

*The Antitrust Revolution in Europe*  
*Exploring the European Commission's Cartel Policy*

by Lee McGowan

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reviewed by Konstantinos Charistos\* and Christos Constantatos\*

Although competition policy represents an important part of the European integration process, it has been systematically neglected by political scientists, being mainly explored by law-experts and economists. This is all more striking since competition policy represents a prime example of supranational governance. This book intends to fill the lacuna by providing a political approach to competition policy. Besides its natural audience -political scientists- the book must also appeal to economists and law experts interested in competition issues and wishing to be informed about the evolution of the European competition law, and the major influences that have given it its shape.

The first two chapters describe briefly the EU's competition policy areas. The author provides a definition of cartel (including the etymology and evolution of the word "cartel"), stresses the factors which affect cartel stability and highlights the difficulty for competition authorities to distinguish between truly anticompetitive practices and activities that can be mistakenly perceived as such, although they result from competitive behavior (E.C. 1984 *woodpulp* decision which was doubted later by the European Court of Justice due to insufficient evidence).

Chapter 3 contains a fascinating account of the European -especially German- attitude towards cartels and contrasts it to the corresponding attitude in the US. During the late 19<sup>th</sup> and early 20<sup>th</sup> century, in many parts of Europe cartels were not considered as harmful economic activity. As a result, this period is characterized by the absence of any antitrust legislation, or regulation of potentially anti-competitive practices. Even worse, since cartels were perceived as means to effectively defend the domestic industries, a number of countries not only tolerated, but even encouraged such formations. At the other side of the Atlantic, in contrast, the emergence of very large firms due to the rapid growth of the US economy created serious concerns. The fear that potential abuses of market power might lead not only to economic, but

\* University of Macedonia, Thessaloniki, Greece

also political concentration, led to the introduction of the major foundations of American anti-trust law: the Sherman Act in 1890, and the Clayton Act in 1914, with the almost simultaneous creation of Federal Trade Commission. Back in Europe, some initial steps towards regulating the abusive economic power of cartels did not appear until the first half of the 1920's, only to be suppressed by the Great Depression which led to the "triumph of cartel" until World-War II.

The end of the War marks the dawn of antitrust policy in Europe. The author divides its evolution into four major periods: 1945-57, 1958-62, 1963-98, and 1999-to present. In chapter 4 it is argued that the aim of the war winners was to democratize Western Germany, and the proper functioning of a decentralized economy was considered crucial in their effort. The financial aid through the Marshall Plan imposed on the European countries which were to receive the assistance a reform towards free market economy. Among the requirements for receiving the aid was the implementation of competition policy in the spirit of US's antitrust tradition. The start of antitrust in Europe was, nevertheless, very slow and the author mainly blames for this the economic situation of the defeated Germany, a fact that made the target of de-cartelization appear less important.

While the Marshall Plan had small significance for the emergence of a European competition policy, the creation of the European Coal and Steel Community (ECSC) Treaty (1951) proved to be of great importance, due to the fact that various parts of the Treaty were embodying competition principles. The ECSC period is characterized by the creation of the High Authority, the first supranational institution with executive power. European competition policy rests in the hands of this new institution.

According to the author, in the transition period from ECSC towards the European Economic Community (EEC) Treaty there is increased awareness about the drawbacks caused by business restrictive practices. As a result, the Treaty of Rome (1958) contains Article 81 (originally Article 85) which explicitly focuses on restrictive practices, cartels, and other forms of anticompetitive activities. The author provides a detailed account of the negotiations preceding the introduction of Article 81, which even today constitutes a cornerstone for European competition policy.

A milestone of European competition policy -reflecting the transformation of the High Authority into the more powerful Commission just a few years earlier- is the introduction of Regulation 17/62, which "created the foundations of a puissant competition authority which was going to be free from member state interference and provided the business community with one institution" (p.111).

The development of the EU's cartel policy from the early 60's to the late 90's is examined in the sixth chapter. This period is divided into three sub-periods. During the early 60's the majority of cases the Commission faced were related to vertical relations and agreements. That gave a reason for criticism over the priorities of early European competition policy and its inability to deal with more severe anticompeti-

tive behavior. The Commission style is characterized as “hesitant, [with] patchy response but growing signs of activity” (p.125). The first investigations deriving from the Commission’s own initiative and the imposition of the first fines represent important novelties of this period. The economic circumstances of the period from 1973 to 1984 forced the Commission to remain hesitant and become more flexible in the face of the economic downturn. The progress of antitrust policy during this period is described as just incremental. The third sub-period begins at the mid 1980’s when the Commission decides to reconsider the severity of the fines imposed, already displaying an upward trend. Moreover, the fining procedure of the EU became under severe criticism during the 90’s, not only by the undertakings concerned, but also by a number of court judgments, leading to a major reconsideration of the method for calculation of fines (1998).

The fourth period, from 1999 to present (presented in Chapter 7) is characterized by feverish activity and important changes in the domain of antitrust policy. The author describes the Regulation 1/2003<sup>1</sup> as a major development which updated the administrative mechanism of EU and modernized the rules related to restrictive practices and abusive dominant position, thus resulting in more efficient outcomes. The decentralization of enforcement introduced in this period greatly enhances the participation of national authorities in the decision making, and for this reason is considered as a step towards uniformity of the application of competition rules. The establishment of the European Competition Network has facilitated the contact between the Commission and National Authorities, as well as the development of a competition culture across the EU, thus improving the speed of information exchange and the consistency of competition rules’ enforcement. In this period there is substantial development in determining the level of fines which, according to many economists, had, until then, been too low to serve any deterrent purposes. Also important during that period is the overhauling of the Leniency activity, granting total immunity to the first firm which willingly co-operates and provides substantial information on the operations of the cartel infringement. The author is rather skeptical about the importance of Leniency Programs as means of saving resources and providing evidence against violators, an issue that has recently attracted the attention of economic research.

The final chapter focuses on the international dimension of competition policy stressing the importance of an international -beyond EU- cartel regulation, due to the multinational character of many cartel arrangements. The author notes that the European evolution shows the way, since competition policy is a prime example of the impact of EU governance on its member states. Realizing the international dimension

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1 Regulation 1/2003 replaced Regulation 17 effectively starting in 2004

of antitrust policy led to the inclusion of competition principles into international treaties, despite the lack of multilateral solutions until the 1990's. The book stresses the important role of organizations such the OECD which facilitated the formation of the International Competition Network and keeps encouraging the cooperation between agencies.

Among the many themes around competition policy developed in the book, of particular interest for economists is the link between economic recessions and anti-cartel regulation. The economic depression of the last quarter of the 19<sup>th</sup> century in Germany was followed by tolerance in cartelization, adoption of domestic market protectionist duties and trade barriers. In addition, during the post 1929 Wall Street Crash period until the end of the War, the authorities not only tolerated but also supported cartelization. International cartels emerged in specific sectors in an effort to enhance stability in a strained and distrusted economic and political environment. Many years later, the economic downturn of the 1970's unveiled the EU's inability to tackle the situation through cooperation. The member states turned to protective policies while the Commission maintained its anti-cartel objectives, despite the need of adjustments compatible to the economic circumstances. The author notes that under such conditions, other policy areas were given priority by the EU and the member-states' governments. Advances on competition policy were, therefore, relatively slow. All these cases lead to the conclusion that economic recessions slow down antitrust policy. In reference to the current economic crisis, this would imply that competition policy may be expected to relax in the coming years. However, the author claims that the nature of antitrust enforcement has changed and contrary to what happened during previous recessions, anti-cartel policy will be supported by the more extensive cooperation among firms and authorities.

In sum, the Antitrust Revolution in Europe is a valuable reading for its main audience, *i.e.*, political scientists specializing in EU politics and policies. The economists may find the analysis of some issues a bit too long and cumbersome, since it does not rely on familiar tools and techniques. Yet, the book provides an excellent account of the relation between socio-political conditions and the development of antitrust and the reader (including economists) can find a lot of interesting information on the evolution of competition policy in Europe.