The Centralization of EU Competition Policy by the Commission. Historical Institutionalist Dynamics from Cartel Monitoring to Merger Control (1956-89)

DRAFT for the CES conference, Washington 2014

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Abstract

The contemporary strength of EU competition policy does not stem naturally and mechanically from the Treaty of Rome, or from the spread of 'neoliberal' ideas or the Single Market programme. It is rather the product of decades of dynamics underlined by historical institutionalism, which allowed the Commission to secure decisive powers, despite the unwillingness of some of the most powerful member states. In this regard, the two most important cornerstones were regulation 17/62 on cartels and 4064/89 on mergers. The Commission benefited from the path-dependencies created by regulation 17/62 and developed a centralized institutional framework with itself at the centre. It was this progressive centralization which paved the way for the current dynamic of modernization through decentralization which has characterized EU competition policy in the 21st century.

Introduction

Competition policy is probably the domain in which the European Commission has enjoyed the largest influence over economic actors, be they companies, consumers or nation states. Nowadays, the 'modernisation' process of EU

competition policy involves a 'decentralisation' of competences. This evolution cannot be understood without considering the previous dynamic of the centralization of power. The centralization process in competition policy refers to a process by which the Commission has acquired a monopoly, both in terms of information and in terms of decisions on anti-competitive practices. This outcome stems mainly from two pieces of legislation which were milestones, regulation 17/62 on cartels and regulation 4064/89 on mergers.

The literature has generally emphasized the merger regulation. Its adoption has often been described as a natural consequence of the Single market, which unleashed a dynamic of European economic integration supported by the European Court of Justice Philip Morris decision (ECJ 1987), and the corresponding support of business actors (Bulmer, 1994; Büthe and Swank, 2007; Pollack, 2003). It has also been described as a logical outcome of the spread of neoliberal ideas and of the influence of transnational capitalism (Buch-Hansen and Wigger, 2011).

I argue that the centralization of the competition policy decision-making process by the Commission was not only linked with structural dynamics, but was the result of fierce negotiations with member states. The outcome of these negotiations, the decision to centralize powers under the Commission, can only be understood by referring to phenomena of institutional path-dependencies and unintended consequences of the decision-making process underlined by historical institutionalism (Pierson, 1996; Fioretos, 2011).

This contribution will examine the decision-making process leading to the regulations 17/62 and 4064/89 by drawing on the literature, and by using EU and national (UK, Germany, France) archival records from the 1950s to the late

1980s, in particular recently declassified material on the final years (1988-1989) of the negotiations on the merger control regulation.

After a first section on the relevance of historical institutionalism for the study of competition policy, a second section will delve into the origins of regulation 17/62, before a third section will examine the negotiations leading to the 'Merger regulation' of 1989.

Historical institutionalism and competition policy

There is now a large body of literature on the history of European Competition Policy. However, most of it is divided between historical literature on the origins of regulation 17/62, and political science literature on the dynamics leading towards the Merger regulation. Several contributions do certainly offer a wider chronological perspective, but they take an interest in only one aspect of competition policy (either cartels or dominant position, usually), or are often sketchy on the decision-making process. Conversely, studies devoted to the detailed examination of the decision-making process in European institutions over a long time frame generally treat competition policy as a minor field (Moravcsik, 1998, pp. 218-9). As a result, there is room for a detailed study of the decision-making process of the crucial milestones in the development of European competition policy.

In order to overcome the historian's tendency to indulge in a detailed chronological narrative, the recourse to historical institutionalist tools is useful. Historical institutionalism (HI) posits that time matters in explaining the outcome of the decision-making process. It is not similar to narrative history:

‘historical institutionalism is less about drawing lessons from or documenting the past than it is about identifying the conditions under which and mechanisms by which the past affects the present and the future’ (Fioretos, 2011, p. 383). It posits that temporality has an influence through two crucial mechanisms, ‘path-dependency’ and ‘unintended consequences’. The first dynamic means that decision-makers are constrained by decisions taken earlier on, sometimes decades earlier. They do not negotiate on a blank page. ‘Path-dependencies’ make alternative designs more difficult to promote, even those which would, in theory, be more in tune with the actors’ preferences. ‘Unintended consequences’ mean that the outcome of negotiations can appear as disappointing after a first apparent victory. This is, for example, the case when a regulation is not implemented in the way anticipated during its negotiation. As a result, HI aims to use history to understand why actors took decisions which appear, with hindsight, illogical or detrimental to their interests. It is especially suited to the study of European institutions. Within the European institutional framework, national decision-makers are especially constrained by the partial autonomy of supranational institutions, the multiplicity of technical issues to master, the limited time-horizons of national decision-makers, and their shift in policy preferences (Pierson 1996).

HI is especially suited to the study of competition policy since this field has barely been affected by Treaty revision, and had largely been considered as secondary by national officials for most of the period considered. Competition policy developed as a significant public policy in West Germany in the 1960s, but in most other countries only in the 1980s. In the United Kingdom and in France, where provisions had already existed for decades, competition policy

was often subdued under the influence of more powerful policies like price policy or industrial policy. As a result, even when the merger regulation was negotiated in 1989, competition policy was a new area of expertise, and not a priority for decision-makers. Such a new and technical field came with the high risk of unanticipated consequences. More generally, national ministers have changed frequently and do not consider this issue as being at the core of their agenda (except in Germany).

It is necessary, however, to use HI in a neutral way regarding the balance of power between member states and the Commission. Indeed, the Commission's officials can also be affected by the dynamics of path-dependency and of unintended consequences. Lastly, archival records are particularly useful to assess whether decision-makers were really constrained by past agreements, or whether they were free to discuss alternative designs. Taking into consideration the alternatives seriously considered by the decision-makers, that is to say, discussed within the Council either on the proposal of the Commission or of member states, enables the researcher to depart from a teleological tendency which had affected some early works on the history of European integration (Gilbert, 2008). Such a teleological vision would ascribe the current situation to a natural, mechanical and smooth evolution, whereas the situation of the 1960s reveals how deep the controversies were.

The path-dependencies of 1962

The foundational years of EEC competition policy, namely between the negotiations of the Rome Treaty in 1956 and the passing of regulation 17/62 in 1962, have now been thoroughly examined (Bussière 2007; Hambloch 2009; Pace and Seidel 2013; Pitzer 2009; Warlouzet 2011, pp. 269-338). Drawing on

this vast body of literature, which does not use HI concepts explicitly, and on further research in archives, this contribution will focus on the question of centralization between 1956 and 1962. It will underline two points. The first is the contrast between the vague and general provisions of the Treaty of Rome regarding competition policy, and the institutional outcome of regulation 17/62. Secondly, the importance of path-dependency and of unintended consequences will be underlined by pinpointing the discrepancy between the anticipation of actors during the negotiation of the regulation, and its early implementation.

The vagueness of the Rome Treaty

The Treaty of Rome was largely influenced, with regard to the competition policy provisions, by a confrontation between the French and the Germans. This is logical considering the sheer weight of both of these countries, but also their contrasting national experience in this domain.

France had the oldest national law in the original EEC, dating back to 1953. However, the expression 'competition policy' was largely unknown in those days. Provisions against cartels were embedded in price policy whose aim was to fight against 'restrictive practices' with an inflationary effect. The 1953 law had established a consultative committee linked to the Ministry of Economics. The cartels were generally cleared, and 'no drastic sanctions' were taken (Riesenfeld, 1962, p. 469).

Germany had no law on its own when the Treaty of Rome was negotiated, except the allied law of 'decartelization'. However, it was in the last stage of a longstanding debate which had begun right after the creation of West Germany in 1949. The law against the restriction of competition was eventually adopted

in July 1957 but some of its features were already visible in 1956, when the Treaty of Rome was negotiated. Two of these contrasted vigorously with the French example. Firstly, competition policy was considered in Germany as crucial in the building of the new democratic and liberal Germany, which would break from the past, as the National-Socialist era was associated with cartelization (Gerber, 1998, pp. 232-65). For ordo-liberalism, a school of thought which influenced many German officials, economic liberalism was strongly linked to political liberalism and competition policy played a central role in this process. It was part of an 'economic constitution' designed to ensure that individual freedom was guaranteed. Secondly, the principle of prohibition had already been largely accepted in 1956 (Nicholls, 1994, p. 316). It meant that all cartels were banned, unless they were explicitly authorized by an authority. The prohibition principle of the aforementioned German law contrasted with the abuse principle adopted in France (all cartels are authorized unless they are explicitly banned). There was no merger control. The Minister of Economics Ludwig Ehrard did not want to weaken the industry with stringent provisions against concentration.

During the Treaty of Rome negotiations, these positions translated into a clash of models. The French proposed a competition policy based on the abuse principle, and on the same treatment of all restrictions to competition: cartels, concentration and individual practices (EU archives, 1956a). They feared the competition of the larger German companies. The Germans had a reverse position: they put an emphasis on the fight against cartels, and they were more lenient against concentrations. Above all, Alfred Müller-Armack, the German negotiator and a close collaborator of Ludwig Erhard, insisted on securing the

prohibition principle. He explained that it was compulsory for domestic reasons: if the prohibition principle was not upheld at the EEC level, it could be threatened at the national level (EU archives, 1956b; German published documents, 1956a).

The two sides agreed on one point: they did not want to give large power to the European authorities in this remit. For the French, competition policy was only a minor field, especially considering the failure of the ECSC policy in merger control (Witschke, 2009). For the Germans, what was most important was to preserve their future national law whose longstanding negotiation was not yet completed. That is why both countries accepted the compromise presented by Hans von der Groeben, the president of the group negotiating the articles on competition policy (EU archives, 1956c). It left the main questions largely unanswered: article 85 EEC (article 81 EU / article 101 TFEU) contained the prohibition principle in the first paragraph, but also the exception in the third paragraph. This association of a prohibition provision with an important exception looked like the French abuse law. Article 86 EEC (article 82 EU / article 102 TFEU) on dominant position was vague and article 87 EEC left the implementation of the first two articles to a further regulation. It was clearly stated that this future regulation should take into account the national laws (article 87-2e), and 'the need, on the one hand, of ensuring effective supervision and, on the other hand, of simplifying administrative control to the greatest possible extent' (article 87-2b). In other words, no clear institutional framework was defined by the Treaty.

The decisive regulation 17/62

Regulation 17 in 1962 clarified the uncertainties of the Treaty of Rome in three ways. Firstly, it interpreted article 85 as a ban on cartels. It followed the German interpretation rather than the French theory of 'abuse', despite the fact that the wording of article 85 was somewhat close to article 59 of the French law of 1953. Secondly, it gave a clear priority to the fight against cartels (article 85 EEC) on the monitoring of dominant position (article 86 EEC). In the same vein, the action on other fields of competition policy like public monopolies (articles 90 EEC) or state aid (article 92 EEC) was postponed. This choice enabled the Commission to concentrate on relatively low-key cases, and thus to progressively nurture its ambition without threatening big companies or crucial domains of state intervention in the economy. As a result, competition policy progressively asserted itself as a genuine public policy, with its own logic and independent from other fields like industrial, social or regional policy. This stance had been constantly affirmed by the commissioner for competition Hans von der Groeben, and it corresponded to the German vision much more than to the French one.

Secondly, regulation 17/62 gave extensive power to the Commission which received a monopoly on information, via the notification procedure, and on decisions, as the committee of member-state experts was only consultative. As article 85-1 EEC was interpreted as a full prohibition on cartels, an institution was required to grant the exemption of article 85-3 EEC. The Commission fulfilled this role. Again, the German model was probably the closest to the regulation 17/62 system, even if it was not a pure adaptation since the Commission was a political institution, and not an independent administrative

authority like the Bundeskartellamt (BKA), the German competition authority created by the German law of July 1957.

This outcome does not mean that the German national government's conception prevailed, but rather that a reinterpretation of the German experience by the European Commission prevailed. Bonn had different priorities in 1960, when the negotiation over the future regulation began. It wanted to preserve the competences of its national competition authority, the BKA, and thus refused to envisage the centralization of decision-making with the Commission at first. The BKA proposed to follow the German experience more closely, by setting up an independent cartel authority, with less risk of political interference than the European Commission (German archives). Eventually, Bonn altered its stance and accepted the revised proposal of the commissioner Hans von der Groeben. The latter was a German but he was not exactly on the same wavelength as Müller-Armack and Erhard. During the Treaty of Rome negotiations, he displayed a stronger sense of enthusiasm than they did for European integration, and he had already proposed to set up a strong European institutional framework to ensure the implementation of competition rules.

Alternative schemes were also envisaged by the French negotiators. From the start, they had defended an interpretation of the Rome Treaty based on the abuse principle, and a decision-making process based on the association of the Commission and of the member states. At the beginning of the negotiation, the principle of abuse was supported by Belgium and Luxemburg. Most of the member states, however, were keen to centralize the decision-making process under the supranational institutions to ensure a consistency in the implementation.

More generally, there was no consensus on the necessity to centralize both the assessment of the agreement and the power to take final decisions under the European Commission. It appeared as logical for many actors to separate both tasks, as in the French experience, or to create an independent authority, as in the German and British cases.

This success of the commissioner von der Groeben has sometimes been considered mainly as a side-effect of an intergovernmental bargain between France (which secured the CAP on 14 January 1962) and Germany (which got the agreement on competition policy). This intergovernmental bargain certainly played a role but it does not demonstrate that the member states got what they wanted, as the gap between the initial wish of the German government and the final regulation shows. Moreover, this bargain was unnecessary to conclude the agreement. According to article 87 EEC, the regulation could have been adopted by a qualified majority voting in 1961, so France, isolated along with Luxembourg in its opposition, could have been outvoted. This scenario was explicitly envisaged by a note of the French European Department (French archives, 1961c). Indeed, in those days, before the Luxembourg compromise, qualified majority voting was sometimes used when the Treaty allowed it.

The commissioner von der Groeben also made concessions. He accepted to alter his initial proposal of 1960, in particular by taking into account the European Parliament report of Deringer, and specific French requests. For example, the French policy against vertical agreement was more severe than that of its neighbours, including Germany, as the German law targeted horizontal rather than vertical restraints. Thus, France secured article 22, which stipulated that, within a year of the regulation's entry into force, the Council (on

a proposal of the Commission) was to examine the possibility of making the notification procedure mandatory for certain types of agreements. This clearly meant distribution agreements according to the French interpretation, which was accepted by DG IV (French archives, 1961d). These additions did not contradict, and even reinforced, the main features of regulation 17/62, namely a genuine pro-competition approach and full centralization under the Commission.

Path-dependency during implementation

The implementation of regulation 17/62 quickly became a nightmare for the Commission. In April 1963, the Commission received 36 000 notifications while DG IV had only 78 officials in 1964. It was a daunting task both from a practical and from an intellectual point of view. This 'backlog' paralyzed the DG IV for decades. This created a strong and negative path-dependency for the Commission.

The origins of this backlog are usually attributed to the notification procedure of regulation 17/62 but, strictly speaking, this is not exactly the case. In fact, the Commission received only 800 notifications in November 1962. As a result, commissioner von der Groeben sought to encourage further notifications (French archives, 1962). This stance of von der Groeben's was clearly an error of judgment. The perspective of a flow of notification was anticipated during the negotiation. It was even mentioned in the introduction of regulation 17/62. Von der Groeben probably underestimated the extent of this flood of declarations, and he thought that he could count on the support of the Council to get grant exemptions.

The study of the adoption of regulation 17/62 and of its early implementation demonstrates that these events of 1956-62 produced a threefold path-dependency: firstly, the prohibition principle and the focus on cartels meant that competition policy could progressively emerge as an independent public policy, as in the German case. Secondly, the centralization of information and of decision-making under the Commission was a surprising outcome considering the wording of the Treaty, and the number of alternatives considered by senior officials. It gave the supranational executive great potential power, but also heavy responsibilities. Thirdly, the mismanagement of the notification process led to a backlog problem which affected DG IV for decades. These three dynamics all had a direct influence on the merger regulation twenty years later.

III. The 1989 merger regulation

The 'merger regulation' of 1989 empowered the Commission to review all mergers of 'European dimension', i.e. beyond a certain threshold. As it was implemented effectively from the start, by contrast with the ECSC Treaty's merger provisions or regulation 17/62, it is a clear watershed in the history of European competition policy. As a result, it brought about a large number of studies. They generally underline the role of market dynamics, in particular the powerful dynamics unleashed by the Single European Act, or through transnational networks of private actors fostering a neoliberal agenda. A decisive role is generally attributed to the pressure created by the Philip Morris judgment of 17 November 1987 (Joint cases 142 and 156/84). When the ECJ recognized the right of the Commission to exert a merger control on the basis article 85 EEC, business companies feared for the legal security of their operations. Thus, they put pressure on their national governments to agree on

the long-awaiting merger regulation, first proposed by the Commission in 1973 but adopted only in December 1989. This momentum created by the Philip Morris judgment is considered as the most important factor leading to the adoption of the merger control by the most convincing account of the negotiation, either almost exclusively (Büthe and Swank, 2007; Pollack, 2003), or in conjunction with other factors such as the leadership of the commissioners for competition (Cini and Mc Gowan, 2009) or member states' bargaining (Bulmer, 1994). However, the interplay between these actors has been studied only rather sketchily. The availability of archives now allows us to deepen our understanding of the decision-making process, and to link it with the path-dependencies of regulation 17/62.

This article does not dismiss the importance of the Philip Morris dynamic but it will consider that the judgment was insufficient to bring about a successful conclusion of the negotiation. The same could be said of the rise of neoliberal ideas and of the Single Market programme. There was no article reinforcing competition policy in the Single European Act of 1986, which by contrast insisted on regional policy, industrial policy, and research and technology policy. It was the implementation of the SEA and the single market dynamic, which were important (Jabko, 2006). Lastly, the ideological explanation is insufficient as the 'neoliberal' term also encompasses theories hostile to the development of competition policy like the second Chicago School. This contribution will put an emphasis on the role of the commissioners Sutherland and Brittan in exploiting the path-dependencies stemming from the regulation 17/62 to convince the member states, but also on the neglected role of purely political factors.

The role of commissioners

The Commission played a leading role in the negotiation, especially the commissioners Peter Sutherland (1985-89) and Leon Brittan (1989-93), both of them committed to fostering a stronger and more independent competition policy. The first was both a federalist and committed to the development of free markets, whereas the second was a Thatcherite following an ideological agenda of scaling back *dirigiste* economic policy. Both of them managed to associate the technical skills of the DG with a new spirit of entrepreneurship (Montalban, Ramirez and Smith, 2011).

The path-dependency of regulation 17/62 was visible in the merger regulation proposals. From the start of the negotiation in 1973, they were based on an institutional template close to regulation 17/62, with a priori notification procedure and a centralization of the decision-making powers under the Commission. The main difference was the criteria to allow a merger, which encompassed non-competition criteria from 1973 to 1988. It was possible to authorize a merger according to the notion of 'general community interest' (in various wordings) in the first three proposals (EEC Commission, 1973, 1981, and 1984). The emphasis changed with Sutherland, who modified the regulation's proposal to align it more closely with the 17/62 template. In 1986, he lifted the previous concession granted by his predecessor Andriessen, which altered the centralization under the Commission by allowing more consultative powers to the Council (EEC Commission 1986). In 1988, he decided to impose the sole criterion of competition in the new proposal of the Commission (EEC Commission 1988). Moreover, Sutherland managed to make credible the threat

of using article 85 EEC unilaterally against mergers. It is well known that after Philip Morris, the commissioner took advantage of the Philip Morris ruling to take several decisions in 1988. The French archives also reveal that Sutherland had already used this threat before this ruling, at the end of 1985, and that the French officials took this blackmail seriously (French archives, 1985).

The more assertive style of the new commissioners certainly played a role. Sutherland and then Brittan decisively increased the centralization process over the Commission in two areas, the liberalization of sectors previously sheltered from open competition, and state aid control. In the field of state aid, the Commission did not hesitate to demand the repayment of large sums of aid, whereas a more lenient attitude had been adopted beforehand. The French state was especially targeted, as it had massively subsidised many ailing firms. As a result, in February 1989, French officials decided to adopt a conciliatory attitude in the merger regulation negotiation in order to alleviate Brittan's concern over French state aids (French archives, 1989a).

The role of negative path-dependencies

The Commission was also able to benefit from negative path-dependencies. To start with, the Philip Morris ruling of 1987 was a negative legacy for the Commission as it reversed the decision of the Commission to authorize the deal. This demonstrates that there was no coordination between subnational (companies) and supranational actors (the Commission and the ECJ). The most important negative path-dependency was the backlog of regulation 17/62. Even though it was milder in the 1980s than in the late 1960s, it was still weighing heavily on DG IV resources. Paradoxically, this negative legacy certainly

helped the Commission in two ways. Firstly, it led important member states to believe that the merger regulation would probably not lead to an assertive policy. This was one of the main reasons for Germany's opposition to the regulation, as the German experts feared that the European merger control would be more lenient than the national one (German archives, 1989a). Conversely, this argument played a role in the last-minute agreement of Bonn to the regulation in December 1989. The German government was represented by the German Minister of Economics Haussmann and his deputy Schlecht, who appeared as far less hostile to mergers than the Bundeskartellamt. The latter remained very critical in late 1989, whereas Schlecht explicitly criticized the BKA's position, and underlined the necessity for companies to grow (German archives, 1989b). At the same time, the Minister of Economics had authorized a controversial German merger between Daimler-Benz and MBB, despite the BKA's opposition to it. The backlog also helped to overcome the French fears of an overactive European merger policy. Many French officials supported the merger regulation because they anticipated a relatively lenient policy, which would be useful to alleviate the 'protectionism' of its neighbour. In particular, many French officials were concerned by the BKA's prohibition of a takeover of a German company (Grunding) by a French one (Thomson) in 1983 (French archives, 1988). In those days, the French socialist government was undergoing a policy of macro-economic stability. It had abandoned its previous 'heroic industrial policies' in favour of a more market-oriented industrial policy (Schmidt, 1996). As a result, a progressive development of the EEC competition policy was welcomed.

The second impact of the backlog was to concentrate the debate on the means of ensuring effective implementation. This is why the debate concentrated (following the wishes of the UNICE, Germany, and the United-Kingdom in particular) on the question of the dual implementation of national and European authorities, and on the delay of the procedure (in order to ensure a quick assessment of mergers). Sutherland had already progressed on these issues, but it was Brittan who secured the final agreement with further concessions regarding the exclusive implementation of the regulation to mergers, and the so-called 'German' clause concerning national authorities (French archives, 1989b). This focus meant that two other features of the regulation, the centralization under the Commission and the competition-only criterion, were less discussed. Many countries, including France and Spain, wanted to include the non-competition criterion but they were uncoordinated and marginalized by the most important debates (French archives, 1989c).

Political motivations

The last factor to consider, independent from regulation 17/62, was the question of pure political motivation. Two political priorities were regularly underlined in the official instructions for the French negotiators in 1989 (French archives 1989d). The first was to get a final deal under the French presidency, during the second semester of 1989. President François Mitterrand was eager to appear as a new builder of Europe. Whereas competition policy was not a priority for Paris, successfully concluding this 26-year long negotiation under the French Presidency was certainly an interesting opportunity. The other one was the impossibility of isolating Germany in the debate, for the sake of the Franco-

German axis, already strained in those days by the reunification process. Both of these arguments softened the French concerns regarding the centralization under the Commission and the competition-only criterion. Several senior French officials criticized the deficiencies of the proposal as it did not take into account non-competition criteria, but they were sidelined for the sake of the aforementioned political priorities (French archives, 1989e).

The British archival records clearly show that the last round of the negotiations (November-December 1989) was played between the Germans and the British on the issue of the competences of national authorities (British archives, 1989). France appeared as an honest broker determined to reach a compromise quickly.

In Germany, reunification certainly played a role. It is well known that the quick pace of reunification after the Fall of the Berlin Wall on 9 November 1989 worried some EEC member states. In late November and early December, the priority of Kohl and Genscher was to dissipate the impression that Germany 'emerged as a brake on the European unification process' (Dyson-Featherstone, 1999). They felt compelled to reaffirm the West German European credentials during the Strasbourg summit of 8-9 December 1989, in particular by accepting to set a date for an intergovernmental conference on the EMU. Since Germany was the most reluctant state in the merger regulation negotiations, being the last one to block a compromise fostered by France was probably not the best option for Bonn (French archives, 1989f).

The adoption of the merger control regulation was a watershed for the Commission. Its action with regards to cartels had always been discussed, as the most damaging cartels were probably safely hidden from the DG IV, drowned

under its thousands of notifications. With regards to mergers, this fundamental question of impact was irrelevant since mergers cannot be hidden. The sheer economic (and often political) importance of the operations considered forced the Commission to take decisions quickly without accumulating a backlog. Last but not least, the commissioner Brittan seized the opportunity provided by this regulation to wage a rather active merger policy. In 1991 the Commission banned the merger between the Franco-Italian company ATR and the Canadian De Havilland. French officials reacted angrily, with members of parliament shouting 'Delors démission!' ('Delors, resignation!') in the French National Assembly, but the decision cannot be reversed by the member states. This was a spectacular illustration of the notion of 'unintended consequences', as most of the French officials negotiating the regulation did not anticipate such an outcome.

Conclusion

Long-term path-dependencies have influenced European negotiations in many ways. Regulation 17 of 1962 remains important in our understanding of the European competition policy as it solved the uncertainties of the Treaty of Rome. Many alternatives to the institutional design finally chosen were seriously considered, such as associating the member states to the decision-making process, setting up an independent authority or adopting the abuse principle. Regulation 17/62 created three long-term path-dependencies: a centralization of the decision-making process under the Commission (both in terms of information and in terms of decisions), a competition-only criterion, and the backlog. The three of them influenced the negotiations of the merger

regulation, and were interrelated with unintended consequences. The experience of the backlog was useful to alleviate the fear of a proactive European merger control policy. This was a dramatic error in the French case, as the indignant reaction to the ATR/De Havilland merger illustrated. The notion of 'unintended consequences' also concerned the Commission, which did not anticipate the extent of the backlog problem in the 1960s. It was triggered partly by an unanticipated consequence of the French insistence on targeting distribution agreements, and of the Council's reluctance to grant block exemptions.

Taking into account the long-term impact of path-dependency and the notion of 'unintended consequences' does not diminish the role of individual actors, quite the contrary. It is helpful to underline the limits of the automatic explanations, such as those which put an emphasis on legal integration (the Philip Morris case) or ideological factors. In all the negotiations studied, member states played an important role, in particular France and Germany, but they were often internally divided. French influence on both the implementation of regulation 17/62 and the adoption of regulation 4064/89 has often been underestimated, as was German reluctance to grant powers to the Commission in the 1960s.

Several commissioners for competition had a strong impact, in particular von der Groeben, Sutherland and Brittan. In a technical issue like competition policy, the Commission was able to play a decisive role, in particular thanks to interrelated issues (state aid). The agreement of member states, however, remained indispensable. The latter were convinced by institutional, political and economic arguments, such as the necessity to ensure credible commitments, but also by miscalculations and path-dependencies.

With regard to current debate, the path-dependencies of regulations 17/62 and 4064/89 have remained crucial. The combination of centralization and of the competition-only criterion has created an independent practice of European competition policy, which then allowed the Commission to decentralise its implementation, partly under external pressure and partly of its own wish. This process was not implemented without resistance from within the Commission, probably considering how long the process of centralization had taken. In the end, the decentralization triggered a transfer of the enforcement task, rather than of decision-making regarding the main orientation of competition policy. Understandably, the Commission is still not ready to abandon completely the centralization gained with such difficulty during those decades.