WHY THE EU DOES NOT HAVE AN INDEPENDENT COMPETITION AGENCY:
French Interests and Transaction Costs in Early European Integration

Yannis Karagiannis

2008/18

INSTITUT BARCELONA D´ESTUDIS INTERNACIONALS

Yannis Karagiannis

Yannis Karagiannis is Post-doctoral Research Fellow at the Institut Barcelona d'Estudis Internacionals (IBEI).

ykaragiannis@ibei.org

ISSN: 1886-2802

IBEI WORKING PAPERS

2008/18

Why the EU does not Have an Independent Competition Agency:
French Interests and Transaction Costs in Early European
Integration

Edita: CIDOB edicions
Elisabets, 12
08001 Barcelona
Tel. 93 302 64 95
Fax. 93 302 21 18
E-mail: publicaciones@cidob.org
URL: www.cidob.org

Depósito legal: B-21.147-2006

ISSN:1886-2802

Imprime: Color Marfil, S.L.

Barcelona, December 2008

WHY THE EU DOES NOT HAVE AN INDEPENDENT COMPETITION AGENCY: FRENCH INTERESTS AND TRANSACTION COSTS IN EARLY EUROPEAN INTEGRATION

Yannis Karagiannis

Abstract: A major achievement of new institutionalism in economics and political science is the formalisation of the idea that certain policies are more efficient when administered by a politically independent organisation. Based on this insight, several policy actors and scholars criticise the European Community for relying too much on a multi-task, collegial, and politicised organisation, the European Commission. This raises important questions, some constitutional (who should be able to change the corresponding procedural rules?) and some political-economic (is Europe truly committed to free and competitive markets?). Though acknowledging the relevance of legal and normative arguments, this paper contributes to the debate with a positive political-scientific perspective. Based on the view that institutional equilibria raise the question of equilibrium institutions, it shows that collegiality was (a) an equilibrium institution during the Paris negotiations of 1950-51; and (b) an institutional equilibrium for the following 50 years. The conclusion points to some recent changes in the way that European competition policy is implemented, and discusses how these affect the "constitutional" principle of collegial European governance.

Key words: European Governance, Collegiality, Competition Policy, Procedural Rules.

1. Introduction

One major achievement of the new institutionalism is the formalisation of the idea that institutions affect economic and policy outcomes.[1] An influential application of this idea concerns the optimal design of monetary and regulatory institutions. It has been found that the prospect of political interference leads rational agents to insure themselves against political risk by charging a correspondingly high premium. Rogoff-delegation offers an institutional solution to this problem: independence decreases the political vulnerability of a policy, increases credibility, and leads to the same equilibrium as politically dependent ones, minus the inefficient premium (Rogoff 1985). The monetarist drive to eliminate unnecessary inflation premiums thus leads to the creation of independent central banks with conservative bankers. Similarly, the liberal drive to establish consumer sovereignty and to eliminate unnecessary anti-competitive premiums leads to the creation of independent competition regulators staffed with expert bureaucrats. [2] (For the argument in monetary policy, see Kydland and Prescott 1977, and Lohmann 2006 – the latter arguing that monetary policy can be both responsive and time-consistent; in utility regulation, Levine, Stern, and Trillas 2005).

But why then didn't the liberal-minded Founding Fathers of Europe integration create an independent competition regulator? That is, why was the multi-constituency and collegial system of Commission governance an equilibrium institution? What does that say about Europe's commitment to free and competitive markets? Surprisingly, the vast literature on European integration has never addressed these questions. By seeking to answer them, this paper sheds light on the institution of multi-constituency collegiality, i.e. one of the most peculiar, but neglected, institutions of Europe, and joins the theoretical literature that views institutions as the object of political choice and strategic behaviour.

Note preliminarily the gulf between the political-scientific literature, and parts of the legal literature. Political scientists refer to the Commission (CEC) as the executive branch of the European Community (EC), and then apply a separation-of-powers logic. In this scheme, the CEC may have its own distinct and perhaps very ideological preferences, but it remains an essentially technocratic, internally de-politicised bureaucracy. Political scientists thus follow Haas' original view according to which "it seems entirely appropriate to speak of a 'High Authority ideology'." (Haas 1958, 452)

---

1. The reference to *formalisation* signifies that this idea pre-existed its formalisation. In fact, independence was an important topic in the establishment of American "sunshine" regulatory commissions during the second half of the 19th century (McCraw 1984). In 20th century Europe the political independence of monetary and regulatory authorities was strongly advocated by the German Ordoliberals ever since the 1930s (Peacock and Willgerodt 1989).
2. "Anti-competitive premiums" can be charged by one or more firms when they have insufficient confidence that the competition authorities will effectively intervene against one or more other firms that engage in anti-competitive practices.

The resulting models view the CEC is a "corporate actor." (Scharpf 1997[a], 54) Hence, the delegation of powers by national governments to the CEC testifies to their desire to increase the credibility of their policy commitments (Majone 2005; Moravcsik 1998; Pollack 2003; Tallberg 2002).

Absent from these frameworks is a clear recognition of the effects of intra-CEC conflicts. If these effects are acknowledged, however, looking only at policy-specific acts of delegation is insufficient. For example, the powers delegated to the CEC in one policy area may be partly offset by the powers delegated to it in a competing policy area. What national ministers responsible for competition may be agreeing around one table may be jeopardised by what their colleagues responsible for telecommunications, or energy, or industry, or trade, or the environment … may be agreeing around another table. Hence, autonomy should not be measured as *Commission* autonomy (in the branches-of-government fashion), but as *policy* autonomy.

Some lawyers make a similar point (e.g. Kirchner 1998). The CEC is seen as a collective actor, and this is contrasted with most other important competition authorities in the world. The advocates of independence of the competition regulator argue that the non-majoritarian status of the CEC is irrelevant. The positive fact of the matter is that the CEC is a multi-constituency organisation where decisions are taken collegially, and in which the Directorate General for Competition (DG COMP) represents only $1/27^{th}$ of the vote.[3] Since other Commissioners respond to different constituencies, DG COMP may be unable to pursue its mandate. The regulated companies will understand this weakness of DG COMP and poorly comply with, or permanently challenge, competition rules. Supporters of collegiality, on the other hand, argue that Articles 2 and 3 EC establish a whole series of complementary, inter-dependent policies. Nothing in the Treaty hints or allows to prioritise competition policy over other policies. It follows that such a prioritisation, with or without an accompanying organisational change, would require a Treaty amendment, and therefore the unanimous agreement of national governments.

Of course, the unanimity requirement for Treaty amendments is extremely demanding. If s represents the policy decision majority, S represents the procedural decision majority, and n represents the number of voters, the norm in national Constitutions is to set $n/2 + 1 \leq s < S < n$. With $S = n$, once agreed, procedural rules can for all practical purposes be considered as exogenously defined.[4] Any unforeseen contingencies may lead to

3. For simplicity, I use the terms "DGs" and "Commissioners" synonymously, and I use the same terminology for the situation before and after the 1960s. These and other details are omitted here, because I focus on the constant rule of collegiality.

4. In other words, the unanimity rule for procedural decisions means that a consistently losing minority cannot hope to achieve its goals by inventing a new political issue that splits the consistently winning majority. Even if the majority is split unequally in favour of the previously losing minority, the status quo prevails as long as at least one member of the previously winning majority is not convinced.

prohibitive maladaptation costs, and the minority will not have any realistic chance to win at a later stage. In the absence of a mechanism of "endogenous revision," (Shepsle 2006, 1043) at least one of the contracting parties may be dissuaded from entering the agreement.[5] Why then did the member states of the ECSC, the EEC, the EC, and the EU repeatedly accept the "super-constitutional" principle of collegiality? The pessimistic view is that this was a mistake, and that the negotiators of the European Treaties could have done better (see Section 2.b.). The more optimistic view is that collegiality provided an efficient institutional solution to the hazards created by the specific transaction contemplated by the signatories of the Treaties (Sections 3 and 4).

In what follows I "cut deeply into the specifics of a time and place, and … locate and trace the processes that generate the outcome of interest". (Bates et al. 1998, 12) Section 2 summarizes existing views on the political economy of the EU and the effects of collegiality upon the EU's credible commitment to free and competitive markets. Section 3 presents four different social-theoretical views on the origins of European integration, only one of which predicts a collegial CEC. Section 4 turns to the empirical record and explains why Monnet had to offer collegiality or renounce to his plans for integration. Section 5 concludes by interpreting the empirical record.

2. The Debates on the Industrial Organization of Europe

If the economic organization of Europe unambiguously favoured competition, the precise nature of the supranational competition regulator might have been less of a problem. Yet, European countries were never as "paranoid" about market power as the United States.[6] It follows that the effective protection of free and competitive markets may crucially depend upon a credible commitment to competition at the supranational level. This has created two main debates, one that can be described as international political-economic, and which regards the governance of global capitalism (Section 2.1) and one that can be described as "constitutional", and which regards the industrial organization of European institutions (Section 2.2). Their description serves to emphasize what was not correctly anticipated by the inventors of collegiality.

5. One important distinction is in order here: this applies to voluntary contracts, and not to constitutionalised polities. In the former case, which includes the European Union, the majority has to satisfy the participation constraint of the minority (e.g. Yarbrough and Yarbrough 1992). In the latter case, which includes nation states like France, the majority can impose its views on the minority.
6. According to Hofstadter, the U.S. has a paranoid fear of economic power (Hofstadter 1965, esp. 228, expressing sympathy).

2.1. The Organization of the European Economy: American and European Views

For many years, many Americans equated European integration with industrial ambition, dirigisme, and an anti-competitive organisation of markets. That was the case when the U.S. Embassy in Paris announced the Schuman Plan to the State Department in Washington: "Beware of the cartel.__" (Quoted in Mélandri 1980, 281) and it was still the case in the 1990s and the 2000s (witness the interventions of the U.S. Presidents in favour of antitrust clearance of U.S. firms). In academic debates this view is exemplified by Frieden, who asserts that the project of European integration was essentially an industrial policy effort to increase the size of European firms. (Frieden 2006, 285ff)

This view is not entirely unjustified. After all, *the* Father of European integration, Jean Monnet, was head of the French indicative planning authority – and neither that authority nor the concept of planning are entirely compatible with free and competitive markets. Similarly, European international cooperation has always been most visible through large industrial projects, or through protectionist policies (tariffs and non-tariff barriers, or the Common Agricultural Policy). More crucially, there have been repeated and influential calls to use common policies against the American industrial and technological "invasion" of Europe (e.g. Servan-Schreiber 1967).[7] And finally, the extraterritorial application of European competition law has often affected U.S. businesses whose plans or practices had previously been cleared by U.S. antitrust authorities.

Yet, the Founding Fathers of Europe point out in their memoirs that Articles 65 and 66 ECSC covered all possible antitrust and merger control categories, and thereby deliberately established the first antitrust policy in Europe. (Monnet 1976, 410-13; Schuman 1963, 33) Similarly, European governments of all persuasions always acknowledge the centrality of the goal of free competition (for the least likely case, Mauroy 1981). Academics argue that "competition policy is the foundation stone of the whole European Union." (McGowan and Wilks 1995). It follows that trans-Atlantic divergences in competition decisions may not be due to Europe's lack of commitment to free markets or to a strategic manipulation of its competition rules, but merely to the fact that the two bodies of competition law diverge.

This view may be as justified as the opposite one. First, the adoption of an EU competition policy represents a significant change compared to the status quo ante. The economy of the EU is no longer regulated by private cartels and other restrictive

7. This may explain why the first call for the introduction of merger control in the EC was made in 1963 by the French minister of Finance, a member of a notoriously Euro-sceptic Gaullist government. Interestingly, the first European Community Merger Regulation was adopted in 1989, under a French presidency of the Council.

agreements, such as the pre-World War II International Steel Cartel. Second, for every decision that affects U.S. firms, the Commission takes a significantly larger number of decisions that affect purely European interests. Third, the extraterritorial application of competition law was initiated by the U.S., not by the EU. And, it was initiated in the very same industrial sector (steel) that the EU sought to liberalise. Last but not least, the ECSC and the EC authorities have always had a strong incentive to push forward with competition policy. In the absence of a mandate to develop broader redistributive policies, Eurocrats can only concentrate on so-called negative integration policies, chief among which are the four freedoms and competition policy. And indeed the EC is usually criticised for being excessively liberal, not for producing anti-competitive policies (e.g. Jobert 1994, Commissariat Général du Plan 1997, Scharpf 1997b).

2.2. Collegiality and the Flawed Constitution of Europe

If Europe is indeed committed to free and competitive markets, why does it not have a normal (i.e. specialized and often independent) competition regulator? Why is DG COMP "hidden" in a multi-constituency collegial organization? This institutional feature is particularly intriguing, especially given that the CEC has long championed the establishment of independent competition regulators at the national level. Further, when offered the opportunity to back plans for an independent cartel office during the 1996 IGC, DG COMP vigorously fought against those plans.

Giandomenico Majone, a leading scholar in the filed of rational choice approaches to European politics, is perhaps the most fierce critic of the multi-constituency and collegial character of the CEC. Building on his previous argument in favour of importing in the EU the U.S. system of regulation by specialised and independent agencies (Majone 1996), Majone argues that the CEC lacks a necessary quality of non-majoritarian regulators, "distinctive institutional competence". This is defined as the ability of an institution "to generate and maintain the belief of being, of all feasible institutional arrangements, the most appropriate one for solving a certain range of problems." (Majone 2005, 38) The lack of a distinctive institutional competence (a) differentiates the CEC from the European Court of Justice or the European Central Bank, and (b) makes the CEC unaccountable by providing it with flawed incentives to pursue integration by stealth.[8]

8. For a macro-political and geo-political discussion, see the different views of Lohmann (2006, arguing that *any* federalist institution diminishes the probability of war) and Majone (2005, arguing that federal institutions are not necessary for the maintenance of peace, and equating the EU with the USSR).

The same argument has been made by some national governments (e.g. Germany during the 1996 Inter-Governmental Conference), constitutional lawyers (Yataganas 2001), and competition lawyers (Kirchner 1998). The common concern of these critics of collegiality is that this institution jeopardises commitment and biases the substantive content of policy decisions towards the goal of market integration (as opposed to, say, purely competition-related goals). More analytically, one might argue that the collegial system amounts to a disincentive for particular DGs to work towards the development of their respective policies. Since the college may, can, and often does expropriate individual DGs from the benefits of their individual investments, each DG has an incentive to work only towards proposals that are compatible with the lowest common denominator. The ultimate result is that Europe cannot live up to its ambitions because of its very own institutions, and in particular because of collegiality. In the words of Majone, the culprit for this Pareto-inefficient institution is "the Monnet method [which] turned out to be flawed." (Majone 2005, vii)

So why did such able and federal-minded men as Monnet, Schuman, Hallstein, and Adenauer choose to embed competition policy within a vaster supranational executive? And is it true that the collegiality rule was not "the best institutional arrangement that could be devised under the prevailing circumstances"? (op. cit. 39) The next two Sections seek to provide an answer to these questions. The goal is to explain not the *effects* of the institution of collegiality, but the *reasons* why that institution was adopted.

3. Social-Scientific Views on the Origins of European Competition Policy

The literature on the origins of European institutions and European competition policy is vast. The arguments can be grouped into four analytically distinguishable views, which correspond to four different social-scientific theories of international institutional decision-making. All four theories explain the adoption of common competition rules, but only one seems to explain collegiality. The predictions of these theories are examined against the empirical record in Section 4.

Liberal inter-governmentalism and the political economy of integration. The most prominent political-economic argument regarding the institutionalisation of European policies in general, and competition policy in particular, is Moravcsik's liberal inter-governmentalism. (Moravcsik 1998, 90, 136, 147-49) This theory starts from the political-economic idea that there is a difference between decisions achieved through direct referendums with costless voting, and decisions achieved through costly referendums or representative systems. Where the former procedure leads to the adoption of the most popular policies, the latter biases the result in favour of the best-organized interests. Thus, national policies should reflect the preferences of the most powerful groups in society. Turning to international agreements, they differ from national deci-

sion-making processes in that they are costless. Their outcome is pre-determined by the negotiating parties' best alternative to non-agreement, as in the Nash bargaining solution. In a 2-party international bargain, if country A has no credible outside option while country B does have one, country A will have to accept a correspondingly unequal division of the gains from trade. Finally, any pooling or delegation decision will be aimed at assuring that "other governments will accept agreed legislation and enforcement, to signal their own credibility, or to lock in future decisions against domestic opposition." (op. cit. 73)

According to this view, competition policy was not adopted because it was popular among different national governments, nor because it was seen by them as necessary complement to the abolition of public barriers to trade. Rather, it was adopted because the German [or French] government represented economic ideas and interests that wished to see such a policy institutionalised at the European level. Regarding inter-governmental negotiations, outcomes were achieved automatically, because the size and expertise of national bureaucracies allowed them to bargain under complete information.[9] Finally, the delegation of powers to the supranational executive must have served to increase the credibility of national governments' commitment to competition policy, in accordance to the preferences of the country that advocated it.

Ideational political economy of integration. Like liberal inter-governmentalism, this theory suggests that national interest-aggregation procedures may bias policy decisions. Its distinctive characteristic lies in the view that international negotiators may have to choose one among many possible efficient equilibria, and in the hypothesis that ideas serve to choose one among them. That is, when there are multiple stable paths to Pareto-improving cooperation, ideas can play the role of a differentiating focal point. Where there is no such ideational focal point, the outcome is indeterminate and cooperation may eventually collapse. By contrast, where actors engage in a conscious indirect strategy to construct ideational focal points, their strategies will first converge towards them and then stick to them (Garrett and Weingast 1993).

This is self-admittedly a weak theory. First, there may be more than one shared beliefs, and thus more than one constructed focal points. Second, the criticism directed to ex post facto efficiency- and interest-based explanations may be equally addressed to focal points. And third, this theory does not properly consider the self-interested motivations of those actors who conceive these ideas (including the strategic implications of knowing or suspecting self-interest on their behalf – Riker 1986).

9. Moravcsik argues that European negotiations are consistent with a Rubinstein bargaining model (Moravcsik 1998, 62), but does not deal with the bargaining parties' discount rates, presumably because he assumes that bargaining is costless.

Nevertheless, there is a prominent ideational political-economic argument regarding the institutionalisation of European competition policy. This was developed by Gerber (1998) and it is shared by some influential academics and politicians (e.g. Amato 1997, Ehlermann 1998). According to this view, European competition policy was adopted because it was popular among elites. It was made popular by members of the German Ordo-liberal school, who succeeded in turning old European antitrust ideals into a focal point for European negotiators. Since the Ordo-liberals were strong advocates of independent regulatory authorities, they must have supported the creation of a European Cartel Office. More weakly, the delegation of powers to the supranational executive must have served to increase the credibility of national governments' commitment to competition policy.

Hegemonic theory (or international political economy). This view suggests that the origins of certain policies must be sought not at the national or sub-national level, but at the international level. Where there is a hegemonic country with either the power to force others to adopt the policies that favour it most, or the ability to absorb the costs of running a system that benefits all, then it can be hypothesised that non-hegemonic countries will adopt the policies that correspond to those favoured by the hegemon. A crucial assumption here is that there is one and only one hegemon (e.g. Krasner 1976).

Arguments that use or rely on hegemonic theory to interpret the origins of European competition policy are advanced by Wells (2002) and Haley (2001). According to this view, competition policy was not adopted because its German advocates benefited from a suitably biased interest-aggregation mechanism, nor because it was popular anywhere on this side of the Atlantic. Rather, it was adopted because antitrust law was popular in the U.S.A., and post-WWII Europe was created in America's own image as projected by American policy-makers. After all, the post-WWII era is a paradigmatic moment of hegemony: The U.S. occupied Germany, protected Europe (France was still a full member of NATO), and directly financed the recovery of all Western European economies. Finally, the quasi-simultaneous adoption of competition laws in the United Kingdom, France, Germany, and Japan may be more than coincidental: it may be due to strong U.S. interests in these countries.

The economics of political transaction costs. This view suggests that parties who contemplate an otherwise efficient voluntary transaction may choose to not transact by fear of being held-up. Because real-world actors are only semi-strongly rational, they cannot write complete contracts that secure them against all possible future contingencies. Because they are opportunistic (this being common knowledge), they have reason to fear that incomplete contracts may eventually be turned against them. And because entering a long-term contract creates a relational monopoly due to asset-specific investments, they will either seek appropriate guarantees or else forego the short-term benefits of contracting. The crucial issues then are (a) the voluntary character of the transaction; and (b) the nature of "appropriate guarantees". In economic transactions, appropriate guarantees take the form of non-standard contracts. Where traditional antitrust economics viewed such contracts as manifestations of anti-competitive agreements or behaviour, transac-

tion cost economics views them as a necessary, efficiency-generating support of otherwise risky transactions (Williamson 1996, 2002).

This view has never been applied to the origins of European integration in general, nor to the decision to adopt common competition rules in particular. Nevertheless, students of delegation of powers to bureaucratic agents have successfully relied on it to develop the so-called ally principle (Epstein and O'Halloran 1999, Huber and Shipan 2006). The ally principle holds that, all else equal, as the policy preferences of politicians and bureaucrats converge, politicians will delegate more discretion to bureaucrats.

What is missing from most models of delegation is an acknowledgement of two facts. First, some political environments do not allow to equate politicians' preferences with the preferences of the median voter. For example, most international agreements represent truly voluntary agreements, where the median voter has to satisfy the participation constraint of all other parties. Second, politicians may be able to shape the bureaucratic agent. Hence, these models are adequate for the study of delegation to existing organizations, but not for the study of organizational design. By focusing too much on the question of *when* politicians delegate powers, and *which* bureaucrats they trust, the political-scientific literature may be misrepresenting the central insight of transaction cost economics. Transaction cost economics does not seek to understand *when* a firm will delegate powers to another, nor *to which* other firm it will delegate powers. Rather, it predicts that firms (politicians, or states) will match governance structures to the hazardous nature of the contemplated transaction. "The general argument is this: more complex modes of governance are reserved for more hazardous transactions." (Williamson 2002, 441)

Transaction cost economics can then be used to make the following simple prediction. If the signatories of the Treaty of Paris found competition policy attractive, then they should have opted for a simple mode of governance – an independent competition regulator. If, on the other hand, they held different preferences, they should have opted for a complex mode of governance – a multi-constituency and collegial authority that mirrored the politics at the time of enactment. Since we know that they opted for the second option, we should observe that competition policy was not a consensual term.

4. The Empirical Record

This Section presents the historical background to the Paris negotiations (4.1.), then shows how that background shaped Monnet's expected utility of proposing an independent European competition regulator (4.2.), and finally returns to the narrative, focusing on the development of the negotiations (4.3.). I used four different kinds

of sources: the official archives of the ECSC, the published memoirs of important actors (Monnet 1976, Schuman 1963, von der Groeben 2002, Marjolin 1989), newspaper reports (The Economist, Le Monde, and the Frankfurter Allgemeine Zeitung), and secondary sources (principally Berghahn 1986, Haas 1958, Gillingham 1991, Milward 1992, and Witschke 2003). Historical information is used like data points of the variables identified in the previous Section.

4.1. The Historical Background: American, French, and German Traditions and Preferences

The context consists of (a) U.S. antitrust policy, as implemented domestically, and as projected abroad after WWII; (b) the domestic competition policies of France and Germany; and (c) the development of the Franco-German relationship before and after WWII.

(a) American antitrust policy, and American international antitrust politics. Modern competition policy originated in late-19th century North America. The U.S.A. passed the Sherman Act in 1890. Despite the controversy regarding the original intentions of legislators, there is enough agreement on the fact that the Sherman Act represented the culmination of a long social, economic, and political struggle. The demands of the Grangers, the "East-Coast nobility", muckraker journalists, progressive politicians and public figures, and possibly protection-minded firms, led to a statute that outlawed conspiracies in restraint of trade and monopolisation practices. During the Progressive Era, advocates of antitrust further succeeded in outlawing anti-competitive mergers, and in creating a specialised administrative authority to operate alongside the Department of Justice and the court system, the Federal Trade Commission. Following a period of neglect that spanned from Hoover's "associationalism" in the 1920s to F.D. Roosevelt's First New Deal, 1938 marked a turning point. With the appointment of Arnold as Assistant Attorney General for Antitrust the U.S. entered into its historically most active antitrust period. Judge Learned Hand's landmark anti-monopoly decision in 'Alcoa' (1945), the passing of the Celler-Kefauver "Anti-Merger" Act (1950), and the American belief that Nazi rhymed with German cartels, combined to make antitrust "the economic Constitution of United States." It must nevertheless be noted that this renaissance of antitrust did not immediately affect the steel industry, where the Supreme Court sided with big business against the government's de-concentration efforts (see U.S. v. Columbia Steel Co. et al. 334 U.S. 495).

That history mattered in three ways. First, the institutionalization of antitrust rules in the U.S. followed a "bottom-up" process: the Sherman, FTC, Clayton, and Celler-Kefauver Acts were supported by broad and heterogeneous political coalitions. Second, although the responsibility for the enforcement of the Sherman Act had first been placed with the judiciary, the conservative orientation taken by the courts in 1890-1910 led to demands for additional measures, including a new public

enforcement bureaucracy. Such demands led, first, to the creation of the Bureau of Corporations (1903), and then, to the creation of the independent FTC (1914). This multi-venue institutional structure eventually translated into a credible commitment to antitrust policy. Third, the end of World War II placed the U.S. in a hegemonic position. America set to democratize what would come to be known as the "Free World". That goal was served by the institutionalization of a liberal international trade order, and by the de-cartelization and de-concentration of the German and Japanese economies (It is not entirely clear whether the "exporting" of U.S. antitrust was a friendly or a punitive measure.) Conversely, that goal was not served by the creation of regional trading blocks. Thus, for example, the first known official American document reacting to the announcement of the Schuman Plan read: "Beware of the cartel._" (Mélandri 1980, idem.)

(b) Competition and anti-competition policy traditions in France and Germany. In Europe, the post-WWII political climate was openly anti-laissez faire. It is therefore appropriate to examine how this climate combined with national policy traditions, first in France, then in Germany.

France had an old arsenal of laws and judicial decisions that could have been used to protect competition. From the 1860s onwards, however, a strong and long-lasting non-competitive and statist tradition developed. In order to close the gap with the industrial production of the United Kingdom, Napoléon III launched several development programmes, especially in maritime, fluvial, and rail transport. Big business (which was propelled by technological advances that required large-scale investments and secured loans) was the main beneficiary. On the legal side, a 1863 law allowed the creation of companies of limited responsibility, and four years later another law allowed the creation of "sociétés anonymes" without prior governmental approval. Crucially, that emerging tradition did not have a purely domestic dimension: it was linked to what the French perceived as their vital economic interests in Europe. In 1864 the coalition offence of Article 419 was abolished in order to allow domestic firms to respond to increased international competition.[10]

In spite of being coal-poor and having to heavily import coal, France imposed a duty on coal in order to keep prices up for domestic producers. The return of the steel-producing regions Alsace and Loraine in 1918, which meant ever-more reliance on Ruhr coke and coking coal, was not accompanied by more liberal policies. Rather, the goal of French policy was to use of political power in view of tightly limiting German steel production. For example, the French 1923 occupation of the Ruhr is commonly attributed to coal- and iron-related interests.

10. Increased international competition was largely due to the very unpopular Anglo-French free trade agreement of January 1860.

Despite its relative development compared to coal, the steel industry was organised along equally anti-competitive lines. The 1920s marked increased levels of horizontal and vertical concentration. The creation of the International Steel Cartel in 1926, wanted by the French and German steel magnates, reinforced that tendency. Such agreements allowed French businessmen and politicians to regulate German exports, mainly in France but also in other export markets. Thus, even well before WWII, France had developed a dirigiste and cartelised system of industrial organisation, especially in coal and steel. Despite much French talk about the Ruhr coal and steel barons, colossi, and giants, the French system did not differ much, except in its even closer links with the state.

Immediately after WWII, France came to be governed by a coalition of Gaullists and Communists. De Gaulle favoured a new social policy that guaranteed working class welfare, minimised the influence of special interests, and operated in the context of extensive nationalisations. The goals of increased production and modernisation led to new powers for the state: powers to organise, and above all to plan. Although, in theory, an active competition policy might have been implemented within that context, the expansion of the state followed different lines. Ordnance 45-1483 of 1945 did outlaw cartels, but only in view of controlling inflation and black-marketeering.

After the fall of the de Gaulle government in 1946, a coalition government was formed by the SFIO (socialists), the MRP (moderate centre) and the PCF (communists). The new government maintained de Gaulle's economically 'neutral' policy. The strategy was to attempt to benefit economically from the escalating conflict between the U.S. and the USSR. The tactic was to negotiate with the U.S., often resorting to blackmail. Although the US provided important financial assistance, it was not until 1947 that its influence on France became more clear-cut. Even then, however, the politics of 'neutrality' would remain a standard feature of French official diplomacy.

One particularly focal aspect of post-WWII French economic policy was the indicative 'Plan'. The first Plan was prepared under the chairmanship of Jean Monnet in early 1947 and covered the period up to 1951 inclusive.[11] It stressed the urgent need for ambitious investments in the transport, iron and steel, and, above all, energy (i.e. coal) industries. The exact nature of the Plan and its effect upon competition seem ambiguous, although most analysts agree that it involved numerous anti-competitive aspects. Its two main objectives were to achieve reconstruction and to improve international competitiveness through a long-tern stabilisation of the French balance of payments. The organizational components of the Plan, the "modernisation commissions", were made up mainly of civil servants and representatives of big business.[12] Many of these men

11. Though not himself a Gaullist, Monnet had been appointed by de Gaulle. The two men agreed on almost every aspect of economic policy, minus European integration.
12. The weight of civil servants is testimony to the statist direction taken by the Plan. Parliamentarians, trade unionists, unorganised small business, representatives of consumer groups, and agricultural interests made up only 10 to 15% of the Plan's committees' members.

shared two inter-related goals: (a) control the German steel industry and thereby make France the biggest worldwide steel exporting country; and (b) build the new European economic order along the tested lines of international cartels. In addition, the modernisation effort meant that the 'trusts', as small business called the big firms, had benefited from a large share of subsidised investments. Nationalisations did not change much in promoting competition, since the banks continued to work hand in hand with big business. Significantly, Monnet's first Plan proposed that numerous steel industries of the Centre and Loire regions merge into four bigger firms.

Finally, regarding ideas and ideologies, it is safe to assume that French competition policy did not enjoy much support in post-WWII France. The two main political parties, the RPF (right-wing Gaullists) and the PCF (Communists), were openly hostile to it. The third biggest party, the MRP (centrist Christian-Democrats) were mostly silent. Yet, faced with a popular reaction against trusts and "monopoly capital", the French élite chose the road of corporatist planning and nationalisations. In the winter of 1949-1950, mounting U.S. pressure for a national antitrust policy led to a proposal to distinguish between 'good' and 'bad' cartels and trusts. After a brief public discussion, however, this idea was killed by the fierce opposition of the Conseil National du Patronat Français (the French employers' association). Support for a national competition policy remained confined to small liberal circles.

Turning to Germany, the post-WWII period can only be understood by reference to two fundamental and closely related factors:

- Gleichberechtigung: the German concern for sovereignty, rapid reconstruction and dignity on an equal footing; and
- Occupation: power rested on four military, quasi-sovereign governments, which initially planned to co-ordinate their policies through the Allied Control Council.

Finding a solution to these issues proved to be more problematic than initially expected. The lack of policy co-ordination created numerous problems among the Allies. Subsequently, the Western Allies' persistence in keeping control of the International Ruhr Authority (IRA) and in enforcing a de-concentration and de-cartelisation policy created problems with the new German elite. But, unlike France, Germany (i.e. what became the FRG) had no negotiating power, since it had surrendered unconditionally.

In terms of its economic model, Germany, like France, had not been a champion of free markets. Following the introduction of the 'Bismarck tariff' in 1879 and an important late 19th century court ruling which effectively legalised cartels, the German economy had become highly concentrated and cartelised. Yet, with the 1922-23 recession, concentration of economic power was feared to lead to excessive inflation. Retailers organised under the Reichsverband Deutscher Konsumerverein and pressed for legislation against the abuses of cartels and trusts. The Streseman government gave in

to popular pressure and finally passed the Ordnance Against the Misuse of Economic Power in November 1923, which established a system for the control of abusive pricing. Nevertheless, the complicated Ordnance proved very hard to implement. Section 4 declared that cartels acting against the common interest should be declared void, but Section 1 amounted to an effective legalisation of cartels (it required their written registration), and Section 9 made membership to a cartel quasi-compulsory.

Regarding coal and steel, both sectors were highly cartelised and protected, and provided the model for numerous other cartels. The structure of these industries had been hardly affected by the 1923 Ordinance. In these two vital sectors, German firms had achieved an enviable international position that changed only after 1945. At the turn of the 19th century, German industrialists had created the first heavy-industrial integrated system on the continent, the Verbundwirtschaft. Steel production was based on iron ore from Loraine and coke from the Ruhr. That helped German iron and steel industries out-perform their French counterparts. Like the United States, Germany now possessed the two basic raw materials within its borders, and moved iron ore to the source of coal.

After the Treaty of Versailles, Germany preferred not letting Ruhr coal float easily in the Loraine basin. In this, it was supported by the British, and then by the militaristic turn in German politics. In 1926, the year of the creation of the International Steel Cartel, German heavy industry was as productive as ever. In that year were also created two new entrepreneurial giants, the Vereinigte Stahlwerke and I.G. Farben. Such concentrations were fuelled by economies of scale, whose exploitation allowed German steel producers to produce by 1929 twice as much as their French counterparts. The discordant operations of the International Steel Cartel did not substantially damage German steel. Similarly for coal, by 1940, Germany was producing 30% of world output (France 2.9%).

Turning to German ideology in the post WWII period, memories of industrial leadership and comparatively efficient cartels were present in all German minds. In addition, most segments of the German population became de-politicised. In turn, that led to an abandoning of most decisions to the US, the UK and French authorities. That situation changed only slowly, presumably after the first general elections of 1949.

Nevertheless, Germany might have differed from France in one important respect: the presence of a group of increasingly influential liberals, the 'Ordo-liberals'. Although there was no important liberal party to support them in the immediate post-war era, the Ordos gained influence and, eventually, power. Starting as a group of liberal-minded scholars at the University of Freiburg, the Ordos had developed a political and legal theory which aimed at revising German liberalism. Their goals included the protection of competitive markets. And crucially, following the capitulation of Germany, most Ordo-liberals were assigned important administrative posts, and they also founded the influential *Frankfurter Allgemeine Zeitung*. Nevertheless, it

can be argued that the Ordos' post-war influence was neither immediate nor undisputable. Indeed, the social market economy was initially neither very social nor very market-based. In addition, Erhard himself later described himself as "an American invention". Mélandri found that what is known as Erhard's first important act as Minister of Economics, the 1948 monetary reform which sparked off the 'miracle', had actually been planned since some time at the U.S. Embassy in London. (Mélandri 1980, 148-149) Berghahn has convincingly shown that German industrial circles were not influenced by Ordo-liberal ideas and displayed "particularly strong cartel proclivities." (Berghahn 1986, 40-71, 102-105)

Concerning German party politics after 1945, the two main political parties were the Christian-Democrats and the Social-Democrats. Neither was committed to antitrust policy. Most Ordos supported the Christian-Democrats, but their influence remained marginal until 1948, and minoritarian thereafter. For example, in 1945, the CDU had called for state ownership of natural resources and key monopoly industries, as well as for the elimination of large-scale capitalist industries. Again, in its 1947 'Ahlen Programme' the CDU embraced the anti-liberal theses of the Catholic Church, opposing capitalism and favouring a new order based on public ownership. That new order was to be based on the socialisation of the coal, iron and steel industries, co-determination, de-cartelisation, and broad distribution of shares in large companies. Clearly, in proposing antitrust-like measures, the CDU was influenced by its Christian orientation, rather than by the German competition tradition or the Ordos.

As late as two years after Erhard's nomination as Minister of Economics *The Economist* reported that the federal government "leans heavily on the support of the industrial and business circles." It asserted that one of Bonn's main goals was the end of restrictions on, inter alias, steel production as well as the devolution of powers from the International Ruhr Authority to the federal government. The other was to "make certain that no drastic structural changes in the Ruhr combines are made, and that the old shareholders are enabled to become owners of the reorganised trusts." (*The Economist*. 07/01/1950. Germany's New Year. p.7 of microfilm).

Finally, the Germans strongly opposed the Allies' de-cartelisation and de-concentration efforts. These measures were strongly associated with Occupation and with the operations of the foreign-controlled and vilified IRA. Unsurprisingly, the first act of the Adenauer government in 1949 was to advocate the end of dismantling, and to refuse to seat at the IRA unless it stopped and unless the mandate of that authority was widened to include the French and Benelux industries as well. His strategy was quite straightforward: appeal to the Americans by using the Soviet threat argument, secure the end of dismantling, opt for regional integration rather than for unification, and make deadlock seem due to the French. By mid-November 1949, dismantling virtually stopped, and Germany joined the IRA.

In order to prevent the continuation of dismantling, and in view of escaping the deadlock, Adenauer signed with the Allies the Petersberg agreement. Although

perceived as a triumph of the Chancellor, that agreement included a promise that Germany would take all appropriate legislative measures in order to combat cartels and trusts. On the one hand, Germany managed to keep intact industries such as the Thyssen steel-making industries. On the other hand, it made a commitment to introduce antitrust in its domestic politics and economy. The U.S., that had launched a campaign to educate the Germans on the merits of free and competitive markets, initially thought that their campaign had been fruitful. The French, however, understood that the German commitment to a national antitrust policy was far from credible.

(c) Politics, economics, and Franco-German relations before and after WWII. It is a well-known fact that Franco-German relations had never been harmonious before 1950. Under Napoléon Bonaparte, the French had conquered Germany, only to be beaten in Waterloo by the Prussians. Under Louis Napoléon, the Germans had struck again, inflicting the French a humiliating defeat in Sedan. The First World War had not yet been renamed, and it was still known as the Great War. The Treaty of Versailles did to Germany what Prussia had done to Louis Napoléon's France. And, in 1950, World War II was more recent than September 11 is today.

Beside these well-known facts, two other issues must be taken into account in order to evaluate the situation in 1950. First, France was an Occupation power in Germany. That status gave it membership of the International Ruhr Authority, and hence the ability to influence German industrial structures and trade flows. The Loraine steel mills could finally gain access to cheap Ruhr coal, perhaps even at a lower price than the Ruhr's own steel industries. No wonder then that France soon became the champion of the Allies' de-cartelisation and de-concentration efforts (the British were the laggards). Of course, the Germans knew that, and agreement with French "economic" arguments were seen as treason. Coupled with their fury over the French colonial style of occupation, this made German politicians extremely suspicious of the French. Second, the only successful episode of Franco-German cooperation before WWII had involved international cartels. Now, French public officials were turning their backs to that way of managing European business relations. Together with the U.S. Treasury and Justice Departments, France was among the most active, if not *the* most active promoter of de-cartelisation and de-concentration of German industry. Ally policy, as planned at the Québec Conference of September 1944, would be implemented with priority in the coal, steel, and chemical sectors. All Allied antitrust instruments had been strongly supported by France. Clearly, she and the U.S. were creating the first ever European competition policy. And they were doing so in Germany, against the German will.

A few days before the Schuman Declaration of May 9, 1950, Jean Monnet wrote: "At the present time, France <u>is</u> Europe." (Monnet 1950[1990]: 170). Indeed, France is where the Schuman Plan officially emanated from, and where the ensuing negotiations took place under the chairmanship of Monnet. So could it be that Articles 65 and 66 ECSC corresponded to French preference for competition policy? And if so, why did Monnet not propose the creation of an independent competition regulator?

4.2. Monnet's Expected Utility of Proposing an Independent European Competition Regulator

That historical information allows us to understand the politics underlying the decision to delegate competition powers to a multi-constituency and collegial supranational executive organisation. Specifically, it helps understand who were the main actors involved in the origins of European integration, what each of them was trying to achieve, what choices they faced, how these choices led to specific institutional and policy outcomes, and how the actors evaluated those outcomes. Crucially, it also helps understand that there was no "philosopher-king" who could look unilaterally decide the best policy for post-WWII Europe, and the best institutional support for that policy. Rather, each of Germany, France, and the U.S. had to acknowledge their inter-dependent relationship.

Note preliminarily that Secretary of State Acheson had planned a visit to London on May 10, 1950. There, he was to announce the liberalisation of IRA policies in Germany. Following diplomatic protocol, he informed Robert Schuman, the French Foreign Affairs Minister, and asked him to think of a commonly acceptable way to frame German production. Liberalisation of IRA policies was to be both substantive and institutional, and hence of double importance for France. On the substantive side, de-cartelisation and de-concentration policies would be softened in view of allowing German business to expand production. On the institutional side, the Federal government would be allowed a greater voting share in the IRA. France had to react by proposing a new way to govern the European economy (i.e. the Ruhr). In other words, France's chief economic planner had to invent a way to keep control over the Ruhr coal production, to maintain the balance between the French and German steel industries, and to safeguard France's right of say in German affairs. If Monnet did not propose a common competition policy, he would not be proposing anything valuable to the French economy. Although such an option might secure him the backing of the French and German business circles, it would leave France without a saying in the Ruhr, without the possibility of gaining cheap access to German coal, and without the chance to catch up with the size of German firms. In short, Europe without a competition policy was as good for France as no Europe.

If, on the other hand, Monnet proposed a competition policy, he was sure to face harsh opposition. That opposition would come from French international-cartel-minded industrialists, but also, and mainly, from the German Ruhr industrialists and their allies in the Bundestag. Since the knowledge of Acheson's planned declaration imposed on Monnet a high discount factor, he had to come up with a proposal that would be seen by Adenauer as an acceptable basis for immediate negotiations *in spite of such predictable opposition in the Ruhr*. In essence, Monnet faced the following expected utility values:

(1) $EUM(CEC) = p(EUR \mid CEC)\, u(EUR) + p(SQ \mid CEC)\, u(SQ) = .X$
(2) $EUM(IRA) = p(EUR \mid IRA)\, u(EUR) + p(SQ \mid IRA)\, u(SQ) = 0 + u(SQ) = 0$
(3) $EUM(nAT) = p(EUR \mid nAT)\, u(EUR) + p(SQ \mid nAT)\, u(SQ) = 0 + u(SQ) = 0,$

where *EUM* is Monnet's expected utility, *EUR* is the goal of European integration, *CEC* is a collegial supranational executive, *SQ* is the status quo, *IRA* is an independent competition regulator (an independent regulatory authority, U.S.-style), and *nAT* is a proposal without competition policy.

Note that in equation (2), p(EUR | IRA) = 0. This is because Monnet knows that the Germans will not accept a European regulator with a mandate to "destroy" their most productive and competitive businesses. First, the Germans know that France neither has a strong antitrust tradition, nor has plans to abandon its planning system in favour of a free market. This means that the French proposal for a competition policy is most probably directed towards the Ruhr. Second, the Germans can confirm that impression by their experience from working with the French at the IRA: they know that the French are active supporters of a strong structural competition policy for the Ruhr. Third, given French attitude in Versailles in 1919 and know in the Occupation Zone and in the Saarland, most segments in both of the big German political parties have reason to distrust *any* proposals coming from the French. Monnet knows all that, and he also knows that, although Adenauer himself may be willing to pay a price for Gleichberechtigung, his CDU party is (a) closely linked to German industrial interests in the Ruhr, and (b) already uncomfortable with the pro-Western policies of Adenauer, which they see as an impediment to German reunification. Hence, Monnet knows that what the Germans need is a reassurance that France is not sending in a Trojan horse.

Multi-constituency collegiality then appears as a solution that balances the French desire to adopt a common competition policy (and to make the immediate opening of the negotiations acceptable to the Germans) and the German need for guarantees that the projected High Authority will not be the Ruhr competition regulator. At the same time, however, collegiality gives Germany only 1/n (or, as will be later specified 2/9) of the vote. This leads to the prediction that it is more acceptable than an independent regulator, but still objectionable. Regarding its acceptability, note in particular that a multi-constituency collegial authority presents the following advantages for Germany:

- It is open to the participation of other European countries, none of which (except perhaps the UK) has any interest in, tradition of, or preference for competition policy;
- It broadens the constituency of the regulator, who now has to serve different interests through different policies and in the pursuit of different goals; and
- It increases the complexity of judicial review exponentially, especially for cases of failure to act.

Note also that Monnet himself does not face the same accountability problem as Adenauer. He is not an elected official and, as a de Gaulle appointee who has very good relations with the M.R.P. but who is himself closer to the S.F.I.O., he can mobilise his political supporters against the attacks of cartel-minded businessmen. His only concern is the ratification of the Treaty in parliament, where the combined vote

of the Communists, the Gaullists, and the right-wingers may defeat the Europeanist coalition. Yet, he may be confident that a Treaty which establishes a European competition policy will bit alternatives (Acheson will have made his declaration by the time the Treaty reaches the ratification stage, and hence the French legislators will believe Monnet). Finally, this means that Monnet must propose a multi-constituency and collegial competition regulator, *no matter what he would himself prefer for France or for Europe*. In other words, although for Monnet (IRA)P(CEC)P(nAT), taking into account the German response he faces EUM(CEC) > EUM(IRA). This, independently of how small X is, leads him to propose CEC.

4.3. The Development of the Paris Negotiations

Monnet's proposal was successful. Robert Schuman announced "his" plan on May 9, 1950, one day before Acheson's London declaration. Adenauer, who had been informed on May 8, readily accepted the Schuman Declaration and the invitation to negotiate in Paris. Soon after, Italy, and the Benelux countries joined to form the "Six". The negotiations started in Paris in June 1950. Between June and July the negotiators made very quick progress, expecting to be able to submit the Treaty to their respective Parliaments by the end of the year. After the summer recess, however, things got increasingly complicated. From September onwards, and under U.S. insistence, Monnet clarified the anti-cartel provision of the Schuman Declaration. Competition policy came to the forefront, and it became the dominant issue until the final signing of the Treaty.

In September 1950 Monnet clarified his view on the indispensability of competition policy provisions in the Treaty. Hallstein immediately received the order to negotiate against the cartel provision, then draft Article 34. For the Germans, France was attempting to counter-weight the positive effects of U.S.-led reconstruction by unduly imposing contractual obligations on German industry. In particular, Erhard believed that the proposed Community was conceived as a Ruhr Authority II. Consequently, he was resisting the draft treaty's antitrust clauses. In October, the new CDU Minister of the Interior (Lehr) openly defended the interests of the Ruhr and proposed that Germany abandoned the negotiations. In November, Schuman himself started feeling uncomfortable about Monnet's decision to exclude French business associations from the negotiations. Monnet reassured him twice, both times reminding him that competition policy was France's unique hope against the prospect of German industrial reconcentration. Amidst growing business and social unrest, Adenauer was obliged to ask for the suspension of the negotiations until the antitrust elements of Occupation Law 27 could be implemented in an acceptable way. As late as January 1951, Erhard and Adenauer still backed the Ruhr industrialists in Bonn, and proposed to first abolish the IRA and steel producing quotas, and then consider signing the Schuman Plan. The French and the Dutch, backed by the U.S., proposed to opposite. Brinkmanship-like, the tension escalated in mid January 1951, when the Council of the Federation of European Industries took an aggressive stance that obliged Adenauer to call off the negotiations. It seemed that, after all, Europe was not going to be.

At that crucial point of the negotiations, everything seemed to depend on German acceptance of draft Articles 60 and 61. Yet, the contribution of U.S. Commissioner (McCloy) and his assistant (Bruce) proved to be crucial. At the end of February and the beginning of March 1951, they persuaded France to not insist further on the crucial questions of the Saarland and the level of concentration of German industry. Similarly, they persuaded Adenauer to acknowledge the significance of French side payments, and in return to accept draft Articles 60 and 61. Following the Chancellor's acceptance to mediate in favour of the Treaty, the latter was signed in Paris on April 18, 1951.

5. Interpretation

This story contributes to our knowledge by highlighting five important points. Most obviously, it shows that European competition policy did not emanate from Germany, but from the French Commissariat Général du Plan. Second, Monnet's proposal was not based on any kind of French antitrust tradition, but on France's pressing need to secure continuing control of the Ruhr. Third, Germany was reluctant to accept Monnet's proposals. Fourth, the competition policy proposals did not result from the existence of, nor did themselves operate like, a focal point – on the contrary, they polarised the negotiations to the point of almost causing an early end to the process of European integration. Fifth, the near-collapse of the negotiations may not have been due to Adenauer's strong pro-Ruhr preferences, but to his vulnerability vis-à-vis alternative German leaders.

The empirical record does not lend strong support to either liberal-governmentalist and ideational explanations. The former are refuted by (a) the almost total lack of societal support for competition policy, either in France or in Germany; (b) the absence of an automatic Nash bargaining solution; and (c) the obvious and purposefully non-credible commitment to what was being delegated to the supranational authority *by virtue of the design of that authority*. Similarly, ideational explanations are refuted by the persistence of the disagreement over competition policy even after all other issues had been agreed. Similarly, there is no evidence that collegiality was a pre-constructed focal point.

Regarding hegemonic theory, the results are more ambiguous. On the one hand, the U.S. did promote competitive structures and markets, especially in Germany. Similarly, Monnet was in close and constant contact with American officials and antitrust lawyers. On the other hand, there is a convincing case for arguing that a European competition policy was inherently advantageous to France. International cartels had worked in the past, but they had also led to catastrophic results. In addition, their workings benefited French steel producers, but not the French economy as a whole. Yet, Monnet's constituency was the whole French economy. Finally, hegemonic theory does not provide an adequate explanation for the near-collapse of the negotiations in the winter of 1950-51, nor for the lack of a European organisational structure that mirrored U.S. domestic regulatory institutions.

The transaction costs approach seems to offer a more accurate explanation. Monnet understood the necessity to impose competition policy provisions of Germany. Yet, he also understood that Germany would not be able to accept a complete antitrust contract that was aimed at dismantling its most productive industries. Hence, the problem was not to delegate powers to a supranational authority in order to secure a credible commitment to a specific policy line; rather, it was to offer Germany a credible commitment that European competition policy would not be used as a tool against it – i.e. that, once these rules were adopted, France would not act opportunistically. The competitive forces that led to an efficient institutional arrangement were provided by Germany's credible outside options.

The upshot is that the institution of collegiality in the EC is not aimed at securing commitment to specific policy options, but commitment to a negotiated implementation of the Treaty. Although the Treaty made it costly for the reputation-hungry Germany to renege on its obligations, collegiality made it costly for France to try to execute the Treaty in a discriminatory way. That is, collegiality created a true organization, in Williamson's sense of the term (Williamson 1996). Thus, although it is possible to attribute the creation of that institutional to a mistake or a "flawed" calculation (Majone 2005), it seems far more plausible to interpret it as a necessary offer to make the prospect of free and competitive markets acceptable to Germany.

References

Amato, Giuliano. 1997. *Antitrust and the bounds of power: The dilemma of liberal democracy in the history of the market*. Oxford: Hart Publishers.

Bates, Robert H., Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast. 1998. *Analytic Narratives*. Princeton: Princeton University Press.

Berghahn, Volker, R. 1986. *The Americanisation of West German Industry, 1945-1973*. Leamington Spa: Berg.

Commissariat Général du Plan. 1997. *Europe: L'impératif de cooperation et de conquête industrielle*. Paris: La Documentation Française & Economica.

Epstein, David and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy-Making under Separate Powers.* New York: Cambridge University Press.

Frieden, Jeffry .A. 2006. *Global Capitalism: Its Rise and Fall in the Twentieth Century*. New York: W.W. Norton.

Garrett, Geoffrey and Barry R. Weingast. 1993. Ideas, Interests, and Institutions: Constructing the European Community's Internal Market. In Judith Goldstein and Robert O. Keohane (eds). *Ideas and Foreign Policy*, pp. 173-206. Ithaca: Cornell University Press.

Gerber, David J. 1998. *Law and Competition in Twentieth Century Europe: Protecting Prometheus*. Oxford: Oxford University Press.

Gillingham, John. 1991. *Coal, steel, and the rebirth of Europe, 1945-1955: The Germans and French from Ruhr conflict to economic community*. Cambridge: Cambridge University Press.

Haas, Ernst B. 1958. *The Uniting of Europe: Political, Social, and Economic Forces. 1950-1957*. Stanford: Stanford University Press.

Haley, John O. 2001. *Antitrust in Germany and Japan: The First Half-Century, 1947-1998*. Seattle: University of Washington Press.

Hofstadter, Richard. 1965. *The Paranoid Style in American Politics and Other Essays*. Chicago: Chicago University Press.

Huber, John D., and Charles R. Shipan. 2006. Politics, Delegation, and Bureaucracy. In Barry R. Weingast and Donald A. Wittman (eds). *The Oxford Handbook of Political Economy*, pp. 256-272. Oxford: Oxford University Press.

Jobert, Bruno (ed). 1994. *Le Tournant Néo-Libéral en Europe*. Paris: L'Harmattan.

Kirchner, Christian. 1998. Working Paper 8.III. In Claus-Dieter Ehlermann and Laraine Laudati (eds). *European Competition Law Annual 1997: Objectives of Competition Policy.* Oxford: Hart Publishers.

Krasner, Stephen D. 1976. State Power and the Structure of International Trade. *World Politics* 28 (3): 317-347.

Kydland, Finn E., and Edward C. Prescott. 1977. Rules Rather than Discretion: The Inconsistency of Optimal Plans. *Journal of Political Economy* 85 (3): 473-492.

Levine, Paul, John Stern, and Francesc Trillas. 2005. Utility Price Regulation and Time Inconsistency: Comparisons with Monetary Policy. *Oxford Economic Papers* 57 (3): 447-478.

Lohmann, Susanne. 2006. The Non-Politics of Monetary Policy. In Barry R. Weingast and Donald A. Wittman (eds). *The Oxford Handbook of Political Economy*, pp. 523-544. Oxford: Oxford University Press.

Majone, Giandomenico. 2005. *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*. Oxford: Oxford University Press.

Majone, Giandomenico (ed). 1996. *Regulating Europe*. London: Routledge.

Marjolin, Robert. 1989. *Architect of European Unity: Memoirs 1911-1986*. London: Weidenfeld & Nicolson.

Mauroy, Pierre. 1981. Discours de Pierre Mauroy à l'Assemblée Nationale. http://www.premier-ministre.gouv.fr

McCraw, Thomas. 1984. *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James L. Landis, Alfred E. Kahn*. Cambridge: Harvard University Press.

McGowan, Lee and Stephen Wilks. 1995. The first supranational policy in the European Union: Competition policy. *European Journal of Political Research* 28 (2): 141-169.

Mélandri, Pierre. 1980. *Les Etats-Unis face à l'unification de l'Europe 1945-1954*. Paris : Pedone.

Milward, Alan. 1992. *The European Rescue of the Nation-State*. London: Routledge.

Monnet, Jean. 1976. *Mémoires*. Paris: Fayard.

Monnet, Jean. 1950[1990]. Note de réflexion. May 1, 1950. In Fondation Jean Monnet Pour L'Europe, *La Naissance d'un Continent Nouveau*, pp. 163-168. Lausanne.

Moravcsik, Andrew. 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca: Cornell University Press.

Peacock, Alan and Hans Willgerodt eds. 1989. *German Neo-Liberals and the Social Market Economy*. London: MacMillan/Trade Policy Research Centre.

Pollack, Mark A. 2003. *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU.* Oxford: Oxford University Press.

Riker, William H. 1986. *The Art of Political Manipulation*. New Haven: Yale University Press.

Rogoff, Kenneth S. 1985. The Optimal Degree of Commitment to an Intermediate Monetary Target. *Quarterly Journal of Economics* 100 (4): 1169-1189.

Scharpf, Fritz W. 1997a. *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Boulder CO: Westview Press.

Scharpf, Fritz W. 1997b. Economic Integration, Democracy, and the Welfare State. *Journal of European Public Policy* 4 (1): 18-36.

Schuman, Robert. 1963. *Pour L'Europe*. Paris: Editions Nagel.

Servan-Schreiber, Jean-Jacques. 1967. *Le Défi Américain*. Paris: Denoel.

Shepsle, Kenneth A. 2006. Old Questions and New Answers About Institutions: The Riker Objection Revisisted. In Barry R. Weingast and Donald A. Wittman (eds). *The Oxford Handbook of Political Economy*, pp. 1031-1049. Oxford: Oxford University Press.

Tallberg, Jonas. 2002. Delegation to Supranational Institutions: Why, How, and With What Consequences? *West European Politics* 25 (1): 23-46.

Von der Groeben, Hans. 2002. *Europäische Integration aus historisches Erfahrung: Ein zeitzengengespräch mit Michael Gehler*. Bonn: RFWUB.

Weingast, Barry R., and Michael J. Moran. 1983. Bureaucratic Discretion and Congressional Control: Regulatory Policymaking by the FTC. *Journal of Political Economy* 91 (5): 765-800.

Wells, Wyatt C. 2002. *Antitrust and the Formation of the Postwar World*. New York: Columbia University Press.

Williamson, Oliver E. 2002. The Lens of Contract: Private Ordering. *American Economic Review* 92 (2): 438-443.

Williamson, Oliver E. 1996. *The Mechanisms of Governance*. Oxford: Oxford University Press.

Witschke, Tobias. 2003. *Die Rekonzentration der westdeutschen Stahlindustrie in der EGKS 1952-1960*. PhD diss. European University Institute, Florence.

Yarbrough, Beth. V. and Robert M. Yarbrough. 1992. *Cooperation and Governance in International Trade: The Strategic Organizational Approach*. Princeton: Princeton University Press.

Yataganas, Xenophon. 2001. Delegation of Regulatory Authrority in the European Union: The Relevance of the American Model. Jean Monnet Working Papers 3/01.