Judging in Europe: Do Legal Traditions Matter?

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Journal of Competition Law & Economics (forthcoming)

Abstract

EU competition appeals typically involve applications by private businesses to annul decisions made by the European Commission. Moreover, these appeals are first assigned at random to a chamber, with a judge then designated as the rapporteur who will be most closely involved with the case. Using hand-collected original data on the background characteristics of EU judges and on competition judgments by the General Court between 1989 to 2015, we test the extent to which the legal origins of judges bear a statistically significant effect on case outcomes and that the rapporteur plays a crucial role in the decision-making process. In particular, if a rapporteur comes from a country whose administrative law has a strong French influence, the decision is more likely to favor the Commission than if he is from any other EU country. These results are robust to alternative political ideology variables, including left-right politics and a preference for European integration.

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1. Introduction

Competition law is a global enterprise. Yet despite the powerful forces of globalization and the pressures for convergence and harmonization, pronounced differences remain between the United States and the EU, the world's two most advanced antitrust regimes. Experts have attributed this divergence primarily to asymmetrical judicial intervention, particularly the jurisprudence of the highest court in each jurisdiction (Fox 2014). Indeed, decisions from the Court of Justice of the European Union (CJEU) often appear formalistic and legalistic, in sharp contrast to their US counterparts (Fox 2014). In highly salient competition cases such as *Microsoft*, the General Court decided to defer to the European Commission (Commission) when it came to complex economic or technical analysis, whereas in *Intel*, the court relied on some antiquated precedents and completely dispensed with economic analysis. Similarly, in cartel cases, the court tends to defer to the Commission when fine-based sanctions are entailed, despite the fact that it enjoys unlimited jurisdiction in evaluating the fines (Forrester 2012).

But this phenomenon is hardly unique to competition law. As the substance of EU law becomes more technical and sophisticated in other areas such as agriculture, intellectual property, and state aid, the CJEU is increasingly seen exercising "light judicial review" over administrative actions (De la Serre and Anne-Lise 2008; Donnely 2010). But there are notable exceptions. In some early competition cases, as well as a number of merger cases in early 2000s, the Luxembourg court engaged in extensive and in-depth economic reasoning, striking down a series of the Commission's decisions (Forrester 2010). The impact of these rulings was far-reaching, triggering a major internal restructuring within the Commission. The variance of the court's standard of review therefore caused much confusion among practitioners and academics, who accused the court of producing inconsistent, illogical, and incomprehensible case law (Forester 2010; Colomo 2013).

What explains the difference in judicial intervention in the United States and the EU? More specifically, how do we explain the variance that practitioners have observed in the court's approach to reviewing the Commission's decisions? Further, what has contributed to the growing trend of "light" judicial review? Existing literature on EU competition law has tried to rationalize this by referring to its legislative history and philosophical underpinnings, where German ordoliberalism assumes a fundamental role (Gerber 1998). While ordoliberalism may have been an important force in shaping EU competition law, it fails to resolve the puzzle of why there has been growing convergence between US antitrust law and EU competition law at the agency but not the judiciary level. Nor does it explain the variance in the judicial standard among different cases and the growing trend of light judicial review.

We believe that the main problem with the current literature is that it tends to view the CJEU as a black box and ignores, or even denies, one crucial element in judicial law making—human behavior. Indeed, if we view judicial outcome as a good, its output is mainly determined by two factors. One is the input of human capital, and the other is the process of producing the good, in this case, the process of how decisions are made. In order to fully understand judicial output, it is therefore essential to make an in-depth

inquiry into both the decision-makers and the decision-making process, as well as the underlying institutional framework within which they operate.

To begin, the jurisprudence of EU competition law has been produced by an international tribunal consisting of judges from countries with varying legal traditions within Europe (a few common law and several civil law jurisdictions). Legal economists have long argued that a country's legal heritage shapes its approach to property rights as well as the level of control that state sovereignty exercises over judges (Mahoney 2001). Although there are disagreements concerning the particular inclinations of different legal cultures (Garoupa et al. 2017, Patrick 2010), it is widely accepted that a judge' training within particular legal traditions instill in him[1] a particular understanding of the role of the courts in relation to the government. At the same time, the loosely-worded provisions of the EU Treaty provide judges with ample discretion in determining proper levels of scrutiny in administrative decisions (Stone Sweet 2004). This is especially true with regard to competition cases, which often involve complex factual issues but are not subject to clear statutory guidance as to the proper standard of judicial review. As a consequence, the diversity in judges' legal training and culture could become a source of conflict among judges in handling competition appeals.

Meanwhile, EU judicial law-making is a cooperative enterprise where judges work together in a committee. Each case is first allocated to a chamber on a random basis, with the president of the chamber then designating a judge to act as rapporteur. The rapporteur assumes the most responsibility in drafting the judgment and is also the first to provide observations and recommendations to the case. While other judges in the chamber (officially entitled assessors) also contribute to the case with comments and feedback, in practice the rapporteur is the most involved and active judge in that particular case. Therefore, even though conceptually each judge in the chamber is entitled to the same voting power, in reality their influence may vary depending on their particular roles in any given case. This group dynamic may therefore influence judicial voting in competition appeals.

The unique role of the rapporteur has been recognized in empirical studies on other national courts in Europe (Garoupa et al. 2012; Dalla Pellegrina and Garoupa 2013). Within a panel, the rapporteur bears the most costs in compiling the relevant information, engaging in legal analysis, and preparing an initial draft of the judgment. Opposing the proposal of the rapporteur inevitably generates additional costs for the panel, adding new stages to the process of delivering a decision, and exposing the panel members to additional pressures in delay and backlog. It is therefore natural that judges tend to be deferential to the rapporteur. Moreover, such tendency is consistent with an inclination for dissent avoidance, a preference for a collegial working environment, and the desire of an effective allocation of judicial resources in a congested court.

We test the effects of legal origins and group dynamic using two hand-collected original databases: one consists of the background characteristics of all the judges who served

[1] For the sake of brevity, we refer to an EU judge as "he" throughout this Article. Note, however, some of judges who have served at the CJEU are females.

at the General Court from the start of 1989 to September 1, 2015; the other of all competition judgments decided by the General Court during the same period. Our empirical results show that the legal tradition in which the rapporteur was bred bears a statistically significant effect on the case outcome. Specifically, if the rapporteur came from a country where its administrative law has a strong French influence, the outcome is more likely to favor the Commission than if the rapporteur is from any other EU country. At the same time, holding constant the legal origin of the rapporteur, the ratio of the legal origins of the judges within the chamber does not have a statistically significant effect. These results are consistent with our hypotheses that legal traditions influence judicial attitudes and that the panel dynamics among judges would amplify or dampen such influence.

Our empirical analysis controls for other possible explanations, namely political ideology such as left right politics and preference for European integration. Previous empirical studies on the European Court of Human Rights (ECHR) find that political ideology matters for judicial preference, whereas legal tradition does not seem to play a role (Voeten 2007, Voeten 2008). We show that the influence of legal traditions is relevant despite political orientation. This is a significant result, as there has been a long ongoing debate about these two dimensions of legal culture and ideology, and the extent to which the law merely reflects political preference. Specifically, Roe (2003) argued that the French inclination for fewer pro-market solutions in law simply derives from a taste for social democracy that is absent in the Anglo-American world. Moreover, it is widely perceived that that common law judges are more Eurosceptic than French or German judges. We suggest that EU judicial decision-making can be explained by legal tradition even when taking into account these possible ideological biases.

Our findings are, however, limited to the competition judgments decided by the General Court. One explanation for the divergence between our results and the previous literature on the ECHR may be to do with the difference in the *type* of cases under judicial review. Competition law is a technical and specialized area of law. The vast majority of competition cases are routine and highly fact-intensive. It is for this reason that the CJEU established the Court of First Instance (predecessor of the General Court) to handle competition cases, together with other standard cases involving staff and intellectual property issues. Interview findings by one of us suggest that judges and their référendaires (the official title for law clerks) in Luxembourg generally do not view competition cases as political cases (Zhang 2016).

Thus far, empirical work on the CJEU has primarily focused on how the preferences of EU member states have influenced the way that judges resolve cases (Carrubba et al. 2008; Carrubba et al. 2012). Scholars have proposed different explanations for the court's decisions in siding with the Commission. Stone Sweet and Brunell (2012) suggest the court has particular deference for the Commission because the latter is its presumed partner in constructing the supranational judicial authority, whereas

Carrubba et al. (2008) argue that the court was constrained by the threats of noncompliance and legislative overrides by the powerful member state governments.

In a departure from previous empirical literature, this article is the first to test the statistical relationship between the legal origins of the EU judges and judicial outcome at the General Court. The article is also the first to test the dynamics of group decision-making on case outcomes inside the court. Our empirical results not only have important implications in the study of EU competition law, but also in other areas of EU law where the court has the power and discretion to make law. This article also contributes to the empirical studies on international courts, where judges with diverse legal backgrounds collectively decides on cases. Existing literature on judicial group decision-making is primarily based on the US setting where judges' votes are observable. As many courts in civil law countries employ similar decision-making processes as the court by issuing a single judgment without dissent, this article further contributes to the study of multi-member judicial settings where judges' voting preferences are not observable.

Our research is also timely and has important implications for understanding of the impact of Brexit on the CJEU. At the Annual Antitrust Spring Meeting held in Washington D.C. in March 2017, Marc van der Woude, the vice president of the General Court, said that the running of his court wouldn't be affected by Brexit, but it might nonetheless suffer when it loses British members with a common law tradition. (Mlex 2017). As he was quoted below: "There is no organizational impact, but there will be a cultural impact. And I fear that impact is negative." (Mlex 2017) Judge van der Woude stressed that common law judges brought with them a different approach to the "intensity" of reviewing cases in Luxembourg and that the UK had a "real tradition of the rule of law, so that input for this melting pot of our court will disappear." (Mlex 2017) The findings in this article echoed with the observation by the judge.

The article is organized as follows: Section 2 delves into the various legal traditions of Europe and examines the potential conflict among EU judges in conducting judicial review of competition appeals. Section 3 investigates the court's decision-making process and analyzes how the panel dynamics among judges could affect their voting on a case. Using hand-collected data on the background characteristics of EU judges and on the competition judgments, Section 4 then conducts an empirical test of the effects of legal origins and panel dynamics. Section 5 concludes and provides implications for this study.

2. Legal Origins

Judges do not make decisions in a vacuum. Their preconceptions, which are nourished by education, work experience, and political ideology, among other possible determinants, can have a profound impact on how judges evaluate the facts and how they reach a decision (Nicola 2017). Even if a judge may not be consciously aware of it, no judge can ignore his prior conceptions in making a decision (Posner 2008). Surely, EU statutes and the precedents of the CJEU play a critical role in the decision-making of judges, and it would be an overstatement to claim that they are disregarded

in reaching their desired outcome. But when judges are confronted with complex facts and circumstances, and can no longer rationalize through pure legal reasoning, their intuition is likely to come into play (Stone Sweet 2004; Nicola 2017).

As products of specific national legal systems, EU judges have been bred in legal traditions spanning the historical divide between the common law and civil law systems. Within the civil law systems, the EU is home to three common legal families: French, German, and Nordic (Zweigert and Kotz 2011). The most common legal tradition in Europe is the French model, which, according to an influential strand of literature by legal economists, historically placed emphasis on the use of state power to alter property rights in ensuring judges cannot interfere (La Porta et al. 1998). The French tradition assumes a larger role for the state, deferring more powers to the administrative branch, which relegates the judiciary to a bureaucratic and subordinate role (Mahoney 2001). In contrast, the common law tradition affords the judges broad discretion in interpretation and endorses judicial review as essential part of the protection of private property rights and liberty (Mahoney 2001).[2]

This results in different institutional arrangements when it comes to reviewing executive action.[3] While the common law does not distinguish between public and private law, instead offering the same protection to all legal actors, the French law tradition espouses a sharp distinction between them and offers different protections for the state and private parties (Bell 2001). Procedurally, administrative cases are handled by specialized administrative courts and judges are drawn from a distinct corps of the administration (Brown and Bell 1998). Substantively, French administrative law has been observed to intrude less in the decisions made by the executive, which is entrusted with the freedom to pursue the collective public interest (Schwarze 2006).

The economic implications of these institutional arrangements, as well as the recent trend in legal reform of promoting convergence across Europe, have been subject to much controversy (Garoupa et al. 2017). Indeed, French administrative law was never codified and is instead mostly developed by the Conseil d'État, the highest level of the administrative court in France (Bell 2003). However, it is important to recognize that French administrative law was inspired by the overriding philosophy of the French revolution, which accords that the courts cannot interfere with the workings of the administrative agencies (Schwartz 1954). As French administrative law is founded upon recognizing the autonomy and independence of the executive, administrative courts have never been conceptualized to restrain the power of the government, unlike their English counterparts (Schwartz 1954). As Bell stated: "The English approach is that review is exercised by the informed outsider, be it the judge or an ombudsman. The French approach is that review is conducted by an institutionally detached insider.

[2] It is worth noting that judicial deference to expert doctrines is deemed constitutionally acceptable in common law countries. The Wednesbury principle made administrative action subject to a reasonable test in English law, and according to the Chevron doctrine in the US, federal courts defer to reasonable interpretations of statutes by agencies. However, deference in common law countries is largely the outcome of strategic delegation, as one of us explained in a previous article (Garoupa and Mathews, 2014).

[3] The court-agency relationship in different legal families closely follows a rational choice between discretion and deference that reflects the main lines of reasoning common to the standard discussion in private law, as one of us explained in a previous article (Garoupa and Mathews, 2014).

Both are independent, but their backgrounds and starting points may differ." (Bell 2003).

Meanwhile, France has been considered to be the most advanced in the development of administrative law and its model has been followed by most other Continental European countries. (Bell 2003). Schwarze (2006) noted that French administrative law not only has a deep influence on countries with French legal origin, but also on the German law tradition. For instance, Otto Mayer, an influential German administrative law scholar and a significant contributor to the development of German administrative law, was a professor who specialized in French administrative law (Schwarze 2006). The French model also had profound influence on Eastern European countries that started to join the CJEU from 2004. After the fall of the Berlin Wall, these Eastern Europe countries reverted to their pre-Soviet legal systems, which were French or German law (Glendon, Carozza, and Picker 1994).

By contrast, the French model has a relatively weak influence on Nordic countries. This may be due to the historical origin of the Nordic legal tradition. First, unlike the French or German law traditions, Roman law has little influence on Nordic countries (Zweigert and Kotz 2011). Second, the Nordic countries have never systematically codified their civil laws, thus legal formalities play a less important role in Nordic countries than those in other Continental European countries, and its laws are more judge-oriented (Bernitz 2007). Third, legal historians assert that Nordic legal theorists share similar beliefs with common law scholars regarding the realism in law, which manifests in the judicial opinions of Nordic judges being seen as more argumentative and pragmatic than their Continental European peers (Bell 2006). Indeed, unlike most other Continental European countries, there is no clear distinction between public and private law in Nordic countries. In fact, administrative courts do not exist in Denmark and Norway (Gellhorn 1967; Schwarze 2006). Edwardsson (2009) observes that administrative courts in Sweden traditionally have the power to conduct intense reviews of agency decisions. He notes that Swedish administrative courts have the same power as the administrative authority, in contrast to most other continental European countries. Nordic countries were also the first to create the ombudsman system to check administrative power (Gellhorn 1967). Departing from the French practice of conducting checks on the administration through an insider system, ombudsmen are chosen and report only to Parliament, and are thus completely immunized from political pressures of the government (Gellhorn 1967).

Following La Porta et al. (2008), we classify the existing EU countries into the French, German, Nordic, ex-socialist, and common law traditions. See Table 1 below, which also indicates the year of accession of each member state. However, this classification is not immune to controversy and it has been at the heart of significant criticism in recent years (Garoupa and Pargendler 2014). With the goal of testing for robustness, we also consider alternative taxonomies. For instance, some countries with a French legal origin have received German influence and the Supreme Courts of these countries often do not use citations in French. Gelter and Siems (2013) suggest that courts in these countries tend to cluster by language and thus we consider these French legal traditions that speak French and those that do not separately. Similarly, German law has influenced some of the ex-socialist countries, as they were previously a part of the

former Austria-Hungarian Empire, so we also consider them separately in our analysis. As explained further in Section 4 below, our empirical results are independent of any particular classification, and subdivisions of French, German, and Socialist legal origins do not matter significantly to our conclusions.

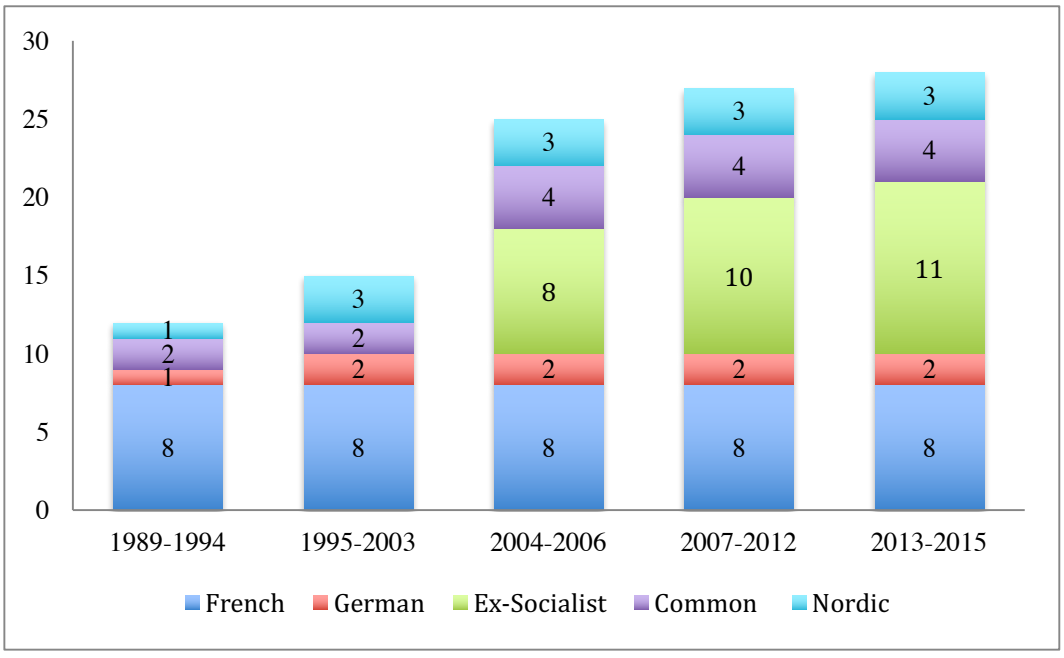
Importantly, the composition of legal traditions at the CJEU is not static, rather, it has been gradually evolving with the continued expansion of the EU. Because our study focuses on the General Court, we observe its evolvement from its inception in 1989. As illustrated in Figure 1 below, from 1989 to 1994, out of the twelve EU member states, eight had a French legal origin; only one state had a German legal origin (Germany itself), two had common law origins (UK[4] and Ireland), and one had a Nordic law origin (Denmark). The balance of legal cultures changes slightly in 1995, with the addition of a second German legal origin country (Austria) and two Nordic countries (Finland and Sweden). A major shift took place in 2004 with the expansion of the EU leading to the addition of eight former socialist states plus two additional common law states (Cyprus and Malta). In 2007, two additional former socialist states (Bulgaria and Romania) joined the EU. Another former socialist state (Croatia) joined in 2013.

[4] There could be doubts about whether Scotland should be categorized as the rest of the United Kingdom as a common law jurisdiction. Indeed, Scottish law has a mixture of civil law and common law elements. But the UK Supreme Court hears civil appeals from Scotland and it is essential for Scottish lawyers to be familiar with the common law. Among the three British judges who were appointed to the General Court during 1989 to 2015, only one judge (David Edward) came from Scotland. Judge Edward served at the General Court from 1989 to 1992. He received his undergraduate degree in Oxford before returning to Scotland for further studies and practice. During his practice in Scotland, he frequently appeared in front of the House of Lords (the then UK Supreme Court) (Smith 2005).

Table 1: Classification of EU Member States by Legal Origin

COMMON LAW	NORDIC	FRENCH		GERMAN	EX-SOCIALIST	
		PURE FRENCH	GERMAN FRENCH		GERMAN EX-SOCIALIST	OTHER EX-SOCIALIST
UK (1973)	Denmark (1973)	France (1958)	Netherlands (1958)	Germany (1958)	Czech (2004)	Poland (2004)
Ireland (1973)	Finland (1995)	Belgium (1958)	Italy (1958)	Austria (1995)	Slovakia (2004)	Estonia (2004)
Cyprus (2004)	Sweden (1995)	Luxembourg (1958)	Greece (1981)		Hungary (2004)	Latvia (2004)
Malta (2004)			Portugal (1986)		Slovenia (2004)	Lithuania (2004)
			Spain (1986)		Croatia (2013)	Bulgaria (2007)
						Romania (2007)

Figure 1: The Composition of Legal Traditions at the General Court (1989-2015)

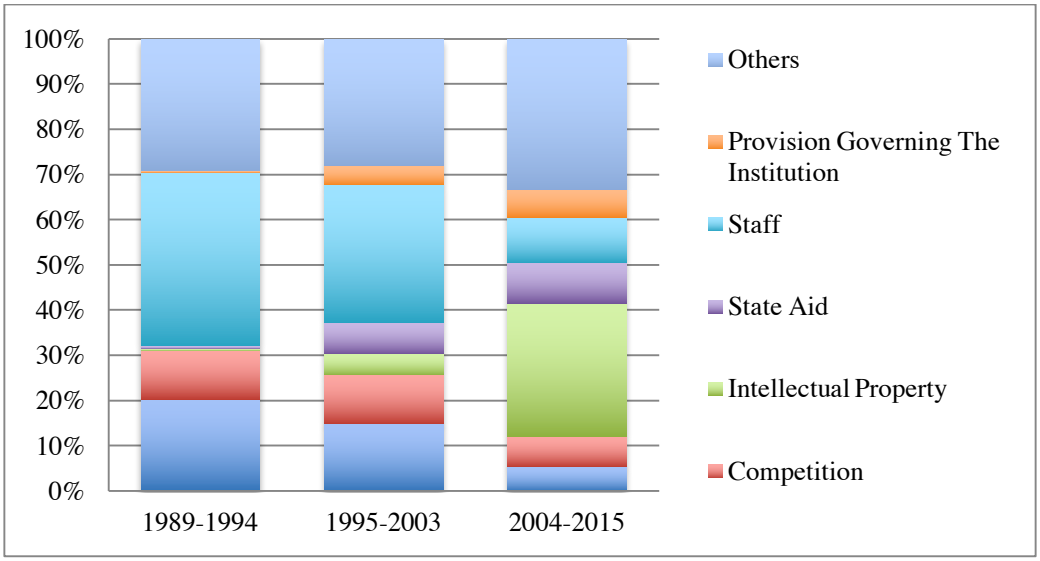


3. Institutional Details

Before the 2015 reform, the CJEU comprised three tribunals: The Court of Justice, the General Court, and the Civil Service Tribunal which specializes in staff cases (Alemanno and Pech 2017). The Court of Justice is the highest level of the CJEU, but also acts as the court of first instance for certain matters. The General Court is the lower court. It hears actions against EU institutions, though certain matters are reserved for the Court of Justice. The General Court mainly deals with fact-intensive cases involving competition, state aid, trade, agriculture, or trademarks. Cases heard at the first instance by the General Court may be subject to appeal to the Court of Justice on points of law only. As the EU's main executive arm, the Commission is the most frequent party to appear before the Court. While member states have a primary responsibility to apply EU law, the Commission monitors its application and may bring infringement action against a member state for non-compliance. With regard to competition, the Commission acts as both the investigator and prosecutor and can bring actions directly against individuals and companies.

For purpose of this study, the focus of the inquiry is on the General Court, which is the court of first instance for appeals against the decisions of the Directorate General for Competition of the European Commission (DG Comp). While the General Court was initially created to deal with competition cases, the portion of such cases was diluted over the years as the court's jurisdictional competence expanded. Figure 2 shows that the percentage of competition cases (excluding state-aid) was relatively stable (at approximately 11%) during the period from 1989 to 2003, but declined to 7% in subsequent years. Meanwhile, the share of intellectual property cases has increased dramatically and accounted for almost 30% during the same period.

Figure 2: Major Categories of Cases Handled by the General Court



Source: CJEU case database

EU judges work together in a committee. From the General Court's inception in 1989 to the early 1990s, competition cases were most commonly heard by a chamber

consisting of five judges. As the court's caseload increased and the European Union expanded, the court was divided into smaller chambers. Since the late 1990s, the vast majority of competition cases are heard by chambers consisting of three judges. More complex cases were heard by extended chambers consisting of five judges, and certain types of important cases are reviewed by the grand chamber consisting of 13 judges presided over by the President of the court.

Before the 2015 reforms, at the General Court, all incoming cases are allocated to chambers in turn following three separate rotas: (1) competition and state aid cases, (2) intellectual property cases, and (3) all other cases.[5] According to the court's rules of procedure, the President of the General Court may derogate from the rota to ensure an even spread of the workload.[6] After a case is allocated to a chamber, the chamber president will propose that the President assign the case to a judge as rapporteur. Although the President has the authority to decide on the proposal, in practice, the discretion lies with the chamber president, as the latter has more information regarding the workload and expertise of the other judges within the chamber. Accordingly, case allocation to chambers largely follows an automatic process, with the exception of the interference from the President on the basis of workload. On the other hand, the designation of the rapporteur is not a purely random process. A chamber president may consider expertise, workload, and other policy factors that are very individualized when choosing the rapporteur.

The rapporteur assumes the responsibility in drafting the report of the hearing, which is essentially a summary of the parties' arguments, and a preliminary report, which is purely an internal document for purposes of deliberation. The preliminary report summarizes the legal and factual background of the case and concludes with the personal observations and recommendations of the rapporteur. This report is then circulated to the other judges on the panel for comments and feedback. After deliberation, the rapporteur incorporates any comments from the other judges with the aim of ensuring that a consensus is reached among the panel members. Barring serious disagreement, there is no need for voting among judges. The General Court only issues a single judgment and the actual votes of the judges are not observable. In theory, each judge sitting in the panel is entitled to the same voting power. However, in practice, the influence of individual judges may vary depending on their particular roles in a case.

Due to the designated functions prescribed by the General Court's rules and procedures, the rapporteur is often the most involved judge in the case. It is very common for the rapporteur to delegate writing initial drafts of hearings and preliminary reports to one of their référendaires. The référendaire also bears the responsibility of summarizing written submissions and background reading to understand the facts and the reasoning of each case. In doing so, the rapporteur and his référendaire gain the upper hand in first presenting the facts, allowing them to frame the issues, and provide preliminary suggestions to other judges in the chamber as to how they should decide the case. The viewpoints of the rapporteur can of course be challenged by the other judges on the

[5] *See the Criteria for Assigning Cases to Chambers* (OJ 2011 C 232), at 3.

[6] Art. 13, Rules of Procedure of the General Court.

panel. However, by being the first to present the facts, it places the rapporteur in a superior bargaining position. This is due to the power of anchoring effects.[7]

Another factor that contributes to the enhanced role of the rapporteur is the workload pressures. Workload crisis is a perennial concern for the General Court. Indeed, the General Court is currently undergoing a dramatic expansion reform to cope with increasing caseload. We focus on the pre-reform period, as the cases that we examined were decided by the General Court before the expansion. As the rapporteur is the key person involved in a case, they are most susceptible to the associated workload pressure. This diverts the attention from cases in which they serve as an assessor, as their responsibilities are less defined and their involvement may be more flexible in these cases. While each assessor has the right to contribute their own opinions and observations, they also have significant discretion in determining the amount and the significance of such contribution. If an assessor feels strongly about a case, they may be more interested in intervening. The assessor may disagree with the opinions of the rapporteur and provide substantive comments to the preliminary report. But such dissents also come at a cost, as the assessor will need to put more time and effort in coming up with a different line of reasoning or solution to the case. Such efforts are also largely unobservable to other judges outside of the given chamber in the case. Therefore, the busier that the assessors are, the less likely it is that they will deviate from the proposal of the rapporteur. Moreover, if a case involves an area of EU law that the assessors and their référendaires are unfamiliar with, they will be less likely to provide substantive feedback in disagreement with the rapporteur. Furthermore, because the rapporteur and their référendaires have invested more time and effort in the case than other judges, they are likely to hold a significant information advantage. This further enhances the rapporteur's bargaining position, and increases the likelihood that other judges will accept their proposal.

Collegiality is another important concern. Judges do not like to be criticized (Posner 2008) and dissents thus tend to fray collegiality among judges. Epstein et al. (2011) predict that the more often that judges sit together, the more likely it is that they will invest in collegiality and be less likely to dissent. The vast majority of cases at the General Court are handled by a small chamber consisting of three judges. Therefore, judges who regularly sit together will be likely to invest in collegiality since it is a repeated game among them. Moreover, because consensus-building is highly valued in order for the chamber to produce a single coherent judgment, judges who dissent may experience pronounced pressure to conform. This emphasis on group cohesiveness and collegiality therefore puts pressure on assessors not to deviate far from the initial "offer" that the rapporteur suggested.

4. Empirical Test of Competition Judgments

Based on the analysis developed in Sections 2 and 3, we propose two hypotheses to be empirically investigated:

[7] For example, Tversky and Kahneman (1974) have long shown that different starting points for decision making yield different results, which are biased against the initial values.

First, the legal origin of EU judges will influence their attitudes toward administrative appeals. Judges from countries that are more heavily influenced by the French tradition in administrative law (i.e. countries with French legal tradition, German legal tradition, or ex-socialist legal traditions) are more likely to be deferential to, and therefore rule in favor of, the Commission than those from the rest of EU countries.

Second, the rapporteur exerts a greater influence on the case outcome than the other judges in the same chamber due to the first mover advantage, as well as workload, collegiality, and backlog concerns.

4.1. The Approach

We test the above hypotheses by examining whether there is a statistically significant effect between a judge's legal origin and the case outcome. We use the judge's country of origin as a proxy for the legal tradition in which he was bred. Admittedly, this is not a perfect proxy. On some occasions, a judge from a French legal tradition country may have studied in a common law country and vice versa. However, these occasions are rare. Only two EU judges from Continental Europe have received legal training in common law countries in our dataset. Moreover, these two judges obtained extensive legal training in Continental Europe before obtaining a master's degree in the common law jurisdiction. Similarly, only one common law judge has received a French legal education. We tackled this problem by treating him as if he were a judge from France. In any event, our result does not change qualitatively whether we treat him as a common law judge or a French judge. Furthermore, because of the nature of the collective decision-making process, we also take into account the influence of other judges in the chamber. We control this factor by including the ratio of the legal origin of all the judges from the chamber in the regression equation.

Certainly, legal tradition is not the whole story. Each individual's preconceptions are a complicated mixture of experiences and background, so it is difficult to reach a credible conclusion by simply relying on a single aspect. For instance, a judge who was a civil servant prior to joining the bench may have a different approach in handling administrative cases compared to a judge who was in private practice. Therefore, we control for a judge's prior work experience. Similarly, as the CJEU's working language is French and many of its rules and procedures are obviously derivative of French administrative law, one might hypothesize that a judge's familiarity with the French language and French procedures could also influence his attitude toward administrative appeals. We control for this by examining whether a judge has received legal training in a French-speaking countries (Belgium, France, and Luxembourg). We also include other possible control variables that one may expect to use in regression analysis, such as sex and age.

Since cases are assigned automatically to a chamber (with the exception of the President's intervention in balancing caseload), we can treat case assignments as random allocation to the chambers. After a case has been assigned to a chamber, the chamber president determines the rapporteur. As there is no statutory requirement or procedure that the chamber president must follow in choosing a rapporteur, the chamber president retains a certain amount of discretion. Thus, we also control the legal origin of the chamber president and consider their interaction with the rapporteur.

The outcome of each case is our dependent variable, which indicates whether a decision favors private businesses or the Commission.[8] We also control for other variables that could potentially influence the case outcome. For example, private businesses may be more likely to win in certain categories of competition cases than others. Moreover, because a member state's intervention in a competition case could exert political pressures on the court, we control for this by looking at whether a member state has intervened as a party.

In 2004, ten countries joined the EU and the number of member states expanded from 15 to 25 overnight. Eight of these countries are ex-socialist countries with legal traditions influenced by French administrative law. Because of this dramatic change in the court's composition, one might hypothesize that, after 2004, the General Court is more likely to reach an outcome in favor of the Commission. We control for this possibility by examining whether such decisions were reached after 2004. We also control for other major events that took place during the relevant period, including the enactment of the Maastricht Treaty in 1993, the accession of Nordic countries in 1995, and the enactment of the Lisbon Treaty in 2009.

Last but not least, we use the length of the opinion and the duration of the proceeding as proxies for the complexities of a case. This is potentially valuable if one believes that case complexity may influence judicial outcome.

4.2 Ideology

Abundant literature has shown that judicial behavior could be influenced by political ideology (Epstein et al. 2013). We do not have data on the political ideology of the individual judges. However, because each member state selects their own judges to the CJEU, we use the political ideology of the appointing governments as a proxy for their ideology. This assumes that appointing governments choose judges whose ideologies are aligned with or close to their own preferences. We acknowledge that this is not a perfect proxy, as each member state needs to take into account a number of factors in appointing judges. For instance, because the court's working language is French, some member states may have difficulty in finding suitable candidates with fluency in French (Zhang 2016). Nonetheless, political ideology seems to play an important role in judicial appointment, as evidenced by previous qualitative studies on the court (Alter 1998; Kenney 2002; Costa 2003).

There are many different ways to measure the ideological orientation of the appointing governments. One common indicator is the left-right politics (Voeten 2007; Hix, et al. 2007). For instance, one may expect that judges appointed by the right-wing governments are more inclined to rule in favor of private businesses than judges appointed by the left-wing governments. Another relevant indicator is the appointing government's stance on European integration. It is possible that judges who are

[8] We acknowledge that using the partial or total annulment of a Commission decision as a proxy for judicial deference is not perfect. It is possible that in some cases, the partial annulment of a decision on minor procedural points may leave law and policy wholly unaffected. The Commission is a repeat player who is not necessarily interested in the outcome of every single case, but in shaping the law more broadly. However, it is unlikely that a systematic annulment would be welcomed by the Commission, and alternative coding demands a disturbing degree of subjectivity.

appointed by governments are more in favor of European integration and will be less likely to overrule a Commission decision, as this will undermine the Commission's authority. Therefore, we also control the right-left politics and the pro-EU preference of the appointing governments in our regression. These controls are of particular importance as Nordic countries and the United Kingdom, for example, are known to be less pro-EU enthusiasts than other jurisdictions.

4.3 Description of the Data

To test the above hypotheses, we hand-collected and created two original datasets.

Drawing from the CJEU's case law database, we created a new original dataset that contains case characteristics, panel composition, and decision outcomes of competition cases decided by the General Court from its inception in 1989 to September 1, 2015. This dataset consists of all judgments reached as a consequence of the private parties' applications to annul the competition decisions (not including state-aid cases) by the Commission.

We focus exclusively on judgments, though not all actions for annulments result in judgments. Many applications were either dismissed by the General Court on grounds of admissibility or were withdrawn later by the private parties themselves. In such circumstances, the court only issues an order, rather than a judgment. As there is usually no substantive issue involved in orders, we expect that legal origin is unlikely to play a large role in these cases. For this reason, the dataset includes only judgments and exclude orders issued by the court. We note, however, that there is a potential problem of the selection effect. Suppose some private parties withdrew their cases after they knew the composition of the chamber and predicted an adverse outcome based on the legal origins of the judges (e.g., a chamber dominated by judges from countries heavily influenced by the French legal tradition).[9] As our dataset does not include those cases that were ultimately withdrawn, our regression results may underestimate the legal origin bias.

The outcome of each judgment is a dummy variable of "0" or "1." If an application is dismissed by the General Court, it is coded as "0." If the Commission's decision is partially annulled or completely annulled, it is coded as "1." Table 2 below provides the summary statistics of the legal origins of rapporteurs and the annulment rate of the competition judgments in our dataset.

Table 2: Summary Statistics of Legal Origins of Rapporteurs and Annulment Rate (N=559)

Legal Tradition	Number of Judges	Number of Cases*	Annulment Rate**
Common	10	62	53%
Nordic	7	118	64%
German	5	46	35%

[9] If private parties withdrew their cases after they knew the composition of the panel was more heavily influenced by common law judges, we would derive the opposite implication. However, this reasoning would require a different theory since common law judges are expected to be less deferential to the Commission.

French	26	234	38%
Ex-socialist	17	99	36%
Total	65	559	45%

*Number of cases: number of cases in which the group of judges served as rapporteur.
** Annulment rate: the percentage that the General Court annuls or partially annuls the Commission's decisions in cases decided by rapporteurs from a particular legal origin.

In addition to case outcome, other variables that we coded include: (1) case type (cartel and fines, vertical agreement, mergers, dominance, and procedural cases); (2) the chamber composition (the identity of the rapporteur, chamber president, and other judges); (3) length of opinion (word count of the French version of the judgment); (4) duration of proceeding (the interval between the date that the private parties lodged their appeal and the date that the judgment is announced); (5) whether a case was decided after 2004; and (6) whether a member state intervened in the case.

We rely on several sources to collect the background characteristics of EU judges. Most of the information was either collected from the CJEU's annual reports or from its official websites. They generally show the educational backgrounds and work experiences of the judges prior to joining the court. However, some of these profiles are incomplete. Some contain missing information about the educational backgrounds of the judges, rendering it impossible to verify where they graduated from or what degree they received. Some profiles contain significant gaps in a judge's working history. The other source of information comes from the European Council. Whenever an EU judge is nominated by the member states, the European Council publishes his resume. Some of these resumes can be found in the archives, but others are missing; we thus made a formal information request to the European Council for the missing resumes.

Based on the above sources of information, we were able to create a dataset of the background characteristics of the judges who have served at the General Court (except for the education information for three judges, see Appendix A). The main characteristics we coded include: (1) country of origin; (2) primary prior work experience; (3) last job before joining the Court; (4) whether the judge received legal training in France, Luxembourg, or Belgium; (5) age; and (6) gender. In particular, we classified judges' prior job experience into four categories: academic, civil servant, private practitioner, and judge. As many judges have varied work experience prior to joining the Court, "primary prior work experience" reflects the position that a judge has held the longest among all his prior work experience.

In proxy for the ideology of each EU judges who served at the Court, we measure the ideology of his appointment government. This is done by multiplying the ideology score for each party represented in a state cabinet or council of ministers by its weight in the cabinet, then taking the sum of the new weighted values to obtain the average ideology score. We obtain two different ideology scores for each party from the Manifesto Project database (Volkens et al. 2016). One is on the left-right position of the party and the other is on EU integration, which measures positive mentions of the EU in the party manifesto (Volkens et al. 2014).

4.4 First Results

We perform several analyses to test the two hypotheses stated at the beginning of this section. To test our first hypothesis, we classify the judges into two groups according to their legal origins. One group consists of judges from French, German, and ex-socialist legal traditions, labeled as "strong French influence" (denoted "1"); the other group consists of judges from common law and Nordic countries, labeled as "weak French influence" ("0").

The first analysis explores the overall relationship between the case outcome and the ratio of "strong French influence" judges for each case. In particular, we consider a logistic regression model of the outcome on the ratio of strong French influence judges in the chamber. The estimated effect of the ratio is -0.99 with a standard deviation 0.36 and p-value less than 0.01. Thus, for a given case, the winning odds of the Commission in a chamber with 100% judges from strong French influence countries is higher than the odds in a chamber with judges from weak French influence countries by a factor of 2.7. Together with the random case allocation to each chamber, we are able to reach a conclusion that chambers with more strong French influence judges are more likely to rule in favor of the Commission.

We further investigate the impact of the rapporteur and consider a logistic regression model of the outcome on the legal origin of the rapporteur by using Nordic judges as the benchmark.[10] As shown in specification 1 in Table 3 below, judges from strong French influence countries are significantly different from the benchmark (Nordic). Meanwhile, judges from French, German, and ex-socialist origins seem remarkably similar. In addition, the difference between the common law and Nordic law countries is insignificant as well. This result is consistent with our prediction that the voting preferences of Nordic judges are closer to those of common law judges than those of judges from the rest of the Continental Europe. This provides further support to our legal origin hypothesis.

For robustness check, we also test the statistical relationship between legal origin and case outcome using different methods of classifications as discussed in Section 2 above. As shown in specifications 2 and 3 below, the results are consistent with those in specification 1. In particular, Specification 2 uses all subgroups as identified in Table 1. Specification 3 lumps together all jurisdictions influenced by German law.

Table 3: Case Outcome on Rapporteur's Legal Origin (N=559)

	1	2	3
Intercept	0.56**	0.56**	0.56**
	(0.19)	(0.19)	(0.19)
Common	-0.43	-0.43	-0.43
	(0.32)	(0.32)	(0.32)
German	-1.18**	-1.18**	…
	(0.36)	(0.36)	
German French	…	-1.13***	…
		(0.26)	

[10] Notably, our statistical results are not influenced by the choice of benchmark.

Pure French	…	-0.84**	-0.84**
		(0.29)	(0.29)
German Ex-Socialist	…	-1.10**	…
		(0.39)	
Other Ex-Socialist	…	-1.13***	-1.13***
		(0.32)	(0.32)
Total German	…	…	-1.14***
			(0.24)
French	-1.02***	…	…
	(0.23)		
Ex-Socialist	-1.12***	…	…
	(0.28)		

Note. Robust Z-statistics are in parentheses.
Total German includes German, German French, and German Ex-Socialist legal origins.

* significant at 5%; ** significant at 1%, ***significant at 0.1%

4.5 Regression Analysis

We then consider the impact of the rapporteur and the chamber president. The assignment of the rapporteur for each case is decided by the chamber president, which is not a randomized process. Moreover, the assignment preference of each chamber president is not observable. When assessing the impact of the rapporteur, we need to consider potentially confounding phenomena. The consideration of the workload and the expertise of the assignees may affect the chamber president's assignment, but these factors are independent of the eventual case outcome. On the other hand, the chamber president may have his own preference in choosing the rapporteur that could potentially lead to an assignment bias toward private businesses. In the ideal case, for each chamber president, we might prefer to assess the effect of the rapporteur on the cases handled by the particular chamber president. However, this is practically infeasible due to the limited dataset size.

In the following analysis, we use the chamber president's legal origin as the main proxy for his preference in selecting the rapporteur to each case. As the current interest is in the impact of legal tradition on judicial attitude and not in other possible biases, this choice is a reasonable compromise given the limited information that we have in the dataset. Our analysis allows the effects of the rapporteur to be different for strong French influence and weak French influence chamber presidents. The difference between these two effects reflects the assignment preference of these two types of chamber presidents. More precisely, we consider a regression model with the legal origins of both the rapporteur and the chamber president, as well as the interaction term (between these two variables). This interaction term captures the possible difference in the assignment preference of these two types of chamber presidents (strong and weak French influence). We also include the ratio of strong French influence judges in the chamber.

For robustness check, we consider two possible definitions of strong French influence judges in Table 4. One definition consists of all the judges from the French legal origin countries (defined as strong French (1)) and the other consists of all the judges from the French, German, and ex-socialist legal tradition countries (defined as strong French (2).

Table 4: Logistic Regression Results of Case Outcome on Legal Origins and Other Covariates (N=545)[11]

	1	2	3	4
(Intercept)	-0.113	0.777*	-0.164	0.670
	(-0.593)	(2.258)	(-0.703)	(1.656)
Rapporteur Strong French(1)	-0.710**		-0.796**	
	(-2.610)		(-2.752)	
Rapporteur Strong French(2)		-1.466***		-1.664***
		(-3.989)		(-4.295)
Chair Strong French (1)	-0.594*		-0.596*	
	(-2.202)		(-2.180)	
Chair Strong French (2)		-1.026**		-0.941**
		(-3.230)		(-2.790)
Rapporteur Strong French (1) × Chair Strong French(1)	0.570		0.690	
	(1.4887)		(0.080)	
Rapporteur Strong French (2) × Chair Strong French (2)		0.972*		1.064*
		(2.093)		(2.204)
Ratio Strong French(1)	0.676		0.521	
	(1.466)		(1.085)	
Ratio Strong French(2)		0.271		0.240
		(0.510)		(0.436)
Left Right			0.001	0.000
			(0.240)	(0.003)
Pro EU			0.044	0.055
			(0.924)	(1.124)

Note. Robust Z-statistics are in parentheses
Significant at 5%; ** significant at 1%, ***significant at 0.1%

In the above regression table, the legal origin of the rapporteur has a highly significant negative effect on the case outcome. Such a result is consistent among all the specifications (including different definitions of strong French influence judges). The legal origin of the chamber president also has a statistically significant negative effect (however, such effect is more significant under the broader definition of strong French). This is a remarkably important piece of evidence supporting our first hypothesis that

[11] We drop an additional 14 cases in running this regression as we lack data on three rapporteurs' political ideology.

legal traditions influence judicial attitude in handling competition appeals. At the same time, in the above Table 4, the ratio of the strong French influence judges in the chamber is not significant. This suggests that holding constant the legal origin of the rapporteur and of the president of the chamber, the overall ratio of strong French influence judges in a chamber do not have a significant effect. This offers strong evidence in support of our second hypothesis, in that the rapporteur has greater influence on the case outcome than other judges in the chamber. We can anticipate that this result will get more support once additional variables are included in Table 5 below and the effect of the legal origin of the chamber president disappears.

In addition, the interaction between the rapporteur and the chamber president is positively significant (or barely significant) in some specifications. This is an indication that the assignment of the rapporteur can be influenced by bias. In any event, more data needs to be collected to further strengthen this evidence. Notably, our results are robust to how we define the scope of strong French influence countries, whether we only include those that are French legal origin countries, or all the countries that have been heavily influenced by French origin (including the French, German, and ex-socialist countries). Moreover, we find that the rapporteur's left-right ideology and his pro-EU ideology are not statistically significant.

In Table 5, we also include covariates such as background variables of the judges (work experience, French legal education, age, gender) and the cases (case type, state intervention or not, length of opinion, duration of proceeding) that have significant or potentially significant effects on the outcome. We also control the year fixed effects (1993, 1995, 2004, 2009) in specifications 1, 2, 4 and 6 as discussed in Section 4.1 above.

Table 5: Logistic Regression Results of Case Outcome on Legal Origins and Other Covariates (N=545)

	1	2	3	4	5	6
(Intercept)	-9.031***	-8.241***	-6.717***	-8.934***	-6.132**	-8.779***
	(-4.289)	(-3.915)	(-3.291)	(-4.082)	(-3.000)	(-4.004)
Rapporteur Strong French(1)	-1.194**		-1.032**	-1.424***		
	(-3.186)		(-2.696)	(-3.528)		
Rapporteur Strong French(2)		-1.704***			-1.794***	-1.996***
		(-3.784)			(-3.888)	(-4.143)
Chair Strong French (1)	-0.385		-0.346	-0.309		
	(-1.221)		(-1.105)	(-0.944)		
Chair Strong French (2)		-0.867*			-0.731	-0.632
		(-2.307)			(-1.876)	(-1.574)
Rapporteur Strong French (1) × Chair Strong French(1)	0.889		0.594	0.989*		
	(1.923)		(1.274)	(2.020)		

Rapporteur Strong French (2) × Chair Strong French (2)		1.011 (1.876)			0.848 (1.532)	0.970 (1.690)
Ratio Strong French(1)	-0.047 (-0.076)		-0.027 (-0.045)	-0.625 (-0.955)		
Ratio Strong French(2)		0.483 (0.793)			0.313 (0.497)	0.460 (0.706)
Left Right			0.012 (1.667)	0.007 (0.939)	0.013 (1.684)	0.013 (1.663)
Pro EU			0.128* (1.973)	0.182* (2.524)	0.161* (2.433)	0.223** (3.001)
Government	0.475 (1.211)	0.105 (0.263)	0.669 (1.586)	0.149 (0.331)	0.020 (0.046)	-0.370 (-0.796)
Practitioner	1.160 (1.890)	0.447 (0.670)	2.380** (2.661)	2.535* (2.562)	1.197 (1.290)	1.332 (1.275)
Judge	-0.096 (-0.247)	-0.486 (-1.294)	0.034 (0.086)	-0.094 (-0.229)	-0.471 (-1.213)	-0.637 (-1.581)
Last-Government	-0.578 (-1.273)	-0.316 (-0.704)	-0.788 (-1.686)	-0.742 (-1.540)	-0.375 (-0.805)	-0.391 (-0.822)
Last-Practitioner	-1.749** (-2.685)	-1.517* (-2.223)	-2.859** (-3.000)	-3.133** (-3.003)	-2.272* (-2.306)	-2.580* (-2.363)
Last-Judge	0.132 (0.305)	0.162 (0.380)	0.011 (0.023)	0.126 (0.270)	0.239 (0.524)	0.233 (0.506)
French Education	0.076 (0.242)	0.132 (0.481)	0.245 (0.767)	0.224 (0.684)	0.303 (1.120)	0.289 (1.017)
French Education-NA	0.839 (1.267)	0.942 (1.469)	1.100 (1.718)	0.873 (1.283)	1.094 (1.775)	0.982 (1.497)
Age	0.017 (0.934)	0.024 (1.307)	0.009 (0.434)	0.001 (0.057)	0.017 (0.848)	0.012 (0.563)
Gender	1.097*** (3.326)	0.767* (2.386)	1.158*** (3.340)	1.188*** (3.307)	0.875* (2.521)	0.935** (2.610)
Avg Gender	-0.580 (-1.021)	-0.587 (-1.043)	-0.327 (-0.592)	-0.403 (-0.686)	-0.523 (-0.967)	-0.485 (-0.828)
Avg Age	0.020 (0.892)	0.014 (0.602)	0.012 (0.555)	0.017 (0.718)	0.0124 (0.569)	0.011 (0.468)
Vertical	-0.595 (-1.242)	-0.394 (-0.808)	-0.125 (-0.262)	-0.466 (-0.938)	-0.041 (-0.087)	-0.251 (-0.498)
Dominance	-1.257*** (-3.760)	-1.132*** (-3.432)	-1.053** (-3.212)	-1.332*** (-3.829)	-1.008** (-3.111)	-1.189*** (-3.477)
Concentration	-1.854***	-1.620***	-1.342**	-1.689***	-1.255**	-1.469**

	(-4.130)	(-3.167)	(-3.134)	(-3.733)	(-2.869)	(-3.214)
Procedural	-1.127**	-0.891*	-1.279	-1.141**	-1.110**	0.904*
	(-2.757)	(-2.192)	(-3.131)**	(-2.653)	(-2.732)	(-2.129)
State Int.	0.179	0.174	0.272	0.279	0.225	0.247
	(0.439)	(0.427)	(0.667)	(0.672)	(0.551)	(0.600)
Length	0.651***	0.650***	0.519***	0.668***	0.520**	0.670***
	(3.977)	(3.965)	(3.314)	(4.004)	(3.274)	(3.980)
Duration	-0.141	-0.140	-0.018	-0.087	-0.033	-0.051
	(-1.097)	(-1.117)	(-0.142)	(-0.649)	(-0.268)	(-0.392)
Year Fixed 1	1.826**	1.721**		2.357***		2.234***
	(3.048)	(2.905)		(3.616)		(3.509)
Year Fixed 2	1.609**	1.402**		2.035***		1.815**
	(3.005)	(2.610)		(3.450)		(3.084)
Year Fixed 3	0.503	0.500		0.953		0.938
	(0.861)	(0.879)		(1.497)		(1.488)
Year Fixed 4	0.472	0.599		1.067		1.334*
	(0.829)	(1.117)		(1.691)		(2.172)

Note. Robust Z-statistics are in parentheses
Significant at 5%; ** significant at 1%, ***significant at 0.1%

In the above table, we find that the legal origin of the rapporteur still has a highly significant effect on the case outcome across all specifications. However, the legal origin of the chamber president is no longer significant in most specifications. Nor is the ratio of the strong French influence judges in the chamber significant. This further supports our second hypothesis that the rapporteur plays a more important role in influencing the outcome than other judges in the chamber. Notably, the rapporteur's pro-EU ideology is positively significant in a few specifications, which is counterintuitive. We further look into this issue and found that the correlation between the case outcome and Pro-EU ideology is practically zero. Furthermore, pro-EU ideology is significantly correlated with the rapporteur's prior work experience, and it is this multicollinearity issue that has led to the odd result. In any event, the overall effect of pro-EU is very small compared with the effect of legal origin.

We find that the rapporteur's gender is positively correlated to the case outcome, male judges are more likely to rule in favor of private businesses than females. This is an interesting result but we note here that there are only ten female judges (15%) against 55 male judges (85%). Furthermore, these 10 female judges are distributed across legal families (one common law, two Nordic, one French and six ex-socialist countries). This suggests that gender is not a major driver of the empirical results.

Additionally, private businesses are more likely to win in certain categories of cases than in others. The likelihood of success (in descending order) are: cartels, dominance, and concentrations. Furthermore, we find that whether a member state had or had not intervened in a competition appeal does not bear significant effect on the outcome. It

is possible that this is due to the limited dataset size, as member states intervened in less than 8% of the cases in our statistical population.

Holding all of the other independent variables constant (in specification 6), we find that the odds of a ruling in favor of the Commission is increased by a factor of 7.4 if the rapporteur is from a strong French influence, rather than a weak French influence country. A simple example will illustrate the effects. In our dataset, if the rapporteur is from a strong French influence country, there is a 37% chance that the General Court will annul (or partially annul) the Commission's decision, and the odds of annulment is 0.59. If a weak French influence judge serves as the rapporteur instead, the odds will be increased to 4.33, which amounts to an 81% chance of annulment (or partial annulment). In addition, we find that strong French influence judges served as rapporteurs in 65% of competition judgments decided before or in 2004, but that the number increased to 70% after 2004. We interpret this result as evidence supporting the view that judges from strong French influence countries exert substantially greater influence in competition judgments than those from the weak French influence countries, and such influence has increased with the expansion of the EU. We believe that these results shed light on the profound influence of the French legal tradition in shaping EU competition law jurisprudence. We go as far as to predict that if British judges leave the General Court after Brexit, then the French influence will further intensify.

4.6 Robustness Check

One potential concern with our results is that the cases at the General Court are not randomly assigned to the chambers. As discussed earlier, we take the view that the General Court randomly assigns cases to the chambers, with the exception that the President of the court can intervene on the basis of workload. For example, the President will always assign cases that are linked to the same Commission decision to the same chamber. Typically, in cartel cases, the Commission often simultaneously penalizes several companies for their participation in a cartel. When these cartel members appeal to the General Court, such appeals are treated as separate cases in the court's docket. However, because these cases are closely linked to each other and involve similar facts and circumstances, for efficiency purposes, the default rule at the General Court is to allocate these cases to the same chamber. This is indeed what we observe in our dataset.

For a robustness check, we combine these linked cases by averaging their outcomes (not surprisingly, for most cases, their average outcomes are either "0" or "1" due to consistency across decisions). We then run a logistic regression using the same variables as our main regression — specification 6 in Table 5 above (where the combined outcome is the dependent variable). Consistent with our results above, the rapporteur's legal origin remains significant. Meanwhile, other independent variables are not significant. This is probably due to the fact that the dataset size is reduced to 306 cases. A different regression that dichotomizes the combined outcome with a cutoff point at 0.5 produces similar results. In addition, we consider a mixed effect logistic model that includes a random effect term to linked cases. Due to the smaller dataset size, we only use the main independent variables such as the legal origins of the rapporteur and the chamber president, and the rapporteur's political ideology. The results remain robust, confirming that the potential cluster effect does not significantly

change our conclusion (see Table B3 in the appendix). We further consider a mixed effect logistic model that includes a random effect term to both linked cases and the rapporteur's legal origin and the results are closely similar.

As an additional robustness check, we conduct a statistical analysis to assess if different types of cases are evenly distributed across chambers. Again, we consider cases linked to each Commission decision as a single observation. The main case characteristics that we have are the types of anti-competitive conduct under dispute: cartel, vertical agreement, dominance, concentrations, and procedural matters. As our main independent variable is legal origin, we consider the ratio of the strong French influence judges in the chamber as the response variable and run a one-way analysis of variance, with p-value=17%. This suggests that the types of cases distributed are roughly similar across chambers. Furthermore, we include random effect terms to account for the cluster effect due the same Commission decision and the same rapporteur, the effect of the rapporteur's legal origin remains significant after this adjustment.

As we find that the chamber president's assignment of rapporteur could be driven by bias, we also consider whether the importance of a case would have an impact on assignment bias. For instance, one may hypothesize that the chamber president who wish to exert maximum influence will assign less important cases to a rapporteur from a different legal origin and more important cases to a rapporteur from the same (or closely similar) legal origins. Because important cases are usually assigned to larger chambers consisting of five or more judges, we use chamber size as a proxy for case importance. Here chamber size is coded as a dummy variable, if it is larger than 3 it is coded as 1, otherwise it is 0. We then run a regression with all the variables in Specification 6 in Table 5 above, plus three more variables including chamber size, the interaction between chamber size and the rapporteur's legal origin, and the interaction between chamber size and assignment preference (which is the interaction of the legal origin of the chamber president and the rapporteur). Our main results remain robust, but none of the three variables relating to chamber size is significant, indicating that chamber size does not seem to have an impact on the chamber president's assignment preference. It is possible this is due to the fact that most cases handled by the General Court are routine cases. Indeed, among the cases in our dataset, almost three quarters of the cases are heard by a three-judge chamber.

4.7 Implications

Our study has significant implications. It contributes to the ongoing debate about the effects of legal origin on economic growth. One potential interpretation is that these results are consistent with the previous law and finance literature (La Porta et al. 2004). Judges from countries whose administrative law traditions have a strong French influence are more likely to reach decisions that interfere with private property and personal liberty. At the same time, our results also identify an effect that has been underexplored in the current literature, that is, Nordic law shares similar beliefs about the intensive review of administrative decisions with common law and judges from Nordic countries are less likely to be deferential to the Commission than judges from other Continental European countries. In this respect, Nordic law seems closer to common law than to French law. This is consistent with Siems (2016)'s finding showing that Scandinavian countries belong to the same group as common law

countries rather than other European jurisdictions in his network of world's legal systems.

A second interpretation, closely related to the first one, is that legal origin captures the different judicial attitude towards administrative discretion in different jurisdictions, particularly reflecting possible doctrinal specificities. While judges from strong French influence countries are reticent in intervening in administrative discretion, judges from common law and Nordic countries do not hesitate to conduct intensive scrutiny of administrative decision. Such an outcome is consistent with the anecdotal evidence one of us obtained during her field trip in Luxembourg, as well as the extrajudicial writings from some of the leading figures from the General Court (Zhang, 2016). As our dataset is limited to competition judgements, we do not know whether this is a phenomenon unique to the area of competition law, which often requires complex economic and technical analysis.

A third interpretation is that legal origins capture a potentially omitted dimension (closely correlated with legal families). Since our empirical analysis controls for ideology (domestic and European skepticism), such possible interpretation is excluded. Another possibly relevant factor is the appointment of judges in general (a selection effect). The premise would be that civil law judges tend to be closer to governmental institutions and even European institutions, such as the European Council or the Council of Ministers. As a result, they may well be more inclined to defer to the executive. On the other hand, Nordic and common law countries tend to appoint judges with private practice experience and they may be less likely to defer to the executive. Notwithstanding this hypothesis, our empirical analysis does control for judicial background (Table 5) and finds that judges who were in private practice immediately before joining the General Court tend to favor the Commission. Therefore, this alternative interpretation is statistically rejected by our results.

Future empirical studies will be needed to confirm whether our results extend beyond competition law. Table B4 in the appendix provides the ranking and score of different indicators for business attitudes according to the classification of legal origins we use in Table 1. For instance, Nordic and common law countries are on average more business friendly than other EU countries. Thus, it seems difficult to empirically distinguish the effects of the legal origins in the sense of the law and finance literature and those in the sense of possible doctrinal specificities reflecting a different understanding of competition. This complicates any possible empirical analysis limited to competition litigation.

5 Conclusion

EU competition law is often used as a yardstick for many other countries and its precedents have been widely followed by competition authorities around the world. At the same time, there is considerable dissatisfaction with the judicial output from Luxembourg, which often appears very formalistic and deferential to the Commission, in sharp contrast with its US counterparts. Legal scholars have long explained the divergence between US antitrust law and EU competition law by resorting to the

historical origin and philosophical underpinning of EU competition law. This Article breaks new ground by proposing that the legal tradition has also exerted enormous influence on shaping EU competition law.

Our empirical results offer strong support for this view. Using hand-collected data on EU judges' background characteristics and on the competition law judgments reached by the General Court, we find a statistically significant effect between judges' legal origins and case outcomes. We also identify evidence suggesting that the rapporteur plays a greater role than other judges in influencing the outcome of competition cases. Specifically, if a rapporteur is from a country where its administrative law has a strong French influence, the court is more likely to rule in favor of the Commission than if the rapporteur is from any other EU country. Our results also show that judges from strong French influence countries have exerted substantially greater input in producing EU competition law jurisprudence than those from weak French influence countries, and such influence has become even greater since the EU's expansion in 2004.

This article further sheds light on the path dependence in the judicial lawmaking of antitrust law. Judges who "make" law inherently face a set of institutional constraints. These humanly devised constraints include not only formal rules which can be subject to radical changes, but also informal constraints, such as customs and traditions which tend to be sticky. These institutional constraints shape the incentive structures of judges, nourish their ideologies and beliefs, and have a direct impact on their behavior. As institutional change is path-dependent, evolution within a legal system is only gradual. This article therefore provides a basis for predicting that the divergence between US antitrust law and EU competition law will persist in the future.

As a product of unique historical circumstances, the CJEU continues to operate under profound French influence. The findings in this article are consistent with the law and finance literature showing that French legal origin countries tend to provide less secure property rights protection to investors. They are also consistent with possible variations on doctrinal idiosyncrasies. This raises concern about the profound influence of French legal tradition on the court. This is a deeply important question, which we leave for future study.

Appendix A: Variable Definitions and Sources

Our dataset for judges consists of the background characteristics of 65 EU judges who served at the General Court between its inception in 1989 and September 1, 2015. As we lack complete education information for three judges, it is not possible to verify whether those judges received their legal education in a French-speaking country. In addition, Savvas Papasavvas, a judge from Cyprus did not study law in his home country but received extensive legal training in Greece and France. For this reason, we treat him as if he were a judge from a French legal tradition country. In any event, our results do not qualitatively change whether we viewed him as a common law or a French origin judge.

Our dataset for cases consists of all competition cases for which there was a judgment reached by the General Court from 1989 through September 1, 2015. In total, here are 573 cases in our dataset, but 14 of those cases contain missing data. In the analysis, we drop the incomplete cases, only considering the remaining 559 cases that were fully observed. When running the regression in Table 4, we drop an additional 14 cases, as we lack data on the political ideology of the appointing governments of three judges in the dataset.

Table A1: Variable Coding and Sources

Variable	Coding and Sources
Outcome	Equal to 1 if the General Court annuls or partially annuls the Commission's decision; equal to 0 otherwise.
Common	Equal to 1 if the rapporteur came from a common law country in the EU (the UK, Ireland, Cyprus, or Malta); equal to 0 otherwise.
Nordic	Equal to 1 if the rapporteur came from a Nordic legal tradition country (Denmark, Finland, or Sweden); equal to 0 otherwise. This variable is used as the benchmark in the regression analysis.
German	Equal to 1 if the rapporteur came from a German legal tradition country (Austria or Germany); equal to 0 otherwise.
French	Equal to 1 if the rapporteur came from a French legal tradition country (Belgium, Luxembourg, France, the Netherlands, Italy, Greece, Portugal, or Spain); equal to 0 otherwise.
Ex-Socialist	Equal to 1 if the rapporteur came from an ex-socialist legal tradition country in the EU (Bulgaria, Croatia, Czech, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, or Slovenia); equal to 0 otherwise.
Pure French	Equal to 1 if the rapporteur came from a French-speaking French legal tradition country (Belgium, Luxembourg, or France); equal to 0 otherwise.
German French	Equal to 1 if the rapporteur came from a non-French-speaking French legal tradition country (the Netherlands, Italy, Greece, Portugal, or Spain); equal to 0 otherwise.
German Ex-Socialist	Equal to 1 if the rapporteur came from an ex-socialist country that were influenced by German law as parts of the Austria-Hungarian Empire (Czech, Slovakia, Hungary, Slovenia, or Croatia); equal to 0 otherwise.

Other Ex-Socialist	Equal to 1 if the rapporteur came from an ex-socialist legal tradition country in the EU that were not part of the Austria-Hungarian Empire (Bulgaria, Estonia, Latvia, Lithuania, Poland, or Romania); equal to 0 otherwise.
Total German	Equal to 1 if the rapporteur came from a German French, German ex-socialist, or German legal tradition country; equal to 0 otherwise.
Rapporteur Strong French (1)	Equal to 1 if the rapporteur came from a French legal tradition countries; equal to 0 otherwise.
Rapporteur Strong French (2)	Equal to 1 if the rapporteur came from a French legal tradition, German legal tradition or ex-socialist legal tradition countries; equal to 0 otherwise.
Chair Strong French (1)	Equal to 1 if the chamber president came a French legal tradition countries; equal to 0 otherwise.
Chair Strong French (2)	Equal to 1 if the chamber president came from a French legal tradition, German legal tradition, or ex-socialist legal tradition countries; equal to 0 otherwise.
Ratio Strong French (1)	The ratio of judges from a French legal tradition country in a chamber.
Ratio Strong French (2)	The ratio of judges from a French, German, or ex-socialist legal tradition country in a chamber.
Left Right	The left-right ideology score of the appointing government of the rapporteur. The score is calculated by multiplying the left-right score for each party represented in a state cabinet or council of ministers by its weight in the cabinet, then taking the sum of the new weighted values to obtain the average ideology score. Each party's score is obtained from the Manifesto Project ((Volkens et al., 2014).
Pro EU	The pro-EU ideology score of the appointing government of the rapporteur. The score is calculated by multiplying the pro-EU score for each party represented in a state cabinet or council of ministers by its weight in the cabinet, then taking the sum of the new weighted values to obtain the average ideology score. Each party's score is obtained from the Manifesto Project ((Volkens et al., 2014).
Academic	Equal to 1 if the rapporteur's primary prior working experience is as an academic. This variable is used as the benchmark in the regression analysis.
Government	Equal to 2 if the rapporteur's primary prior working experience is as a civil servant.
Practitioner	Equal to 3 if the rapporteur's primary prior working experience is as a private practitioner.
Judge	Equal to 4 if the rapporteur's primary prior working experience is as a judge.
Last- Academic	Equal to 1 if the rapporteur's last job prior to joining the General Court is as an academic. This variable is used as the benchmark in the regression analysis.
Last-Government	Equal to 2 if the rapporteur's last job prior to joining the General Court is as a civil servant.
Last-Practitioner	Equal to 3 if the rapporteur's last job prior to joining the General Court is as a private practitioner.

Last-Judge	Equal to 4 if the rapporteur's last job prior to joining the General Court is as a judge.
French Education	Equal to 1 if the judge received his undergraduate or graduate education in Luxembourg, France or Belgium; equal to 0 otherwise.
French Education-NA	Equal to 2 if the information regarding the judge's French legal training is unavailable.
Age	The age of the rapporteur when deciding the case.
Gender	Equal to 1 if the rapporteur is male; equal to 0 otherwise.
Avg Gender	The percentage of male judges in a chamber.
Avg Age	The average age of the judges in a chamber when deciding a case.
Cartel	The case involves cartel issues. This variable is used as the benchmark in the regression analysis.
Vertical	The case involves vertical agreement issues.
Dominance	The case involves abuse of dominance issues.
Concentration	The case involves concentration issues.
Procedural	The case involves procedural issues.
State Int.	Equal to 1 if a member state intervened in the case; equal to 0 otherwise
Length	The log of the word count of the judgment in French.
Duration	The period between the date the private parties filed their application to annul a Commission's decision and the date of the judgment.
Year Fixed 0	Equal to 0 if the judgment was reached between 1989 and 1993. This variable is used as the benchmark in the regression analysis.
Year Fixed 1	Equal to 1 if the judgment was reached between 1994 and 1995.
Year Fixed 2	Equal to 2 if the judgment was reached between 1996 and 2004.
Year Fixed 3	Equal to 3 if the judgment was reached between 2005and 2009.
Year Fixed 4	Equal to 4 if the judgment was reached between 2010 and 2015.

Appendix B

Table B1: Summary Statistics for Variable Used in Table 3

Variable	Case (1)	Case (0)	Mean	Std. Dev.
Outcome	250	309	0.45	0.50
Common	62		0.11	0.31
Nordic	118		0.21	0.41
German	46		0.08	0.27
French	234		0.42	0.49
Ex-Socialist	99		0.18	0.38
Pure French	86		0.15	0.13
German French	148		0.26	0.19
German Ex-Socialist	38		0.07	0.06
Other Ex-Socialist	61		0.11	0.10
Total German	232		0.42	0.24

Table B2: Summary Statistics for Variable Used in Table 4

Variable	Case (1)	Case (0)	Mean	Std. Dev.
Outcome	244	301	0.45	0.50
Rapporteur Strong French(1)	232	313	0.43	0.49
Rapporteur Strong French(2)	377	168	0.69	0.46
Chair Strong French (1)	241	304	0.44	0.50
Chair Strong French (2)	405	140	0.74	0.44
Ratio Strong French (1)			0.44	0.22
Ratio Strong French (2)			0.73	0.23
Left Right			-1.2	14.7
Pro EU			2.8	1.8
Academic	140		0.56	0.44
Government	183		0.34	0.47
Practitioner	63		0.12	0.32
Judge	159		0.29	0.45
Last- Academic	79		0.14	0.35
Last-Government	193		0.35	0.48
Last-Practitioner	67		0.12	0.33
Last-Judge	206		0.38	0.48
French Education	176	352	0.32	0.47
French Education-NA	17		0.03	0.17
Age			55	6.3
Gender	442	103	0.81	0.39
Avg Gender			0.77	0.25

Avg Age			54	6.2
Cartel	356		0.65	0.48
Vertical	26		0.05	0.21
Dominance	67		0.12	0.33
Concentration	39		0.07	0.26
Procedural	57		0.10	0.31
State Int.	41	504	0.08	0.26
Length			9.7	0.71
Duration			6.5	3.4
Year Fixed 0	34		0.06	0.24
Year Fixed 1	41		0.08	0.26
Year Fixed 2	143		0.26	0.44
Year Fixed 3	78		0.14	0.35
Year Fixed 4	249		0.46	0.50

Table B3: Generalized Mixed-Effects Model of Outcome on Legal Origins and Political Ideology

	Estimate	z value	Pr(>|z|)
(Intercept)	0.592	1.116	0.265
Rapporteur Strong French(2)	-1.611**	-3.184	0.001
Chair Strong French (2)	-0.716	-1.536	0.125
Rapporteur Strong French (2) × Chair Strong French (2)	0.889	1.436	0.151
Ratio Strong French (2)	0.141	0.201	0.840
Left Right	0.004	0.454	0.650
Pro EU	0.039	0.633	0.527

Table B4: Legal Origin and Possible Indicators of Business Attitudes[12] (Averages)

Legal Origin	Ranking position, Doing Business	Score of Quality of Regulation, World Bank	Score of Economic Freedom, Heritage Foundation	Score of Global Competitiveness, World Economic Forum	Score of Economic Stability, Economist Intelligence Unit	Number of Countries
Common Law and Nordic	24.4	93.3	0.79	0.61	0.85	7
German and Ex-Socialist	27.4	79.8	0.73	0.54	0.75	13
French	40.8	82.0	0.73	0.55	0.83	8
Average	30.5	83.8	0.746	0.56	0.80	28

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[12] The data for the indicators of business attitudes are taken from the World Bank 2015 Worldwide Governance Indicators, available here: http://databank.worldbank.org/data/reports.aspx?source=Worldwide-Governance-Indicators

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