission's influence did not shrink (Wilks 2005: 436-440). Regulation 1 / 2003 replacing Regulation 17 / 62 entitles Member States authorities and courts to directly apply Articles 101 and 102 TFEU in their treatment of non-Community-level cases (Regulation 1 /2003 Art. 5 and 6). Nevertheless, they can do so only in line with Commission decisions (Art. 16), and only after consulting with the Commission beforehand (Art. 11 (3)-(5)). Besides, the EU Commission can pre-empt national authorities by initiating its own investigation (Art. 11 (6)). In short, a point here is that the European Commission and its DG COMP manage their enormous workload with Member States authorities whereas this does not necessarily mean EU competition policy has become less supranational.

Although competition policy has been traditionally regarded as internal policy, its external dimension is of increasing importance in Europe. Together with Member States, the EU participates in competition-related international organizations such as the United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Cooperation and Development (OECD), and the World Trade Organization (WTO). The EU represented solely by DG COMP is also a founding member of the International Competition Network (ICN), a competition-dedicated informal network of public officers and experts. Besides, the Union has competition-dedicated bilateral agreements with major trading partners, namely the US, Japan, Canada, South Korea, Brazil, China and Russia (European Commission: no date). The internationalization of EU competition policy caused a problem of legality when a bilateral agreement was signed between the European Commission on the EU side, and the Antitrust Division of Justice Department (DoJ) and Federal Trade Commission (FTC) on the US side. The French government claimed at the ECJ a conclusion of such an agreement exceeds the competence of the Commission. Subsequently, the ECJ declared that it was illegal despite the Commission's claim that it was an 'administrative agreement' without legal effects[5]. According to Article 218 (3) TFEU (ex Art. 228 (1) EEC), the Commission needs Council authorization to conclude legal agreements with third parties[6]. Therefore, only after the Council accepted a communiqué from the Commission, and made a Joint Decision with the Commission in 1995, did the agreement come into force with some adjustments[7] (Damro 2006b: 109-113). Notwithstanding such a political struggle, considering all progresses in the external representation of the Union as well as the Member States, we can no longer dismiss the external dimension of EU competition policy.

In sum, EU competition laws cover major areas of regulation. Given the centrality of the European Commission and two European courts, one can summarize that EU competition policy is highly supranational. Nonetheless, the complexity of EU institutional setting and workload sharing with national authorities should not be neglected. It is also noteworthy that this policy has an external face not only concerning the EU's roles in international institutions, but also concerning the international impact of this 'internal' policy on third-country based businesses. Yet, whether the EU is a relevant international player or not is a matter of empirical analyses to be ascertained below.

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[5] ECJ judgement of 9 August 1994 (Case C-327/91).

[6] In foreign and security affairs, it is the High Representative rather than the Commission which represents the Union.

[7] The joint declaration makes it clear that the European Commission cannot exchange confidential business information with US counterparts unless companies concerned disclose it voluntarily. Official Journal of the EU, L 131 on 15 June 1995, pp. 38-39.

II Theories of international regulatory influence: operationalizing the concept of 'regulatory capacity'

A systematic analysis rather than a partial, random description of international actors power requires some theory-based identification of sources of power. Thus, this section attempts to identify concrete sources of international influence, be it relational or structural, in regulatory policies such as competition policy. In other words, this part has two objectives: to specify where the regulatory power of the EU comes from, and to operationalize key concepts for the analysis of competition policy.

The EU is an economic power because it has both carrots and sticks. For most multinational companies, the huge European Economic Area (EEA)- which is the European Single Market plus Iceland, Liechtenstein and Norway - is simply too large to neglect. It attracts a large amount of foreign direct investments, and companies operating within the EEA are in turn subject to EU laws. The former process of 'magnetic effect' (Bretherton and Vogler 2006: 28) and the latter process of EU regulation are inextricably linked. In combination, they enable the EU to exert considerable influence on both EU-origin and non-EU-origin companies in a legal coercive manner.

It should not come as a big surprise that many researchers have paid much attention to the carrots side particularly since the eastern enlargement in 2004. Nevertheless, a market-size-equals-market-power explanation (Drezner 2005: 843) has two serious shortcomings. First, it is one-sided, as already discussed above. Second, it is not useful when it comes to the analysis of EU power in particular policies. To put it differently, the sheer market size hardly explains the considerable variation of global impacts of EU regulations across issues.

Interestingly, Bach and Newman attempt to go further in their recent research on data privacy and financial market regulation policies. Their research shows that the market size matters indeed, but there are too many phenomena it cannot explain. In other words, an agency could expand its regulatory power without an increase in the market size (Bach and Newman 2007: 832). A concept of the 'regulatory capacity' was coined by these two authors precisely to explain the remaining explanatory factors of regulatory power. The regulatory capacity consists of regulatory expertise, coherence and statutory sanctioning authority (Bach and Newman: 831-832). The quantification of those power sources would provide us researchers with a basis for temporal and geographical comparisons in a systematic manner.

Among the three determinants, the expertise of agencies is relatively easy to operationalize regardless policy areas: the budget size, the number of staffs, and their experience matter. But, it is worth reflecting on what 'statutory sanctioning authority' and 'coherence' mean specifically in the context of competition policy. Concerning the former, the geographical reach of jurisdictions, or the establishment of the extraterritoriality doctrine, is the key. The most active advocate of this doctrine is the US whereas the EU also adopted this idea in the ECJ judgement on Woodpulp case and the GC decision on Gencor / Lonrho case. In essence, European Courts as well as the Commission assert that the EU has judicial power over anti-competitive business practices as long as they are *implemented* in and have negative effects on the Single Market. This implementation doctrine, a particular type of

the extraterritoriality, applies regardless the headquarters location of firms concerned[8]. For example, even a merger of two non-EU-headquarter companies with no European subsidiaries could be pre-empted by the European Commission should the merger have immediate and significant adverse effects on the EEA.

Yet, except for the geographical reach of jurisdictions, law coverage is largely insufficient to explain the effectiveness of competition enforcement. Some countries have highly autonomous competition agencies, while others purposefully build up weak agencies in order to leave ample room for political intervention. This is why a fact that comprehensive competition law exists on paper does not necessarily mean a country concerned has stringent competition policy. Considering such a noticeable legislation-implementation gap in this field (Nicholson 2008: 1022-1027), enforcement effectiveness would be a better indicator of regulatory power than statutory sanctioning power.

The capacity to act externally cohesively, or 'the ability to agree' (Hill 1993: 315) in EU-studies terms, is another important factor which constrains international actors' bargaining power. In competition policy, a common and persistent problem for governments is how to cope with the following dilemma: effective competition law enforcement may adversely affect domestic firms' international competitiveness when other jurisdictions' regulation is significantly looser. Within the government, advocates of rigorous competition policy often disagree with supporters of industrial policy.

As for many other areas, the issue of consistency is much more crucial for the EU than for other international actors in this area. This is because the EU has supranational competition policy, while its industrial policy remains inter-governmental. On the one hand, the founders of the Rome Treaty clearly considered competition policy as necessary for the functioning of the customs union. It was relatively easy for the original six member states to accept some form of supranational competition regulation because none of them had much policy experience at that time. On the other hand, the EU still has only supportive competence in industrial policy – even if narrowly defined as the issues over which Directorate-General Industry and Enterprise have competence. This imbalance explains why EU competition watchdogs disagree at times with Member States as well as other DGs. All in all, it is too naïve to assume that the EU is monolithic in competition policy simply because it is a legally supranational area.

To sum up, current academic debate over the international politics of regulation goes much beyond the rather simplistic, 'the market size matters' argument. More concrete, micro-level factors enable us to explain policy-specific regulatory influence. It should be also noted that some indicators of regulatory power such as the agency capacity are easier to quantify than other indicators such as coherence. This is why the following sections employ both quantitative and qualitative analyses aiming for a better understanding of global impacts of EU competition policy.

[8] Dabbah (2003: 167-191) provides the most comprehensive legal analysis of the extraterritorial issue in European and American context. For the EU case, see ECJ's judgement on the Woodpulp case (C-89/85 (A. Ahlström Osakeyhtiö and others v Commission)) and GC's judgement on the Gencor / Lonrho merger case (T-102 / 96 (Gencor v. Commission). See also Kojima (2002) and Gerber (1983).

III The relational power of the EU: quantitative and qualitative indicators

Drawing attention to structural power does not mean we researchers may ignore relational power. On the contrary, the latter face of power remains essential. This behavioural understanding of power refers to direct and intentional influence of one actor on another by coercion (e.g. with military and / or legal force) or persuasion (e.g. with material incentives). The relational power of the EU *toward companies* means effective enforcement, which can be quantitatively measured and compared across jurisdictions. A key element for the relational power of the EU *toward third states* is the ability to agree, which will be examined below by a qualitative analysis of three cases.

Under-resourced and yet effective? Quantitative indicators of the power of the EU

Based on data from Global Competition Review (2011: 6-7, 14), Table 1 below compares 34 major jurisdictions (33 countries plus the EU) in terms of agency resources. The resources are measured in four ways, namely the budget, the staff number, GDP per staff, and length of average tenure. The table shows that DG COMP of the European Commission is one of the largest competition agencies around the world even without counting the Commission's legal service staffs. In terms of the staff number, Russia comes first (2957), followed by the US (1128), the EU (764) and Japan (741). Excluding Russia which is still in transition from a planned economy, the EU is the second largest. Those four players outnumber the others considerably. Regarding the budget, again the EU (90.8 million Euros) comes second. With the US competition authorities at the top (201.8), DG COMP is followed by Japan (67.8), Italy (67.3), South Korea (50.3) and Australia (47.9).

Therefore, there is little doubt that DG COMP is one of the biggest competition authorities around the world. However, the table also indicates that the EU watchdog is relatively under-resourced (See also Wilks 2010: 150). In terms of administrative burden measured by GDP per staff, DG COMP is the most overloaded institution among the 34. Moreover, 87% of the DG budget goes to salary (Global Competition Review 2011: 14). It is reported that this ratio is higher than that of most other countries such as Germany (72%), France (74%), the UK (Office of Fair Trade) (57%) and the US (FTC) (67%). There are only a few exceptions such as Belgium (93%). Regarding expertise measured by average tenure, the EU (six years) is only slightly above the average (seven years) and the median (six years and a half).

Given such limited resources, the policy performance of the EU is remarkable. Table 2 below provides Global Competition Review's ranking of competition authorities in 2011 according to general enforcement effectiveness. Together with the two US authorities and the UK Competition Commission, the European Commission achieved the top score five. There are also more specific pieces of evidence favourable for the EU. Table 3 shows total amounts of fines imposed on cartels in 2010 and average fines per case in 32 jurisdictions. In these aspects, the European Commission ranks number one with no comparable agencies. Furthermore, Table 4 vividly illustrates a sharp increase in cartel fees by the Commission over last 20 years. There was a sharp increase in the period of 2000-04. The amount soared even more sharply between 2005 and 2009. Major factors contributing this trend are the

Table 1: Measures of resource inputs into competition policy, by jurisdiction

Country	Agency Budget (€ million)	Agency Staff	GDP ($ billion) / staff	Average tenure (year)
US (DOJ & FTC)	201.8	1128	13	13 (FTC)
EU (DG COMP)	90.8	764	23	6
Japan	67.8	741	8	17
Italy	67.3	119	18	11
South Korea	50.3	441	3	13
Australia	47.9	336	4	7
Russia	43.8	2957	1	4
UK (CC & OFT)	40.1	318	8	5 (CC); 7.5 (OFT)
Canada	28.4	267	7	12
Germany	23.0	209	17	10
France	20.4	154	18	5
Netherlands	17.6	214	4	5
South Africa	16.2	163	3	2
Sweden	14.5	113	5	7
Spain	13.5	193	8	3
Poland	12.7	150	3	4.5
Greece	10.9	45	7	4
Norway	10.9	108	5	4
Mexico	9.9	183	6	5
Hungary	9.3	62	2	8
Denmark	9.0	74	5	6
Portugal	8.6	74	3	7
Switzerland	7.4	57	11	6.5
Brazil (CADE & SDE & SEAE)	6.7	257	10	3(CADE) 7(SDE) 10(SEAE)
Chile	5.3	87	3	5
Finland	5.3	56	5	9
Ireland	5.1	39	6	4
Israel	5.1	79	3	3
Belgium (DG & CC)	4.5	64	8	5
New Zealand	4.5	78	2	7
Austria	2.4	32	13	N/A
Slovak Republic	2.4	69	1	7
Pakistan	1.8	52	4	N/A
Lithuania	1.0	41	1	10
Average	25.5	286	7	7
Median	10.9	116	5	6.4

Source: Global Competition Review (2011: 6-7, 14). For GDP, the World Bank (2012). GDP data is from year 2011, except for New Zealand, whose data is year 2010. DOJ=Department of Justice's antitrust division, FTC=Fair Trade Commission, CC=Competition Commission, OFT=Office of Fair Trading, CADE=Council for Economic Defence, SDE=Secretariat of Economic Law, SEAE=Secretariat for Economic Monitoring, DG=Directorate General for Competition, CC=Competition Council.

Table 2: Global Competition Review's rating of 39 competition agencies in terms enforcement effectiveness

European Commission	5	Denmark	3.5	Russia	3
UK (CC)	5	Italy	3.5	Sweden	3
US (DoJ)	5	New Zealand	3.5	Switzerland	3
US (FTC)	5	South Africa	3.5	Belgium	2.5
France	4.5	Spain	3.5	Brazil (SEAE)	2.5
Germany	4.5	Austria	3	Chile	2.5
UK (OFT)	4.5	Brazil (SDE)	3	Greece	2.5
Australia	4	Czech Republic	3	Ireland	2.5
Japan	4	Finland	3	Mexico	2.5
South Korea	4	Hungary	3	Pakistan	2.5
The Netherlands	4	Israel	3	Poland	2.5
Brazil (CADE)	3.5	Norway	3	Slovakia	2
Canada	3.5	Portugal	3	Lithuania	2

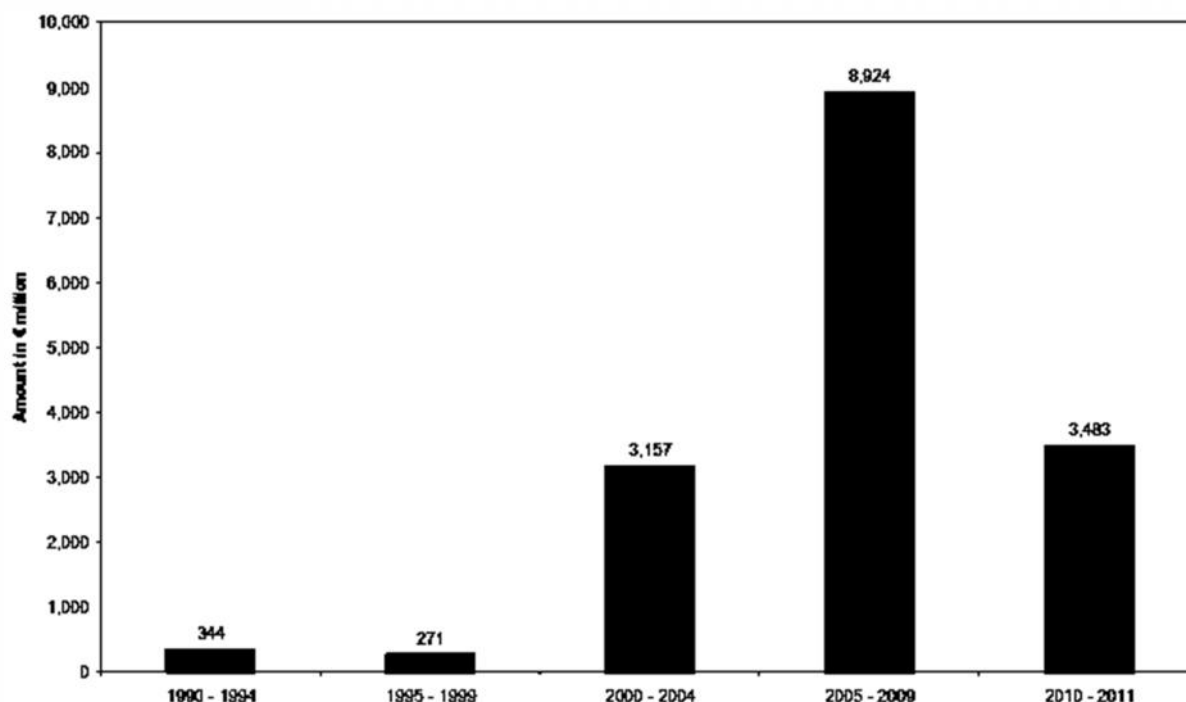
Source: Global Competition Review (2011: 3). Note: scaled between 5 (exceptionally effective) and 1 (ineffective).

Table 3: Cartel fines imposed in 2010 in 32 jurisdictions

Country	cartel fines (€ million)	average fines	Country	cartel fines (€ million)	average fines
European Commission	2900.0	410	Mexico	10.9	3.6
Brazil (CADE)	1000.0	257.3	Australia	6.8	3.41
Japan	600.0	3.5	Canada	5.9	5.4
France	440.3	36.7	Switzerland	5.6	2.81
Korea	373.0	10.7	Belgium	3.5	3.5
US (DoJ)	372.8	21.7	Czech Republic	3.1	1
Germany	267.0	22	Pakistan	2.6	1
UK (OFT)	255.0	255	New Zealand	2.0	1
The Netherlands	137.0	11.4	Austria	1.5	1.5
Italy	121.2	24.2	Lithuania	1.0	0.2
South Africa	71.5	N/A	Israel	0.7	N/A
Poland	40.0	N/A	Slovakia	0.6	0.1
Spain	40.0	8	Portugal	0.5	0.5
Hungary	26.9	N/A	Chile	0.2	0.2
Russia	21.7	1	Finland	0.0	0
Greece	20.2	6.7	Ireland	0.0	0

Source: Global Competition Review (2011: 18).

Table 4: Amount of fines on cartels imposed by the European Commission (adjusted for court judgements) 1990 - 2011



Source: European Commission (2012 a). Note: Amounts as imposed by the Commission and not corrected for changes following European courts judgments and only considering cartel infringements under Article 101 TFEU.

Table 5: Proportion of mergers going to in-depth review

Authority	No. in-depth review	% in-depth review	Authority	No. in-depth review	% in-depth review
Chile	9	100	Ireland	2	4
New Zealand	12	100	UK (OFT)	3	4
Poland	222	100	Austria	7	3
UK (CC)	3	100	Canada	7	3
Australia	159	50	Spain	3	3
Brazil (SEAE)	253	32	Switzerland	1	3
Brazil (CADE)	162	25	Czech Republic	1	2
Denmark	2	20	Germany	15	2
Mexico	15	16	Italy	12	2
Israel	21	14	Japan	6	2
South Africa	31	14	Pakistan	1	2
Finland	2	12	Sweden	1	2
South Korea	60	12	US (DoJ)	28	2
Hungary	4	8	US (FTC)	20	2
Slovak Republic	3	8	European Commission	4	1
Russia	297	6	France	2	1
Greece	7	6	Norway	5	1
Belgium	1	5	Lithuania	0	0
The Netherlands	4	5	Portugal	0	0

Source: Global Competition Review (2011: 16)

adoption of a new guideline on cartel fees calculation in 2006 and a success of the leniency programme. The leniency programme or amnesty programme is a mechanism to combat illegal cartels by offering exemptions for or reduction of penalties, be they criminal or civil, to 'whistle blowers' (companies or individuals that confess their commitment to cartels and cooperate with investigators by providing relevant information).

To interpret Table 3 comparing cartel fees across jurisdictions, three qualifications must be made. The first point is a technical issue concerning the uniqueness of the EU governance structure. The EU has competence only over cases with the Community dimension. The other cases are left for Member States. Secondly, we should keep in mind that some competition authorities such as the US's and the UK's have criminal sanctions as well as non-criminal penalties. Lastly, potential costs at civil litigation are less visible but important deterrence to the infringement of competition laws. The bigger a prospect of litigation by private actors (consumers, firms, and their associations) is, the smaller the number of competition law infringements (Aoyagi 2012: 117-118). Anglo-Saxon countries have much more effective systems of private enforcement than most other countries due to a culture of class action[9]. By contrast, as the European Commission addressed in its Green Paper in 2005 (European Commission 2005: 4) and White paper 2008 (European Commission 2008a: 2) on collective damages action against the infringement of EU competition laws, an effective civil litigation system does not exist in Europe except for a few Member States.

Apart from cartel control, it is not an easy task to compare the effectiveness of competition authorities. Some people focus on the number of investigations initiated and completed per year, while others emphasize the speed of review despite a fact that quick administrative decisions could simply mean less serious scrutiny. One more reliable indicator of enforcement effectiveness is the *proportion* rather than the number of merger files which go to in-depth review. The smaller this proportion is, the more effective first-phase screening an authority has (Global Competition Review 2011: 16). As Table 5 above presents, the European Commission, France and Norway have the lowest level of percentage of in-depth review, which is only one per cent, suggesting that they have exceptionally sophisticated investigative and analytical systems.

Behind such noticeable effectiveness of DG COMP and the Commission are with little doubt two factors, although their contributions are difficult to measure quantitatively. Firstly, in the current EU competition system, who pays most administrative costs is not the regulator, but the regulated. In the past, the EU had a pre-notification rule under Council Regulation 17 / 62 on the implementation of Art. 101 and 102 TFEU (formerly 81 and 82 EC). By contrast, the current rule Regulation 1 / 2003 adopted in 2004 does not require enterprises to notify all business agreements affecting trade between Member States. Instead, every business must acknowledge EU laws and assess prospective competition effects of their cross-national activities by themselves. This self-check system relieved DG COMP from evaluating a flood of mostly uncontroversial requests for permission to conduct certain business activities. The abolition of the notification system was crucial because the eastern enlargement in 2004 and 2007 apparently imposed more administrative burden on EU authorities.

[9] There is a criticism to the Anglo-Saxon style private enforcement saying that, despite merits of the collective damages action mechanism, the excessive use of class actions and punitive rather than compensatory penalties could disadvantage businesses unfairly. See European Commission (2008b: 14).

In addition, the vertical division of labour according to the Community dimension criteria for merger control, and the inter-state trade criteria for restrictive practices and abuse of dominance, enable the Commission to concentrate on complex cases. After five years of formal intensive investigation, the European Commission (2004) asserted in 2004 that Microsoft, a US-based computer company, broke EU laws by abusing its monopolistic power and disadvantaging its competitors in the personal computers operational system (OS) market[10]. The Commission ordered Microsoft (i) to disclose their inter-operational information to its competitors, (ii) to offer its Windows OS products to personal computer manufacturers without tying its own media player, (ii) and to pay record-breaking 497 million Euro penalty fees. In addition, Microsoft was charged a massive amount of 899 million Euro fees for non-compliance with the 2004 Commission decision (European Commission 2008 c). Only one year later, the Intel case (European Commission 2009)[11] broke the record again. Because of the abuse of dominant market position in the computer chips manufacturing industry, as large as 1.06 billion Euro penalty fees were imposed on Intel, another US-headquarter multinational company.

It is fair to say that there is abundant quantitative data which demonstrate considerable and ever-growing regulatory influence of the EU on both EU and non-EU companies in competition policy. The EU is not outstanding when we look at agency resources, but it is outstanding in terms of regulatory impacts. While EU regulation presented here is delivered to companies, its ability to resist political pressures from third states in controversial cases is also noticeable, as we shall see in the following section.

A qualitative analysis of the relational power of the EU: the increasing ability to agree

A gradual qualitative change in EU external relations is evident in merger cases. As Bretherton and Vogler (2006: 88) point out, '[a]lthough the EU increasingly appears to outsiders as a single economic entity, its external representation and capacity to act still varies by issue' even among economic policies. Therefore, while competition policy is one of the most supranational policies of the EU, we should not presuppose that the EU is a unitary actor. This is why a degree of the EU's internal consistency is worth examining.

In the last several decades, we have witnessed a somewhat strange combination of two EU policies. One the one hand, EU competition policy has emerged as one of the most rigorous ones around the world since the mid-1980s (Wilks 2010: 136-137). Soaring fines on international cartels and monopolists are primary examples. On the other hand, the Treaty on the European Union explicitly established the idea of European industrial policy in its newly inserted Title XIII[12]. A series of multiannual framework programmes concerning research and technological development in the late 1980s and 1990s paved a way for the Lisbon Strategy. The Lisbon Strategy is a comprehensive non-binding multiannual programme launched in 2000. It aims to foster knowledge-based highly-productive European economies (For a historical overview, see Rodrigues 2009). It is partly a regional response to

[10] Case 37792.
[11] Case 37990.
[12] It was renumbered as Title XVII by the Lisbon Treaty.

slow economic growth in EU countries and increasing international competition with third states companies, notably American and Japanese ones. While its goals were not adequately achieved by the deadline, 2010, now the strategy was updated as the Europe 2020 programme.

In its annual reports on competition policy, the European Commission has continuously emphasized the positive contribution of this policy to the Lisbon Strategy and now Europe 2020 (e.g. The European Commission 2012b: 9-10). The argument is that competition creates a competitive economy[13]. However, this simplistic discourse should not be accepted without scrutiny. There is a recognition among numerous academics and practitioners that the international competitiveness of European firms could be undermined if the EU had substantially more rigorous competition rules than other major trading partners (Dewartripont and Legros 2009: 89; Blauberger and Krämer 2010: 7). This competition – competitiveness dilemma is serious indeed because there is no equivalence of EU state aid control in other regions. Hence, intra-EU controversy between pro-industrial and pro-competition actors often upsurges when politically sensitive industries are concerned.

The most relevant empirical study about the EU's ability to agree in this policy is that of Cini and McGowan (2009: 154-155; 157-159), which compares three cases in the aircraft industry, namely Aerospatiale/Alenia/de Havilland[14], Boeing/McDonnell Douglas[15] and GE/Honeywell[16] merger plans. Their analysis implies that the EU acts as a cohesive group when it deals with solely third-country based companies. By contrast, the Union is more likely to show internal controversy when EU based companies are involved[17]. So as to develop this argument, it is worth briefly summarizing the three cases first. The Aerospatiale/Alenia/de Havilland case was the first case in which the Commission prohibited a merger plan. A consortium of French Aerospatiale and Italian Alenia, ATR, notified an acquisition of de Havilland, a Canadian branch of Boeing (US) in 1991. However, DG COMP suspected that the merging party would gain excessive market power in the civilian helicopter industry. The college of European Commissioners nearly split. One side was supporters of industrial policy, namely French and Italian Commissioners, and Commissioner for Industry Martin Bangemenn. The other side was advocates of strict competition regulation led by Competition Commissioner Sir Leon Brittan. Nevertheless, in the end the Commission tamed strong opposition and decided prohibition of the merger by 9 to 7 with abstention by former Commission President Delors (Cini and McGowan 2009: 155).

By contrast, the European Commission reached consensus in the latter two cases. Both the Boeing/McDonnell Douglas and GE/Honeywell cases were merger plans between American companies. In 1997 The European Commission declared that a notified merger between Boeing and McDonnell Douglas might have anti-competitive

[13] The Commission avoided stringent competition policy in its initial stages so as to foster national champions (1960s) and minimize negative effects of economic crises on European companies (1970s) (Cini and McGowan 2009: 21-29). It was only in the 1980s when pro-competition ethos became prominent due to (i) a rise of neoliberalism, (ii) strong leadership of Competition Commissioners, (iii) enactment of the Merger Regulation, and (iv) accumulation of case law and administrative expertise (Wilks and McGowan 1996: 245-248; McGowan and Wilks 199: 150-153).
[14] Case M. 53.
[15] Case M. 877.
[16] Case M. 2220.
[17] They analyze the Aerospatiale case as an example of politicization and clashes within the Commission, while the other two are examined to illustrate EU-US disputes concerning extraterritoriality.

effects on the aviation industry. Despite US opposition, the Commission stood still and imposed conditions on the merger. Similarly, EU and US authorities made contradictory decisions again on the merger plan between GE and Honeywell, large companies mainly operating in the electronics industry. While the FTC of the US cleared the notified merger without condition, the Commission decided in 2001 to prohibit the merger maintaining that it would distort competition in the military aviation engine market because of conglomerate effects.

If there is something to add to Cini and McGowan, it is a rather subtle improvement in EU cohesion over time. In the Boeing case, an escalation of political controversy occurred between EU and US sides, particularly from May to July 1997. Upon Boeing's request for governmental support, former US President Bill Clinton and former Vice President Al Gore expressed concerns about the Commission's decision to conduct in-depth investigation. When Karel van Miert, Competition Commissioner at that time presented his negative opinion on the merger, President Clinton even hinted a threat of trade retaliation in case the EU blocked the merger (Buerkle 1997). On the European side, former French President Jacques Chirac publicly requested the European Commission to take an autonomous decision, and former German Chancellor Helmut Kohl urged European aerospace companies to unite and confront a challenge from American competitors (Buerkle 1997). In parallel, the College of Commissioners conveyed grievances to US counterparts in response to their political pressures (for a full sequence of those events, see Aktas et al 2001: 455-457). It should be noticed that the EU side was unprepared to manage such a complex and politically salient issue ensuring horizontal and vertical coordination.

In the GE case, a fewer number of actors represented either side of the Atlantic Ocean. Regardless of political interference by former US President Bush during a highly sensitive period of concession negotiation between the EU and merging parties (Meller and Deutsch 2001), the EU acted as a single block against the US. Competition Commissioner at that time, Mario Monti, played a role as a single face of the European side. Although it was reported that Ireland representative abstained from a decision at the Concentration Advisory Committee (Meller 2001), an overwhelming majority the Committee supported Commissioner Monti's position[18]. In this way, one can observe increasing EU coherence. One possible explanation is that the transatlantic friction in the former case enhanced the ability of the EU to react as a block, despite external high pressures. Yet, it is still difficult to determine the cause of change given a limited number of comparable cases.

To sum up, a major qualitative indicator of EU relational power in competition policy is the degree of its external coherence. Coherence depends on whether the EU is dealing with solely non-EU companies or not. Also, the comparison of Boeing and GE cases demonstrates that the EU is becoming more cohesive over time, possibly because of interactions with the US government.

[18] This is because, according to Meller, there was a large GE plant with 85,000 employees in the west part of Ireland at that time.

IV Not as strong as it asserts to be? The structural power of the EU

As defined in the introduction, structural power is the ability to put forward one's preference over others' through political structures with or without intention. It is power to set context and rules of the game in the global political economy[19]. One crucial aspect of structural power is the capacity of actors to design, build and manage international institutions, be it formal or informal, to promote their own preferences indirectly (Guzzini 1993: 456-457). The GATT-Bretton Woods system is a classic example of such institutionalized governance of the world economy where the US and its major allies set rules of the game in production, monetary and financial structures. Yet, even without such indirect institutional influence, political actors may exert structural power 'by their own presence' unintentionally and unconsciously. For example, an actor's belief or practice may serve as a model or at least as a reference to others because the former has more expertise and experience than the latter in a particular field. Specifically in the context of regulatory policies such as competition policy, global standard-setting can be regarded as a typical expression of such power. In short, two aspects of structural power are of great significance in the politics of global regulation: institution building and standard-setting capacities.

Designing multilateral institutions on competition

The idea of multilateral competition cooperation first appeared in the 1940s. The Havana Charter, which was agreed by 53 states in 1948 for the foundation of the International Trade Organization (ITO), included clauses on competition. However, the ITO remained inborn (Diebold 1952)[20]. Since then, western countries and some other countries had focused on trade liberalization negotiation for nearly half a century in the framework of the General Agreements on Tariffs and Trade[21]. There has been some discussion about international competition cooperation at several international organizations such as the UNCTAD and the OECD. Nonetheless, despite some important OECD recommendations, cooperation at these organizations is limited in scope and remains purely voluntary. Until the 1980s, a major obstacle to multilateralism in this field was the reluctance of the US, a crucial state actor. As Dabbah (2003: 165) points out, the US preferred the status-quo because 'relying on extraterritorial application of domestic antitrust laws would reduce the incentives of countries for the internationalisation of antitrust policy in "bilateral" or "pluralist" sense' (emphasis in the original).

A momentum for institution building on a global scale came in the 1990s. The establishment of the WTO in 1995 after the long-awaited conclusion of GATT Uruguay Round negotiation was a spur for further global economic cooperation. Inter-governmental conflicts deriving from transatlantic divergence also encouraged interested parties to make new international rules on competition. Karel Van Miert, a former European Commissioner for Competition (1989-1999), was one the most vocal and enthusiastic advocates of binding multilateralism for international

[19] Structural power should not be confused with soft power (Nye 2004: 5-6;11) or the power to change others' preferences by attractiveness of culture, political values and foreign policies.
[20] The main reason of the failure was that US Senate dismissed the Charter even without voting. Most other parties thought it as unrealistic to establish the ITO without the US, and did not ratify the Charter.
[21] GATT was signed earlier than the ITO by 23 countries in Geneva in 1946.

competition cooperation. Although the OECD and UNCTAD among others dealt with the competition issue, Van Miert (1998) believed that the WTO was the most suitable arena for competition cooperation. He prefers the WTO because it 'has near universal membership and can provide a balanced response to the interests of both developed and developing countries'. He set up a Wise Men Group in 1994 with his own initiative, requested it to develop ideas about possible areas of competition rules for WTO negotiation (Van Miert 1997). Suggestions of the Wise Men, most importantly agreeing on core principles, and setting up adequate enforcement and dispute settlement mechanism, were accepted by the European Commission (Van Miert 1998). As a consequence, the Singapore WTO ministerial conference in 1996 identified the competition issue and other three as potential agenda for the WTO Doha Round. As a concrete step, a WTO Working Group on Trade and Competition was set up in December, immediately after the ministerial conference, without presupposing an initiation of negotiation in a later stage.

Although a few countries such as Japan, Canada and South Korea supported the position of the EU, disagreement between the EU and the US soon became clear. While the EU preferred binding multilateralism based on its own regional experience (Damro 2006a: 213-214), the US consistently opposed the creation of competition rules to which the WTO Dispute Settlement System could apply. A large majority of less developed countries were also against the EU plan for a different reason. From their viewpoint, developed countries have much more experience in competition policy than the less developed, and are therefore better placed to design global rules. Since there was no guarantee that developed countries would make rules which were beneficial for less developed countries, the latter found themselves disadvantaged in this policy. As a matter of fact, in the fifth Ministerial Conference at Cancun in 2003, stark opposition from the US and less developed countries surfaced. When the Working Group became inactive after this disagreement, a main forum for international cooperation on this issue apparently shifted from the WTO to the ICN.

The ICN is a unique informal network of competition officials and experts clearly inspired by suggestions from US Justice Department's advisory committee, the International Competition Policy Advisory Committee (ICPAC) (ICN: no date). The ICPAC was a group of antitrust officers, academic, lawyers and businesses, and aimed to 'address the global antitrust problems of the 21st Century'. It was formed in November 1997. After several meetings and extensive outreach research, the committee published the over-300-page Final Report[22]. Based on this reports' recommendation for a 'Global Competition Initiative' in Chapter 6 on Preparing for the Future (ICPAC 2000: 281-302), top antitrust officials from 14 jurisdictions[23] launched the ICN October 25, 2001 (ICN: no date). By May 2011, its membership soared to 117 competition agencies from 103 jurisdictions (ICN 2011: 1).

The ICN meets demands of less developed countries and, above all, that of the US. This is a virtual forum without legal personality. The ICN makes no binding rules and has no dispute settlement system. Its main purpose is voluntary policy convergence among participating countries through interactive activities such as conferences, and recommendation of best practices. As Wigger (2008: 198) argues, the US opposition against competition negotiation

[22] Following the completion of this work, the Committee was dissolved in June 2000.
[23] Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States and Zambia.

at the WTO and full support for the ICN are to some extent linked to the transatlantic controversy over extraterritoriality discussed above. From this view point, the US rejection of the EU ambition can be regarded as a response to emerging EU regulatory power. While this shift of gravity from the WTO to the ICN was a complex process in which numerous factors played roles, one thing seems clear: the EU gradually realized 'a leadership gap' (Damro 2006a: 218-221), a gap between its self-image of global leader and the reality of limited success of its global competition rule initiative.

Standard-setting

The EU exports its competition regulation model to third countries and regions intentionally and unintentionally. An impact of EU laws is particularly visible in EU candidate states and neighbour countries (Cini and McGowan 1998: 207-212; Aydin 2012: 673-675). Competition laws are part of the *acquis communautaire* of the European Union. Therefore, EU membership cannot be obtained without aligning national competition rules with EU rules. For example, Turkey's competition law clearly resembles the EU's concerning monopoly, cartel and merger control (Wigger 2010: 187). The EU model also has had some impacts on competition laws of South American countries where the US traditionally exerts strong political and economic influence (Wigger 2010: 197).

Nevertheless, the structural power of the EU is limited with regard to global standard-setting. The main competitor for the Union here is again the US. Despite close cooperation and coordination, transatlantic divergence still exists not only in visions of international institutional frameworks but also in substantial and procedural issues of competition investigation. There are three pieces of evidence which show that the US is still more powerful than the EU. The first example of the diffusion of an American model is the cartel leniency programme. The DoJ of the US issued the Corporate Leniency Policy in 1993 and the Individual Leniency Policy in 1994. Since then, this idea spread rapidly through dozens of competition authorities. They include most developing countries such as all EU Member States except for Malta, the EU itself, Japan, Canada and Australia as well as some less developed countries.

The second benchmark case is transatlantic convergence in merger review. Traditionally, the EU approach to merger review was a legalistic, market-structure-focused approach, which was evident in the so-called Dominance Test for market analysis under former Merger Control Regulation (4064/89) in 1989. By contrast, the Substantially Lessening Competition (SLC) Test adopted in the US and some others puts more emphasis on the analysis of economic efficiency. In other words, large market shares of merging parties are not necessarily illegal in the US context because pro-market efficiency effects may overweigh anti-competitive impacts of a merger. This divergence at the substantial level has been one of the major sources of disagreements over politically sensitive trans-Atlantic cases. However, EU merger review is gradually shifting from the structural approach to microeconomic, efficiency-based analysis (Lyons 2009: 144-147). Merger Control Regulation (139/2004) in 2004, replacing the previous Regulation in 1989, takes the 'Significant Impediment of Effective Competition' (SIEC) Test as its criterion. As the name suggests, the new Regulation clearly shows a gradual alignment of the EU with the Anglo Saxon-style

efficiency-based approach, although the market structure remains important in EU merger review. At the ICN, this issue is nearly solved: the ICN Merger Working Group's Guidelines Workbook (2006: 4-12) recommends an efficiency-based substantial examination of market effects of mergers.

The third and much more general point which indicates American standard-setting power is the so-called 'micro-economization' of EU competition policy (Wigger 2006: 10-12; Christiansen 2005: 2-7). Traditionally, the European Commission and DG COMP had been dominated by lawyers rather than economists. This composition was reflected in their reasoning for rules and decisions. However, the weight of microeconomic reasoning is getting greater in the Commission decisions on competition cases. As a matter of fact, in 2003 DG COMP created a position of the Chief Economist whose responsibility is to enhance the quality of economic and particularly econometric analysis by the DG. The Chief Economist is supported by a number of high profile economics-PhD holders.

On the one hand, this micro-economization of DG COMP is partially an endogenous process within the EU. In 2002, there was an extremely unusual cases in which the General Court (Court of First Instance at that time) annulled the European Commission's prohibition of a proposed merger (Airtours / First Choice, Schneider / Legrand , and Tetra Laval / Sidel merger cases) (Cini and McGowan 2009: 138-139; Levy 2005: 107-108). In each of these cases, the GC harshly criticised the Commission's poor economic analysis as well as insufficient documentation. This series of events were striking because the European Courts had long been allies of regional integration for the Commission (Cini and McGowan 2009: 138-139). Reforms of DG COMP in 2003, namely the destruct of the Merger Task Force, a DG-wide reorganization for better enforcement, and the appointment of the first Chief Economist mentioned above, can be regarded as direct responses to the distrust from the judiciary.

On the other hand, US influence is also non-negligible. At a general level, a particular type of neoliberalism in competition policy, the Chicago School which derives from American academia, is gradually changing European competition policies both at national and EU levels at least since the 1980s (Buch-Hansen and Wigger 2011; Gerber 1994). At a more specific level of regulation, the GC's harsh criticisms on DG COMP's investigative and analytical capacities in the the Commission v. GE case judgement in 2005[24] as well as the three decisions in 2002 (Airtours, Schneider and Tetra) have 'inspired a basic rethink of merger policy' and 'had the effect of pressing EU merger policy closer to US merger policy' (Kovacic: 2009: 333). There is no evidence that the US government and the GE intended to change the European Commission's merger review system *through* private law suits at the EU courts. Hence, the concept of relational power which assumes the intentionality of actors is not useful here. Only through a conceptual lens of structural power, an unintended consequence of the GE/Honeywell case becomes visible.

Yet, notwithstanding these pieces of evidence for considerable US structural power, it is safe to say that there is no dominant competition model up to the present. According to the American Bar Association's Report on the Internationalization of Competition Rules (2000, quoted in Raustiala 2002: 43), there seem to be clusters of nations adopting one (or a combination of) of major competition regimes, which include the EU model (followed by, for

[24] Judgement of the Court of First Instance on 14 December 2005 (Case T-210/01), paragraph 364.

example, EU neighbouring countries); US model (e.g. Mexico); a combination of them (e.g. some Latin American countries); Japanese or Korean model (East Asian countries).

Among numerous factors for policy diffusion, particularly relevant ones are perhaps the quantity and quality of technical assistance (the supply side) and adaptability of assistance receivers (the demand side) (See, for example, Nicholson et al 2006). Concerning the latter, for example, for those countries with civil law and immature judicial systems, the EU model with emphasis on administrative enforcement might be easier to copy and emulate than the US (and, less importantly in this context, the UK) common law model. [25] Yet, given the limited space, this section has mainly focused on results rather than causes and processes of institution building / standard-setting games. Thus, in order to sufficiently explain why the US is more powerful than the EU, at least we need to examine the complex, multi-level and mutually constitutive process of international policy diffusion – a theme which is large enough to make another article.

Conclusions and venues for future research

The present research has demonstrated the usefulness of the distinction between relational and structural power for the analysis of EU power in competition policy. The empirical evidence shows that the EU has a comparative advantage in relational power. The EU has considerable power toward companies including non-EU origin ones which operate inside the EU or export to the European market. Regarding inter-state relations, the EU exhibits increasing coherence. By contrast, in terms of structural power, the EU is still not as strong as the US. The latter continues to shape directions of competition policy enforcement and inter-governmental cooperation intentionally and unintentionally

As mentioned in the introduction, some people surprisingly state that the EU is a regulatory empire in competition policy. By now, it should be clear to the reader that such an assessment is erroneous at least for two reasons. Firstly, the EU is not an unchallengeable regulatory mammoth. This is evident particularly in terms of structural power. Secondly, we should not forget the EU itself is a particular set of multilateral regimes. The Union is also one of the main advocates of global, multilateral cooperation in competition policy as for many other policies. Similarly, the 'EU-US duopoly' (Wigger 2008: 197-199) is not the best expression to capture the reality of EU power in this field. What empirical evidence highlights is the unbalance between the relational and structural power of the Union.

An important recent trend is a seemingly tougher stance of the EU against Russia. In January 2011, Lithuania complained to the European Commission that European subsidiaries of Gazprom, a Russian energy giant, seemed to be abusing their dominant position in the natural gas market across Central and Eastern Europe. In the fall, the Commission even conducted 'dawn raids' (i.e. investigation without a prior notice) on these firms and collected relevant documents (Barry 2011). Moreover, on 4 September 2012, the European Commission opened a formal

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[25] The author is grateful to Ms. Basje Bender for this point. See also Kovacic (2009: 317; 327-328).

proceeding against Gazprom itself (European Commission 2012 c). In retrospect, academic debate over EU competition policy in the last few decades probably put too much stress on visible, controversial transatlantic cases. So did the media. However, nobody seriously debates why the EU has *not* done much toward other geopolitically important partners, most notably Russia. Perhaps, we researchers have underestimated a common wisdom that 'the silence of the dog' might be a key to the truth. Nonetheless, it looks the situation is changing. Nowadays the Commission indicates its commitment to the strict application of EU competition laws to the gas and electricity industries. All in all, it is fair to say that how the EU confronts Gazprom would be a benchmark case for the further evaluation of the relational power of the EU.

Additionally, from theoretical perspective, at least two points remain to be scrutinized concerning actors and venues. While this paper has concentrated on ascertaining EU power in comparison with outside state actors, transitional actors such as professional organizations may also play a role in standard-setting. One important case would be the Antitrust Committee of the International Bar Association, which has abundant resources and expertise, actively publishes research materials, and organizes major conferences. As for actors, venues for networking are multiplying. They range from young ones such as the ICN, to those with long histories such as the Fordham Competition Law Institute's Annual Conferences in New York on International Antitrust Law and Policy where leaders of top competition agencies among others gather.

Finally, it should be noted that this paper did not provide a comprehensive answer to the puzzle of EU efficiency with relatively limited resources. One possible solution for the EU is to transfer more and more cases to Member States competition authorities, as discussed above. It enables the Commission to focus on important and complex cases. A challenge here for the EU is how to assure consistency between EU level and national level enforcement. Internal, administrative restructure of DG COMP also matter (Lowe 2007: 30-41). Lastly, how the EU incorporates the civil society and civil society organizations into European competition governance is an important and big issue. The EU seems to expect them a stakeholder role: they are encouraged to make contributions to the European Commission's continual public consultations, a system launched in 2001. At the same time, the EU attempts to improve private actors' ability as whistle blowers. Admitting a very weak culture of private litigations in Member States, and recognizing a lack of incentives for individuals to sue at their own expenses, the Commission called for an establishment of EU rules on collective damages action (European Commission 2008a; 2005). Once such a rule is legislated at the EU level, groups such as businesses and consumers would enhance private enforcement, make anti-competitive business practices more costly, and therefore complement public enforcement.

In summary, a main contention of this article is that to better understand the global influence of the EU in competition policy, to recognize the asymmetry between relational and structural aspects of power is essential. From a European viewpoint, narrowing this gap by strengthening its structural power is the key for the EU so as to become a leading player on the world stage. Nonetheless, that is easier said than done. Given the Union's ever-expanding tasks and ambitions in competition policy on the one hand, and the rigid EU budget and limited resources for DG COMP on the other hand, it is fair to conclude that the imbalance would remain in the near future.

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