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Transnational networks and the emergence of EU competition policy

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Political scientists have highlighted the role of different national models in capturing the recent shift in European Union (EU) competition policy from the ‘Rhenish’ to the ‘Anglo-Saxon model’. Wigger and Nölke (2007) have contextualized these models within different legal traditions that charge different institutions with the enforcement of competition policy. Accordingly, the Rhenisch model is informed by German ordo-liberalism and embedded in the civil law tradition with respect to the institutional set-up and the enforcement mechanism. An administrative control model, the Rhenish model relies on the enforcement by public authority, ex-ante authorization and political and legal reasoning. In contrast, the Anglo-Saxon model is indebted to the Chicago school, which has dominated US anti-trust practices from the 1960s onwards, and to the common law tradition regarding the institutional set-up and enforcement. A court model, the Anglo-Saxon model involves the enforcement by (private) litigation, ex-post control and economic reasoning (Wigger and Nölke 2007, table, 492). The characterization of the diverging models highlights the usefulness, or the necessity, of considering legal traditions and long-term developments to understand the contemporary transformation of competition policy. In this paper, we are not concerned with contributing to the literature on the recent shift, however (cf. Wilks 2005; Wigger 2008; Cini and McGowan 2009). Instead we take the notion of (national) models embedded in different legal traditions as a point of departure to shed light on the historical foundations of EU competition policy. At the outset of our inquiry is a simple methodological question, namely how to measure and demonstrate the influence of one or another model on this key supranational policy.

Drawing on our combined historical research, based on extensive multilateral research in archival sources, we will tackle this question with regard to the formative period of EU competition policy from the signing of the treaty of Paris establishing the European Coal and Steel Community (ECSC) in 1951 to the adoption of Regulation 17 in 1962 by the European Economic Community (EEC).^{*} Competition policy importantly represented a novel policy area in post-World War II Europe until the early years of the European Commission. At the time of the inter-state conference on the ECSC treaty, however, none of the future six founding member-states of ‘core Europe’ had enacted anti-trust legislation. The notion of free competition and the preference for a competitive market economy, which reflected the need to introduce market liberalization, challenged the protectionist traditions prevalent in the economies of western Europe. Only with the formation of the ECSC in 1952, was the competitive principle first introduced at the European level. Before presenting our empirical evidence, however, some methodological considerations need to be sketched.

Defying models, utilizing networks

One way to define the concept of a ‘model’ is to distinguish it from that of the ‘ideal type’, as developed by Alexis de Tocqueville and Max Weber. Whereas the ideal type represents primarily a descriptive and analytical tool, the model also carries normative connotations. In the *Nerves of Government* (1966, 5-15; cf. Schlotter 1983, 214) Karl Deutsch has identified at least three functions of models. Firstly, they fulfill an organizational function by ordering incoherent facts and therefore making it possible to identify similarities or links between these facts. Models, secondly, transfer acquired habits from a known to an unknown environment and accordingly, have an explanatory function. Lastly, models fulfill a standardizing function in that they provide a standard from which we can evaluate data.

To solve the methodological problem of measuring and showing the influence of one or another model on the formation of competition policy, the organizational and explanatory functions described by Deutsch are of pivotal importance. Applied to the different economic and legal traditions that played a role in the emergence of EU competition policy up to 1962 the notion of the model therefore encourages us to organize their respective key concerns and ideas. In a second step the use of the model allows for conceptualizing the transfer from the known environment – arguably the national context, in which these traditions were mainly developed – to the unknown, here the European-level environment. At the same time, the organizing and explanatory functions of models require both a reduction of ideas in order to

^{*} Brigitte Leucht has covered the period until 1952 in various publications and her PhD thesis. For the years following the formation of the EEC see Katja Seidel’s publications to date as well as her monograph: *The Process of Politics in Europe: The Rise of European Elites and Supranational Institutions*, London: I.B. Tauris (forthcoming). Moreover, bridging the empirical gap that in part still exists for the period 1952-58 is an integral part of Brigitte’s post-doctoral project on the origins of economic governance in supranational Europe (with a working title of *Coal, Customs, and Competition: the Transnational Origins of European Economic Integration, 1945-1962*), for which this paper also serves as a blueprint.

identify and filter out a number of ‘key ideas’ and some generalization to describe the model. As a result, a model always represents the core ideas of economic and legal traditions without sufficiently reflecting changes within these traditions over time. In other words, the use of models is not without challenges for a historical approach that conceptualizes these models as pools of ideas actors drew on in the making of EU competition policy.

Models pose another challenge in that they tend to be attributed to specific national contexts. Undoubtedly, the consideration of specific domestic conditions – including not only economic and legal traditions, but also contemporary politics – helps our understanding of how ideas about competition policy and its objectives were shaped in countries like the US or Germany in the first place. At the same time, the notion of the national model feeds into and reinforces the state-centric approach that has characterized much of the historiography of European integration. Accordingly, when applied to the inter-state negotiations on the ECSC treaty, one would assume that, if it came to play a role in the making of the competition articles, the ‘German ordo-liberal model’ was defended and promoted by German negotiators. Implying that actors first and foremost defend ‘national preferences’, this assumption does not acknowledge, however, that these preferences might have been domestically contested. In fact, actors might have deliberately aligned across national boundaries to realize policy preferences, which they had previously failed to push through in the national context, at the European level.

Instead of using the notion of the national model we therefore propose to conceptualize the making of the treaty provisions in 1950-51 and beyond as a process, in which a variety of stakeholders – state and non-state actors – negotiated concepts embedded in different economic and legal traditions. All of this highlights the significance of exploring how actors co-operated across national boundaries in the emergence of EU competition policy. To guide our analysis of the transnational collaboration of actors we will utilize the network concept derived from the social sciences.

We utilize the network concept for three reasons (Leucht 2008; Leucht and Meyer 2009): firstly, the network concept provides a conceptual tool, lacking within the historical discipline, to assess systematically the role of individual and collective actors in policy-making. Actors include politicians, civil servants, state and non-state actors as well as academic and other experts. Secondly, while originally developed to re-conceptualize public policy-making in the national arena, the network concept has become important for the analysis of transnational policy- and decision-making processes within the EU (Heard-Lauréote 2005). Thirdly, the ‘policy network’ approach in particular highlights the link between actors and policy-making, which is key to shed light on the making of a European-level competition policy. Utilizing the network concept therefore enables us to overcome the focus on states and (member-state) governments as the only decisive actors in EU policy-making. We are utilizing the concept in our empirical historical analysis without, however, attempting to contribute to the further differentiation and improvement of those variants that emerged out of the social science literature on network analysis in the 1990s.

An analysis of the transnational networks and their development over time can build on a set of categories and criteria as well as a sophisticated terminology, all of which help to analyze the formation, scope, structures, functioning and, to some degree, the impact of transnational networks. The different approaches under the policy network, for example, offer a variety of criteria that can be used to fine-tune the questions for the analysis of original sources and at the same time further differentiate the central research question about the role of expert networks in the making of European-level competition and environmental policies. These criteria include the level of institutionalization of a policy network (how stable or instable is a network); the scope of policy-making arrangements (are networks sectoral or cross-sectoral); the number of participants; the regulation of access to the network (is it restricted or open); the types of participants; and the major functions of the network (Börzel 1998). Moreover, the network approach considers such categories as trust between actors and their common view of the world or shared policy paradigm (Heard-Lauréote 2005: 40-1).

Another notion is important with regard to linking the exploration of the formation, scope, structure and functioning of transnational networks to their impact. Policy networks stress the importance of resources, including expertise, in structuring the relationships between actors. Advocacy coalitions and epistemic communities, however, specifically focus on the notion of policy ideas. Whereas epistemic communities of actors debate common sets of ideas, advocacy coalitions of actors within the same policy domain engage in policy-oriented learning. Introduced by Peter Haas (1992), the concept of epistemic communities is characterized by a shared set of normative and principled beliefs; shared causal beliefs; shared notions of validity; and a common policy enterprise. The advocacy coalition concept in turn accommodates multiple network affiliations of actors. Advocacy coalitions form on the basis of shared beliefs and values (cf. Sabatier, Jenkins-Smith eds. 1993; Sabatier 1998). The core argument is that actors and institutions that share a similar perspective will forge coalition-type relationships with each other. Identifying the common cause of actors in the source material therefore makes it possible to identify or designate advocacy coalition-like types of co-operation. However, even though actors might have shared a policy paradigm, they might have differed with regard to the actual co-ordination of policies. Having sketched the methodological tools for exploring transnational networks, we will now present how such networks impacted on the emergence of EU competition policy.

Transatlantic policy networks and the anti-trust provisions of the ECSC treaty

In the initial period in the genesis of EU competition policy, transnational networks were *transatlantic* since US actors featured prominently within them. That networks were transatlantic resulted from an especially increased density of contacts between American and European actors at a number of levels, which characterized the immediate post-war period. In the early Cold War, the US government supported efforts at European integration and the formation of a democratic and capitalist western Europe within an Atlantic framework in their

opposition to Soviet Communism (Lundestad 2003). Two major US policies provided a backbone for informal transatlantic co-operation, on the one hand, and a broader framework for the discussion of free competition and anti-trust policy, on the other.

Firstly, the European Recovery Program (ERP, Marshall Plan, 1948-52) represented the US government's most visible and comprehensive attempt at promoting the political and economic integration of western Europe. For US foreign policy planners, the notion of cartels was linked to the rise of autocratic and totalitarian systems. Hence, for political as well as economic motives, their objective was to firmly install the competitive principle within European societies and to introduce national laws safeguarding competition. Secondly, the US occupation programme in Germany rested on the basis of the reorganization of the German heavy industries and the democratization of German society (Smith 1994). With the reorganization of the heavy industries the US government hoped not only to break the German potential for aggression, but also to establish the basis for a competitive market economy. Even more, the pending reorganization of these industries, in particular the Allied programme for de-concentration and decartelization, directly impacted on the emerging anti-trust provisions of the ECSC treaty.

To administer and implement these reconstruction and occupation policies, new governmental agencies were established. Three agencies in particular proved important to establishing transatlantic patterns of co-operation: the European Co-operation Administration (ECA) was set up in 1948 to manage the Marshall Plan on the US side. The US High Commission for Germany was in charge of US occupation policy for Germany after the transition from military to civilian occupation government in 1949. The French Planning Commission managed the French national programme for economic reconstruction and modernization. Since 1948 it was financed by capital made available to the French government under the Marshall Plan. Institutionalized patterns of co-operation between these governmental agencies partially accounted for the formation of one of two transatlantic policy networks that contributed significantly to the ECSC treaty negotiations, the 'US Embassy working group' (Leucht 2006).

An analysis of this group needs to be prefaced by the remark that crucially, the US government was at no point officially represented at the inter-state negotiations on the ECSC treaty (NARA 1950). Within the more formal consultation structures established at the conference, moreover, specifically designed expert groups consisting of members of the six delegations and other policy experts were expected to deal with particular problems in the already specialized area of coal and steel policy (AN 1950). It is noteworthy that a working group on anti-trust or competition policy was not among these groups.

The US Embassy working group represented an informal, but highly integrated and stable policy network made up of a number of individual US and French actors most of whom were affiliated with governmental agencies at the time of the inter-state conference. Actors included *William Tomlinson*: representative of the US Treasury in the US Embassy in Paris,

director of financial and trade affairs for the ECA mission to France, and financial advisor to the US ambassador in Paris, David E. Bruce (Brown Wells 1995, 204-11); *Stanley Cleveland*: working under Tomlinson as one of the members of a combined State Department-ECA-Treasury group in Paris (Interview Cleveland); *Robert Bowie*: professor of law at Harvard University and head of the Office of the General Counsel of the US high commissioner for Germany – among others, in charge of the reorganization of the German heavy industries (Interview Bowie); *George Ball*: former head of the General Counsel's Office of the Lend Lease administration and general counsel of the French Supply Council, at the time of the negotiations the only non-state actor, co-operating on behalf of the law firm Cleary, Gottlieb, Steel and Hamilton with the French government (Ball 1982, 1-68; DiLeo 1995) and *Jean Monnet*, head of the French Planning Commission and practically the head of the French delegation at the inter-state conference (FJM 1950); *Pierre Uri*: economic and financial expert in the French Planning Commission and professor at ENA, the French School for Public Administration (Seidel 2005); *Etienne Hirsch*: deputy commissioner general in the French Planning Commission (Hirsch 1988); and *Paul Reuter*: professor of international law at Aix-en-Provence and Paris and a legal advisor to the French foreign ministry (Interview Reuter; Cohen 1998).

The US Embassy working group owed its existence not only to institutionalized patterns of co-operation between various US and French governmental agencies, however. Equally significant proved the initiative of Monnet and US High Commissioner for Germany *John McCloy*, whose friendship went back to the interwar period (for example, Schröder, 1994). They facilitated the formation and operation of the US Embassy working group by supporting the co-operation of individual actors with policy expertise. During the war, Monnet had co-operated with Hirsch, Ball and Reuter when serving with the Anglo-French Coordinating Committee in London, the British Supply Council in Washington and the French Supply Council. Uri and Monnet had worked together in the French Planning Commission, which in turn provided the institutional basis for the collaboration with Tomlinson and Bruce. McCloy supported Bowie's involvement. Crucially, individual actors became part of the policy network not primarily because of their affiliation with a governmental agency, but as a result of their expertise. In 1950-51 Bowie, Reuter and Uri were affiliated with an academic institution, which further underscores the relevance of policy expertise (cf. Leucht and Meyer 2009). Moreover, that French actors Hirsch, Monnet and Uri, had first-hand experience in the US, where they had been partially socialized, needs to be considered, especially with regard to the smooth operation of the network. Almost certainly, these French actors were well equipped to negotiate with US actors.

Analyzing the composition of the US Embassy working group we can further conclude that there was a connection between the function of actors in the conference and their age and/or career stage. Actors belonged to two generations which influenced the functions they fulfilled within the network: a younger generation of actors whose policy expertise determined their involvement in the negotiations were at the early stages of their careers. These actors were likely to contribute directly to the ECSC treaty. With the exception of Hirsch, who was born

in 1901, all actors of the US Embassy working group were born after 1909: Ball and Bowie, 1909; Reuter and Uri, 1911; and Tomlinson, 1918. These younger actors could only have progressed to a certain stage in their career development by 1950, which affected their role in the negotiations. An older generation, which had much more extensive experience and was at the peak of their careers, comprised Monnet and McCloy born in 1888 and 1895, respectively. They not only acted as facilitators, but also fulfilled a second function at the inter-state conference. Jointly, they mediated between the US Embassy working group and high-ranking officials who exercised political influence such as US Secretary of State *Dean Acheson*. Unlike Monnet and McCloy none of the policy experts of the working group was old enough to have remembered World War I. In contrast, World War II may have provided a varied yet shared experience for both generations, which helps to explain why actors committed to fostering European co-operation and integration.

Another informal network, the ‘transatlantic university network’, comprised American law professor *Heinrich Kronstein* (US anti-trust law and policy, Georgetown University); German law professors *Walter Hallstein* (comparative public law, University of Frankfurt), *Hermann Mosler* (public and international law, University of Bonn) and *Hans-Jürgen Schlochauer* (University of Frankfurt until 1933, when he was prevented from pursuing an academic career; 1950-51 Federal Ministry of Justice); and German official and honorary law professor *Carl Friedrich Ophüls* (University of Frankfurt, patent law and Anglo-American law). The network overlapped with the German delegation since Hallstein served as its head and Mosler, Schlochauer and Ophüls as experts of the delegation. Kronstein had no institutional affiliation that could have accounted for his role in the conference. In contrast to the US Embassy working group, which constituted a Franco-American network, the transatlantic university network comprised German and US actors with legal expertise.

In fact the nomination of Hallstein as head of the German delegation triggered the formation of this network that shares important characteristics of an epistemic community or expert network. Also significant for its formation and later, its operation, were an academic exchange programme between Frankfurt and Georgetown universities – in which Hallstein, Kronstein and Mosler participated (for example, MPG 1949) – and previously existing intra-German academic networks – evidenced, for example, by the co-operation of Mosler and Schlochauer on the journal *Europäische Föderation*, co-founded by the latter (MPG 1947). Co-operation on the journal also draws attention to the shared commitment of experts to advance European integration. Moreover, through their professional affiliation the members of the network facilitated links to a wider circle of academic actors and initiated the collaboration of legal experts, for example, the Max-Planck Institute for Public and International Law in Heidelberg (PA AA 1950). Another noteworthy example is Kronstein’s acquaintance with *Franz Böhm*, one of the founders of German ordo-liberalism, who was a close friend of Kronstein’s brother Max (Wiedhölter 1989, 219). At the time of the inter-state negotiations Hallstein was in contact with Böhm regarding de-concentration and the problem of cartels (BA 1950).

The transatlantic university network fulfilled another particular function of transnational policy networks when experts mediated between different socio-economic, political and cultural contexts. In the negotiations on the anti-trust provisions of the ECSC treaty, experts mediated between the two complimentary economic and legal traditions of US anti-trust law and German ordo-liberalism both of which emphasize that competition provides the key to economic prosperity and political stability. US anti-trust policy simultaneously pursued an economic, a political and a social-moral goal (Hofstadter 1996 [1964]). Even though the economic rationale and the effectiveness of anti-trust law and policy were always challenged, American society agreed on the necessity to maintain free competition (cf. also Brinkley 1998).

Ordo-liberalism, in turn, was developed in the 1930s by a group of lawyers and economists at the University of Freiburg who were concerned with generating a response to the traumatic economic and political experiences of the Weimar Republic that resulted in the rise to power of the National Socialist regime. Ordo-liberals constituted an intellectual movement with a programmatic interest focusing on the reorganization of the relations between state and society (Gerber 1998, 232-65). They highlighted the need for an economic constitution (*Wirtschaftsverfassung*) and the politics of order (*Ordnungspolitik*). These concepts reflected the conviction that free markets require a state administered framework to guarantee the survival of the market, which gave rise to the notion of ‘ordered competition’ (for example, Kolowski ed. 2000). Ordo-liberals did not constitute a homogenous group, however. Nor was the so-called Freiburg school of ordo-liberalism a ‘monolithic bloc’ (Goldschmidt and Wohlgemuth 2008, 9). A reference to *the* German ordo-liberal model is therefore difficult to uphold. Crucially, both traditions regard competition policy as highly political. Experts affiliated with these traditions therefore were not only knowledgeable in highly complex matters of law and political economy but were involved in reflections about the wellbeing of society.

While competition featured in the inter-state negotiations from the beginning on, the need to integrate specific anti-trust provisions into the treaty resulted from a blend of external pressures (the outbreak of the Korean war in June 1950) and internal developments at the conference. The two-fold structure of the anti-trust articles of the ECSC treaty reflects the understanding of the negotiating parties that cartels or agreements between enterprises were made for a limited period of time and therefore maintained the competitive independence of the enterprises. Concentrations, in contrast, once they were completed, were virtually impossible to dissolve. Article 65 gave the High Authority power to authorize temporary agreements concerning the specialization, the purchase or the sale of specific products if the High Authority concluded at first that such agreements (a) improved the production or distribution of products; (b) were essential to cause these effects without implying any further restrictions; and (c) did not entitle the enterprises involved to fix prices or to control or limit the production or distribution of products. Article 66 stipulated that specific horizontal and vertical concentrations needed to be approved as long as they did not create market-dominating enterprises or restrain competition. A purely textual analysis falls short of

attributing the articles fully to either US antitrust law or German *ordo-liberalism*. The ban of agreements and practices hampering competition (article 65) and of market-dominating enterprises (article 66) resembled US antitrust law. However, treating differently an accumulation of power depending on whether it results from concentration or from an expansion of an existing enterprise is an idea contrary to US antitrust law (Hamburger 1961, 254, 256).

Transatlantic policy networks regarded a supranational institutional framework with an independent high authority as crucially important for implementing a liberal economic policy framework. In particular, it served to control the cartel-oriented heavy industry, which had its own networks that even transcended the divide of World War II (Gillingham 1986). Crucially, both transatlantic networks directly contributed to the draft ECSC treaty and the creation of a supranational European anti-trust law. Accordingly, these networks shaped one crucial dimension of the formation of the first integrated core Europe organization of six member-states. As part of a broader advocacy coalition for free competition they also helped to overcome domestic opposition in Germany and France and realize a competitive policy on the supranational level (for a detailed analysis see Leucht 2009).

European transnational networks and the competition policy of the EEC

The formation of core Europe and the institutionalization of the ECSC altered the framework for both informal transatlantic co-operation and the development of competition policy. During the early years of supranational European integration, apparently irreconcilable tensions between protectionism and market liberalization prevailed in western European states. On the one hand, the High Authority failed to apply the anti-trust rules of the ECSC treaty, largely as a result of opposition by the highly organized and protected coal and steel sectors (Witschke 2009). On the other hand, important advances in favour of free competition were made in some ECSC member-states. When the Six negotiated the treaty establishing the EEC in 1956-57, France and Germany had enacted national laws safeguarding competition (1953 and 1957, respectively). The Netherlands followed shortly thereafter (1958). On the supranational European level, different conceptions of competition embedded in diverging economic and legal traditions kept interacting, too. However, once the ECSC treaty had locked the European integration process into a competitive framework, they succeeded only when they were compatible with the competitive principle.

If we consider transatlantic co-operation against this backdrop, we can assert that unlike at the inter-state conference on the ECSC treaty, there was no direct involvement of transatlantic policy networks in the Val Duchesse negotiations leading to the formation of the EEC. At least two factors accounted for the declining importance of informal transatlantic co-operation. Firstly, the importance of reconstruction and occupation policies had altered. US economic aid for Europe had reached its peak during the Marshall Plan (until 1952). Further, US governmental policy vis-à-vis occupied Germany had firmly come down on embracing

the Federal Republic as a partner in the defence of the West, which is evidenced by Germany's integration into the North Atlantic Treaty Organization (NATO) in 1955. Secondly, although it remained limited to integration within a regional framework, ECSC core Europe represented a realization of the US government's policy preference for a supranational Europe based on a competitive market economy. Institutionalization and with it new forms of supranational and intergovernmental co-operation therefore might have taken away incentives or diminished the necessity for more informal transatlantic co-operation. Two of the actors who continued their co-operation with the ECSC High Authority, for example, were Tomlinson and Ball. The former's official collaboration with the High Authority began in 1953, when Bruce became appointed the first US ambassador to the ECSC. The latter advised the High Authority on behalf of his law firm before he became a fervent promoter of European integration as under secretary of state in the Kennedy administration (Winand 1993).

European actors of the two transatlantic policy networks also remained committed to European integration. One of the better-known cases is Hallstein who as president of the European Commission pursued his vision of a federal Europe with a strong supranational Commission at its core. A less visible example is provided by Bowie who co-edited a comparative study for the European Movement together with his colleague at Harvard, the political scientist Carl Friedrich (Bowie and Friedrich 1954). Mosler, in turn, became a judge at the European Court for Human Rights in Strasbourg in 1959 (MPG undated). In short, whereas the transatlantic policy networks of 1950-51 ceased existing, the commitment of their individual participants to the goal of European integration – core Europe and beyond – did not.

At the same time the newly established institutions of the ECSC might have facilitated intra-European transnational co-operation between actors. Monnet became the first president of the High Authority. He took Uri with him who took over the economics division in the High Authority. The day-to-day business of the ECSC brought Monnet, Uri and their colleagues into a close collaboration with industry, trade unions and civil servants in the six member-states. The ECSC institutions therefore very likely fostered collaboration between policy experts. Further archival research is required to confirm this but we hypothesize firstly, that links existed between the transatlantic university network and the expert network later created within Directorate-General (DG) IV, which translated the competition articles of the EEC treaty into a concrete set of policies in the form of Regulation 17/62. One example of a mutually related actor involves Georgetown-based Kronstein (Leucht and Seidel 2008).

Secondly, policy experts that did not belong to either network at the inter-state negotiations on the ECSC treaty also had the potential to bridge the negotiations on the ECSC anti-trust provisions with the activities of DG IV and thus contribute to the formation of a more European transnational (expert) network. Thirdly, DG IV fulfilled an important function by integrating different actors into the network. Whereas networks preceding the institutionalization of the ECSC/EEC only comprised European actors from Germany and

France, DG IV provided the framework for the emergence of a truly European network, which also included actors from other core European member-states. According to Lee McGowan and Stephen Wilks (1995, 164), DG IV ‘...has created a competition policy network by cultivating close relations with the non-core actors, it has generated its own dynamics, backed with legal precedent, high calibre staff and generational transformations and has proved to be one of the most active and respected of all the DGs.’ A case in point for the second and third hypotheses is *Peter VerLoren van Themaat*. A cartel expert in the Dutch economics ministry, VerLoren van Themaat advised the Dutch delegation to the ECSC negotiations in cartel matters. As director general in DG IV, he later assumed an influential role in formulating the basic ideas of the Commission’s competition policy. In doing so VerLoren van Themaat co-operated closely with *Hans von der Groeben* and *Ernst Albrecht* (Seidel 2009). These two actors highlight another dimension of linking policy experts, namely between the experiences of the ECSC in operation and the EEC negotiations as well as competition policy-making within DG IV.

As head of the Schuman Plan department in the German economics ministry, von der Groeben was influenced by the ideas of the social market economy, which were inspired by ordo-liberal notions of competition, prevalent within this ministry (Löffler 2002, see especially, chapter B.3). Moreover, von der Groeben participated regularly in ECSC meetings in Luxembourg and was certainly aware of the difficulties the High Authority faced in the implementation of the anti-trust articles. Von der Groeben co-authored the Spaak report (1956) with Uri whom he already knew. The report included a chapter on competition and set the agenda for the inter-state negotiations on the EEC treaty. Von der Groeben then chaired the internal market committee at the Val Duchesse negotiations and together with *Alfred Müller-Armack*, the secretary of state in the German economics ministry, defended an ordo-liberal approach to competition (for example, Müller-Armack 1971, 114). Albrecht, in turn, had written his doctorate under the supervision of German neo-liberal *Fritz W. Meyer* and worked for the secretariat of the ECSC Council of Ministers in Luxembourg before he became secretary of the Internal Market Committee at the Val Duchesse negotiations on the EEC treaty.

When von der Groeben was appointed commissioner for DG IV, he created a network of academic advisors, among them *Erich Mestmäcker*, a former student of ordo-liberal Böhm, who also became influential in the development of DG IV’s competition policy (Leucht and Seidel 2008; Seidel 2009). Finally, if we contrast the experts who as part of transatlantic policy networks helped to safeguard the competitive framework of the ECSC treaty with such actors as VerLoren van Themaat and von der Groeben, we can conclude that competition policy expertise was by the late 1950s officially established at the very core of the European integration project.

As to the contents of the competition articles of the EEC treaty, important path dependencies had been created by the introduction of the ECSC treaty’s anti-trust provisions, which provided a source for the competition rules of the EEC. However, while article 65 in

particular served *one* important precursor for the competition rules of the EEC treaty, articles 65 and 66 were not suitable for a common market integrating the entire economies of the six member-states. The competition rules of the ECSC treaty were tailored to the particular conditions of the coal and steel market with the aims of de-concentration and decartelization of these industries. Horizontal integration required different legal tools to guarantee a fair and just competition in the common market. In short, the EEC articles reflected the changing requirements of market liberalization from sectoral integration in coal and steel to horizontal integration (Leucht and Seidel 2008).

The competition rules of the EEC treaty covered four areas and were in this respect more extensive than those of the ECSC treaty. The four areas were restrictive practices and dominant position (articles 85-90); dumping (article 91), state aids (articles 92-94) and taxation (articles 95-99). While the ECSC treaty covered dumping and state aids, these provisions were more specific in the EEC treaty. Like article 65 in the ECSC treaty, article 85, paragraph 1 contained a general prohibition of agreements while paragraph 3 of this article listed the exemption clauses. The principle of prohibition corresponded to the US anti-trust and the *ordo-liberal* conception, but was otherwise not widely supported in western European states, which were generally more lenient towards cartels. French law, for instance, favoured the abuse principle. Article 86 on market-dominating positions only roughly corresponded to article 66 in the ECSC treaty. It did not deal with mergers but was more fully developed than its ECSC counterpart as it included examples of abusive conduct (Gerber 1998, 345). However, the EEC treaty remained silent on concrete measures regarding the realization of a common competition policy. It also left open the distribution of competencies between national governments and community institutions. Contrary to the ECSC treaty, the EEC treaty was a framework treaty and fixed neither the institutional arrangements nor the rules of application of the competition provisions. Accordingly, the competition rules in the EEC treaty provided a framework for a competition regime that was to be fleshed out later (Küsters 1982, 367).

Finally, the competition articles of the EEC treaty also represented a compromise between divergent approaches to safeguarding competition. In the context of the various inter-state negotiations, including the Val Duchesse negotiations, leading to the formation of the EEC German *ordo-liberal* concepts clashed with the more protectionist French approach to competition. Incipient research has suggested that while these approaches might be labeled German or French, actors continued to align across national boundaries to overcome domestic opposition and realize a competitive policy on the supranational level (Leucht and Seidel 2008). This is particularly visible in the process of formulating and implementing Regulation 17/62 (1958-62). Regulation 17/62 arguably established the ‘Rhenish model’ at the European level in that it contained a general prohibition of restrictive practices and a notification system, which centralized control for cartel policy at the Commission.

The Commission’s initial proposal dating from October 1960 already included these principles. They were in line with von der Groeben’s aim of creating a European competition

order, which he and his collaborators formulated in a key text published in 1961 (von der Groeben 1961, 10; von der Groeben 1995, 244-5, 258-9). A strong competition policy, which concentrated power at the level of the Commission was also favoured by director-general VerLoren van Themaat. Gerber argues that ‘since the inception of the European Community, France and French officials have often tended to resist a more vigorous role for competition law in the process of European integration’ (1998, 180). In fact, however, a group of French civil servants thought that far-reaching competition rules at the European level could serve their interest of modernizing the French economy (Warlouzet 2007: 930). As the draft regulation was backed by a strong coalition that included the German and Dutch governments, the Commission and the European Assembly, they were able to circumvent the more protectionist French ‘model’ without even having to push the agenda themselves (Seidel forthcoming). Consequently, in spite of a strong initial opposition to this approach by French business associations, the French, Belgian and Luxembourg governments, the Council adopted Regulation 17/62 in February 1962.

Conclusions

Our analysis of the genesis of EU competition policy, while in part to be verified empirically, firstly has confirmed the significance of both state and non-state actors who co-operated across national boundaries. The making of this supranational policy therefore cannot be understood as a bargaining process between member-state governments. Even more, informal co-operation between actors in network-like arrangements not only preceded the institutionalization of core Europe institutions in 1952, but also went beyond the geographical confines of core Europe.

Secondly, utilizing the network concept to identify which actors were involved in policy-making has also helped to draw the boundaries of these networks. Neither in the initial period, 1950-51, nor later, when DG IV assumed centre stage in the development of EU competition policy, were UK actors linked to policy and expert networks. The *de facto* exclusion of UK actors explains why the ideas and concepts of UK competition policy played little or no role in the making of EU competition policy.

Lastly, we would like address again the link between networks and the difficulty of using national models. In his acceptance speech of the Ludwig-Erhard Prize in 1998, competition Commissioner Karel van Miert characterized Ludwig Erhard’s social market economy as a model that surpassed the national level (cf. also Denord 2008, 30-1). Van Miert explained that using the positive image of this model, which was inextricably connected with the economic miracle in Germany after World War II, has facilitated the acceptance of a strong European competition policy in the Eastern European accession countries. Such an acceptance was easier to achieve with arguments of the *social* market economy than, for example, with arguments used by the Chicago school (van Miert, 1998, 2). This demonstrates that a national model – which, following the initial distinction, should probably rather be called an ideal type – embodying a certain image can facilitate the acceptability of what has become a genuine European competition model which cannot exclusively be ascribed to German *ordo-liberalism*.

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