JCMS

Journal of Common Market Studies

JCMS 2021 Volume 59. Number 4. pp. 762–781 DOI: 10.1111/jcms.13130

Bureaucrats or Ideologues? EU Merger Control as Market-centred Integration*

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Abstract

Since 1989, no major European merger has been able to go through without EU approval. The introduction of a centralized merger control procedure was another increase in the powers of the Commission's Directorate-General for Competition (DG COMP). While some see it playing a neo-mercantilist role in a positive European integration, others underline its neoliberal ideological roots. Through our analysis of all merger decisions made between 1990 and 2016 (6,161 cases), we instead find evidence for market-centred negative integration: DG COMP is particularly harsh towards coordinated market economies and targets sectors that have high levels of state intervention, thus thwarting the rise of 'European champions'. Our interviews with merger experts and the decision citation data further suggest that this market-centred logic of enforcement is not necessarily driven by ideology, but by the silent logic of bureaucratic autonomy. We thus contribute to the debate on the EU as a supranational force of economic liberalization.

Keywords: European Commission; competition policy; merger control; varieties of capitalism; industrial policy

MPIfG Journal Article
Sebastian Billows, Sebastian Kohl, Fabien Tarissan: Bureaucrats or Ideologues? EU Merger Control as Market-Centred Integration. In: Journal of Common Market Studies 59(4), 762-781 (2021). Wiley-Blackwell
The original publication is available at the publisher's web site: https://doi.org/10.1111/jcms.13130
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Introduction

Competition policy is the most supranational of all EU policy fields (Karagiannis, 2013). Ever since the Rome Treaty came into force more and more powers have been delegated to the European Commission's Directorate General for Competition (DG COMP). With powers to prosecute cartels and abuses of dominant positions and to monitor concentrations and state aid, DG COMP has set the rules of the game of how European markets operate. Focusing on merger control, we provide an empirical assessment of the origins and scope of this form of bureaucratic power. EU Council Regulation 4069/89 created a centralized one-stop procedure for merger control. Since then, DG COMP has been obliged to review and clear any corporate merger or takeover with a Community dimension and so far it has examined almost 7,000 takeovers and has prohibited 30 of them. In more than 200 cases the merged entity had to make costly commitments that ranged from a promise to divest from a specific market to the resale of an entire division to competitors (phase II investigations). As it targets large merger and acquisition deals, which in 2014 constituted €700 billion in Europe (Bradford *et al*., 2018), merger control has become the most potent and visible of all policy instruments in the hands of the DG COMP. Momentous decisions include the 2001 prohibition of the GE/Honeywell merger, then the largest

*The authors would like to thank the two anonymous reviewers for their helpful suggestions. They are also grateful to Fabio Bulfone, Timur Ergen and Martin Höpner for their comments on earlier versions of the article.

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merger project in history, and the 2019 decision to prohibit Siemens from taking over its rival train manufacturer, Alstom.

Mark Thatcher (2014a) described EU merger control as a balancing act between the enforcement of market competition and the integration of European markets around large, cross-national European champions. According to him, the main component of this integrationist policy is the European Commission's alleged lenience towards the creation of large firms operating at EU level. In this article, while we acknowledge that EU merger policy acts as an integrationist force,[1] we argue that the outcome is different from that suggested by Thatcher. European policies can be classified into three categories (Warlouzet, 2017): policies fostering integration via social policy, policies based on neo-mercantilism (where the aim is to maximize the level of domestic industrial output), and policies seeking to integrate Europe through market-based mechanisms. We argue that, far from leading to neo-mercantilist outcomes, as suggested by Thatcher, merger policy has contributed to the convergence of European capitalism around market-centred principles. Given the magnitude of its actions, DG COMP, the EU body in charge of competition policy, has become an integrationist force on a par with the Single European Act and the ensuing (de)regulatory push (Jabko, 2006), the monetary union (Feldstein, 1997), and the recent expansion of the powers of the European Central Bank (Braun, 2020).

What are the driving forces behind DG COMP's market-centred enforcement of mergers? Regulation 4064/89 itself is the outcome of a critical juncture that led to yet another increase in the powers of DG COMP. Both intergovernmental forces, such as the interests of key member states (Karagiannis, 2013; Warlouzet, 2016), and supranational forces, such as DG COMP's own myth-making (Akman and Hussein, 2010), played a role in this process. After this regulation was passed the question of the driving force behind DG COMP's actions remains open; a point that has not been addressed by the literature on the development of EU competition policy. To make it acceptable to national governments, Regulation 4064/89 was drafted in an ambiguous way (Warlouzet, 2016), which provided DG COMP with a high level of autonomy in the interpretation of its provisions. Focusing on the overlooked issue of enforcement, we seek to determine whether DG COMP was able to expand and deepen this procedure by means of its own functionality or whether it was permeable to external forces. While some have insisted on the spread of neoliberal ideology, an external force, in explaining DG COMP's actions (Buch-Hansen and Wigger, 2010; Cini and McGowan, 2009), we view bureaucratic enforcement as mainly self-referential, and thus contributing to the process of 'negative integration', identified twenty years ago by Fritz Scharpf (1999). Since the 1960s the Commission has been implementing Articles 85 and 86 of the Treaty of Rome and has fought to expand its powers and bureaucratic resources. As this article will show, the implementation of merger control is a prolongation of this supranational process. Moreover, since the 1989 merger regulation was passed DG COMP has not fundamentally changed course, despite a changing political and ideological environment.

We explore the logic underlying the implementation of merger control by the European Commission through an analysis of all available merger decisions made between 1990

[1]By 'integrationist force', we refer to the strengthening of ties between *all* members states. Other researchers have stressed the integrative power of competition policy on new member states (Böheim and Friesenbichler, 2016; Hölscher and Stephan, 2009; Hölscher *et al*., 2017).

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and 2016 (6,161 cases involving 13,365 firms). This quantitative analysis is supplemented with four semi-structured interviews with key experts in the field and the merger decision citation data. We find that the Commission intervenes more heavily, deciding to move the case to a phase II investigation, if merging firms are from coordinated market economies (CMEs) and from sectors prone to state intervention. The enforcement pattern suggests that merger control severs the corporate ties associated with a coordinated style of capitalism (Hall and Soskice, 2001) and renewed forms of industrial policy (Thatcher, 2014b). Although cross-national mergers are favoured compared with domestic ones, our results give few indications that merger control accommodates the rise of European champions (Bulfone, 2019; Colli *et al.*, 2014), thus challenging a previous empirical analysis of EU merger control (Thatcher, 2014a). Overall, the results support our argument that merger policy integrates European capitalism via pro-competitive rules.

Why did the European Commission act this way? Our interviews with four merger control experts and the merger decision citation data suggest that the negative integration function that emerges from the statistical macro-level patterns of decisions is not necessarily the result of the micro-diffusion of neoliberal ideology in Brussels, but instead a reflection of the set-up of EU institutions and the autonomy left to self-referential bureaucracies. The article thus expands and contributes to the debate about other EU actors such as the Court of Justice (Höpner, 2011) or the European Central Bank (Braun, 2016) that have been found to contribute to European economic liberalization through their structural design rather than by the mere diffusion of neoliberal ideas.

The article is organized as follows. We first discuss various works addressing drivers of EU competition policy and its impact on national models of capitalism and economic policy. We then describe our dataset and the main parameters of the quantitative analyses. The next section covers the results, showing that most of our expectations of frictions between merger control and national styles of capitalism are valid. The discussion section focuses on the driving forces behind EU merger control and introduces interview data and the citation patterns of EU merger decisions.

I. Conceptual Framework

To create expectations as to the impact of EU merger control on European capitalism, we draw on three different bodies of literature. The first, the ‘varieties of capitalism’ (VoC) literature, divides Europe into styles of capitalism with distinctive features of corporate control. The second addresses industrial policy, and, specifically, corporate restructuring in key sectors that were liberalized by EU-led policies, such as energy, telecommunication or transport. The third centres on negative integration and clarifies our expectations about the drivers of EU competition policy.

Varieties of Capitalism

Using the VoC theoretical framework, European countries can be classified either as liberal market economies (LMEs) or as coordinated market economies (CMEs) (Hall and Soskice, 2001). The VoC approach analyses how economic coordination and competition operate at the national level. In the empirical literature, the UK is often used as an example of an LME, while Scandinavian countries, Austria, and Germany are usually viewed

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as CMEs (Hall and Gingerich, 2009). It is well known that CMEs are more likely than LMEs to have centralized wage-bargaining systems. However, corporate control is also a key feature of the VoC framework. CMEs clash with LMEs because the former favour stakeholders over shareholders, promote the horizontal cooperation of companies through corporatist arrangements, and encourage bank, union and (provincial) state codetermination (Callaghan and Höpner, 2005). In CMEs, rather than the marketized logic of stock markets and aggressive takeovers, corporate structure is negotiated by long-term investors, such as banks or the state. Thus, the interconnected business community in CMEs should be capable of strategic specialization; that is, creating one national champion in one specific sphere of activity and preventing foreign competitors from entering the domestic market or taking over the domestic incumbent. Such features of CMEs should lead to higher levels of friction with EU merger control and we would expect CMEs to be particularly targeted by DG COMP (*VoC expectation*). This would not be the first case of such friction between CMEs and EU policy: in the field of corporate ownership, EU institutions have a history of breaking down national legal mechanisms protecting domestic firms against foreign takeovers (Werner, 2013).

Industrial Policy

Another potential point of friction between EU merger control and European capitalism is attempts by member states to establish European champions via industrial policy. After the Single European Act was signed in 1986 the European Commission acquired powers to liberalize and regulate industries that used to be run by state-owned incumbents (Jabko, 2006). In various sectors, such as telecommunications, energy and air transport, these state-owned companies lost their domestic monopoly. Member states were mandated to level the playing field and allow newcomers to enter the market. The most striking effect of this was the decline of traditional forms of industrial policy and the rise of the regulatory state (Majone, 1994): many powers were delegated from central governments to independent regulators, both at the national and European levels. Central governments refrained from planning and let the market pick winners instead.

Surprisingly, rather than putting an end to neo-mercantilism (that is, discretionary state intervention in the newly liberalized sectors), the shift towards market regulation merely led to an adaptation of such intervention (Thatcher, 2014b). One aspect of this which is relevant to merger policy is the strategy of turning domestic champions into European ones. Fearing the devastating effects of competition on their domestic markets, many states encouraged former state-owned incumbents to internationalize and buy out firms abroad, especially in other European countries undergoing similar processes of liberalization (Colli *et al*., 2014). To increase the chances of success, the highest echelons of government were actively involved. Government intervention is crucial to creating a viable new corporate entity (Viallet-Thévenin, 2016) and to forming a stable group of local shareholders (Bulfone, 2019).

A recent article addressing merger control (Thatcher, 2014a) claims that DG COMP has shown flexibility towards the neo-mercantilist goal of fostering European champions. By contrast, given the goals explicitly stated by EU competition policy and that EU institutions are, on the whole, heavily oriented towards market-building (Jabko, 2006; Scharpf, 1999; Warlouzet, 2017), we could expect friction between merger control and

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the renewed forms of industrial policy described above. According to previous research, the European Commission refrains from protecting the European industrial fortress: DG COMP does not treat takeovers of EU firms by extra-European firms more harshly than intra-European concentrations (Bradford *et al*., 2018). Another sign of this friction should be apparent in the sectors targeted by merger control (*state-sector expectation*). Sectors with a history of state intervention and large domestic incumbents – such as telecommunications, energy or transport – should be targeted more often than others.

Negative Integration

Traditionally, the behaviour of EU institutions such as the European Commission is explained in one of two conflicting ways: by intergovernmentalism and supranationalism (Tsebelis and Garrett, 2001). While the former breaks down EU features to interests at the nation-state level, the latter considers supranational EU institutions as a level of its own kind. In this article we adopt the supranationalist perspective and view competition policy enforcement as a factor in negative integration (Scharpf, 1999). Traditionally, this perspective has been applied to the Court of Justice. In this view, it does not matter much whether incumbent officeholders such as judges hold market-liberal convictions – some apparently do, others do not (Scharpf, 1999). What matters is the key institutional conditions of the Court of Justice: the lack of a strong supranational executive, legislative and public media power as a political counterweight, and the constant pressure to decide cases with much higher decision-making efficiency than the debating parliament in the very domain in which the Court has most competence; the defence of individual market rights against obstruction by national regulations.

In agreement with recent research on the European Central Bank (Braun, 2016) or the European Investment Bank (Mertens and Thiemann, 2019), we hypothesize that the Court of Justice is not the only EU institution that has thrived due to Europe's lack of positive integration. DG COMP has, too. A bureaucracy set up 60 years ago, DG COMP operates in an institutional context where member states and key stakeholders (such as business interests) have consistently disagreed over the goals and content of competition policy (Cini and McGowan, 2009). Given this context, part of the rule-making process has been delegated to DG COMP and the competition commissioner. In 1989 the merger regulation that created a one-stop procedure to be enforced by Brussels was partly an outcome of DG COMP's own efforts (Warlouzet, 2016). While member states still have a say in drafting new regulations, enforcement is entirely in the hands of the European Commission. Given the flexibility of the language used in merger regulation (Thatcher, 2014a), EU civil servants should have considerable leeway in interpreting it.

A potential challenge to this explanation is the diffusion of the neoliberal ideology in Brussels in general and in DG COMP in particular. In this ideas-based view, it is not the internal logic of bureaucracy that explains the enforcement of constraining merger rules but the diffusion of an ideology that is hostile to any form of market coordination or state intervention (Djelic, 2006) and the political mobilization of member states and the Commission in favour of those solutions. DG COMP's roots are commonly described as Ordoliberal: competition should be actively *enforced*, even if it affects pre-existing monopolies (Gerber, 1994). More recent developments (such as Chicago-based economic theories) have led to the rise of neoliberalism, which is more radical in its promotion of

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market logics than other branches of liberalism (Mudge, 2008). While many agree that neoliberalism has affected DG COMP, there is disagreement as to how. According to Buch-Hansen and Wigger (2010), neoliberalism strengthens its decades-long project of aggressively lifting market barriers. By contrast, others stress that the neoliberal project promotes a more restricted role for anti-trust agencies (Glick, 2019). This 'more economic approach' is more lenient towards market concentration, which is believed to yield efficiencies for the consumer. Whether it leads to a weakening or a strengthening of interventionism, we will assess the impact of neoliberal ideology on DG COMP's decision-making (*ideology expectation*). Our main empirical strategy is to discern whether the appointment of a new competition commissioner has an impact on enforcement. We thus pay close attention to Mario Monti. Appointed as Commissioner for Competition in 1999, he was trained as an industrial economist at Bocconi University and at Yale, two institutions where neoliberal views on anti-trust are dominant.

II. Data and Variables

We explore merger enforcement patterns using 6,161 cases comprising 13,365 firms, covering virtually all enforcement activity from 1990 to 2016.[2] While other contributions have also used extensive datasets, they test only a limited range of hypotheses focusing on how DG COMP responds to takeovers initiated by non-European firms (Bradford *et al*., 2018; Özden, 2005).

Our dependent variable is whether the European Commission opens a phase II investigation. The Commission divides the procedure into two phases. During an initial phase of 25 working days, DG COMP officials make a preliminary assessment of the case. At the end of this stage an overwhelming majority of cases are cleared and the merger can proceed. A minority of cases (203 in our dataset) that 'raise serious doubts as to [their] compatibility with the common market'[3] go into a second phase, that can last up to 105 working days. More administrative resources are devoted to those cases and the notifying parties must provide robust evidence in support of their merger project. While it is true that outright prohibitions are rare (Thatcher, 2014a), phase II decisions can affect the economic viability of a merger or acquisition deal.[4] At this stage, DG COMP officials typically demand commitments that involve giving away critical assets to competitors.

Our independent variables reflect the place, time and sector of the merger. A first set of independent variables describe firm-level characteristics. In most cases the country of the notifying parties is indicated in the decision report released by DG COMP. In a minority of cases this information had to be retrieved through various online sources. A country dummy was used to test whether firms from CMEs are targeted more often than those

[2]We kept only cases that ended either with outright clearance or the opening of a phase II investigation. According to DG COMP's publicly available statistics, they were notified of 6,245 such cases before 31 December 2016 (https://ec.europa.eu/competition/mergers/statistics.pdf, accessed 29 September 2019). We were able to retrieve 6,147 reports of those decisions, the majority from the European Commission's case database (https://ec.europa.eu/competition/elojade/isef/, with a web-scraping procedure performed on 2 May 2019). We manually retrieved 21 other documents by typing the case code into a web browser. In concentrations involving joint ventures, we considered only the parent firms and excluded the joint ventures that were created. The latter presented us with a coding challenge: in most cases they were empty shells created for legal purposes only.

[3]This is the language used in the merger regulation (Article 6 (b)).

[4]The takeover of Syngenta by ChemChina is an example of this. When it became clear that a phase II investigation would be opened, the value of Syngenta's shares fell by six per cent (*The Financial Times*, 2016).

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from LMEs. We used this to create additional variables to identify cross-national concentrations or a takeover of a European firm by an extra-European one and distinguish purely domestic mergers from those involving foreign firms. Finally, this allowed us to create a network of countries linked through the number of merging firms targeted by phase II investigations.

At the case level, our first independent variable was the name of the competition commissioner at the time the decision was made. We used this dummy variable to test whether merger enforcement is sensitive to ideological changes. To further our understanding of the drivers of merger decisions we also conducted a textual analysis of their content, looking for the sources referenced by DG COMP officials. We compared the citation rate of three types of sources: previous decisions, the guidelines that were introduced in 2004 and 2008 to reflect the most recent advances in economics and EU court decisions (the Court of Justice and its Court of First Instance (CFI), called the General Court from 2009).

The other case-level independent variable is the sector. The metadata provided by the European Commission assigns sector codes to each case. The codes are part of the unified Statistical Classification of Economic Activities in the European Community (known as NACE codes). As most cases received more than one NACE code, sector values have some degree of overlap, making it difficult to assign a single value to each case. Because of this problem we assigned only 11 sector dummies, based on their size, absence of overlap and theoretical significance. While some of those sectors feature virtually no state enterprise (food and beverages, mass retail) others were made up of state-owned monopolies until the European Commission's liberalization efforts of the 1990s and the 2000s (air transport, energy and telecommunications). We were careful to maintain variety. Our selection of sectors ranges from fast-moving consumer goods (food and beverages) to high-technology products (pharmaceuticals).

An additional control we include is the concentration of sectors. DG COMP becomes active if a merger creates a problem for community-wide market concentration or for specific national submarkets. We therefore constructed a conventional Herfindahl–Hirschman index (HHI) for the 11 main sectors, firstly using firms' turnover from the unconsolidated accounts in the Amadeus database for nationally specific sectoral HHIs and secondly, using firms' turnover from the consolidated accounts for European sector concentration. Because of Amadeus coverage, HHIs can only be reasonably computed for the subsample of years post-2008 and are more reliable for bigger countries. As HHIs are, however, quite static (Cavalleri *et al*., 2019), ranging from lowest below-100 values of the construction sector to a low four-figure number in air transport, we use the variable as a pooled average.

III. Results

The dependent variable and the main explanatory dimensions are displayed in Table 1, showing that the air transport and paper industry are the economic sectors most targeted, with more than ten per cent of their cases moving to the second phase, with financial and employment services at the other end. Geographically, mergers involving companies from Europe are among the most targeted, with North America not ranking first despite its size.

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Table 1: Mean of Dependent Variable by Main Explanatory Dimensions

Sector	*Mean phase II*	*Subregion*	*Mean phase II*	*Commissioner*	*Mean phase II*
Air transport	0.12	Northern Europe	0.05	Brittan	0.07
Paper	0.11	Switzerland	0.05	Van Miert	0.05
Telecommunications	0.06	Germany	0.04	Monti	0.04
Metals	0.06	Latin America	0.04	Kroes	0.03
Food/beverage	0.04	Austria	0.04	Almunia	0.02
Energy	0.04	Africa	0.04	Vestager	0.02
Other	0.03	Northern America	0.04		
Mass retail	0.02	Benelux	0.03		
Construction	0.02	United Kingdom	0.02		
Pharmaceuticals	0.01	France	0.02		
Financial services	0.00	Southern Europe	0.02		
Employment services	0.00	Tax haven	0.02		
		Australia and New Zealand	0.01		
		Asia	0.01		
		Eastern Europe	0.00		

The alignment of phase II cases by commissioner shows, in fact, a perfect chronology since 1990; that is, a tendency towards leniency.

Doesn't DG COMP activity simply reflect the underlying size and concentration of the economy? DG COMP is indeed more likely to deal with merger cases involving companies from bigger economies ($r = 0.53$, $P < 0.001$*), but this does not necessarily translate into a higher likelihood of receiving a harsh decision, as Figure 1 shows. Among the high GDP countries and disregarding the tax-haven outliers, bigger economies even have a comparatively low proportion of hard merger cases. Within economies, some sectors are more concentrated than others and the pooled averages of national sectoral HHI correlates negatively with the number of all merger cases investigated (-0.20, $P < 0.01$*),[5] but positively with phase II probability (0.16, $P < 0.05$*). This generally shows that the logic of targeting the subsample of problematic phase II cases is different from the pure number of cases on DG COMP's radar, which itself reflects the size of the economy.

For a multivariate picture of this logic, we estimate a logistic regression on whether individual firms participating in potential mergers passed to the critical second phase of the EU merger control procedure. Generally, just over three per cent of all firms (414) and cases (203) moved to this phase.[6] For robustness, we use multilevel models to account for the hierarchical structure of the data, with firms being nested in cases, cases in sectors and sectors in countries (see Appendix). In a first model in Table 2 we introduce the firms' countries of origin. With reference to the UK as the foremost LME in Europe, DG COMP

[5]This is unsurprising, given that the mergers considered by DG COMP are picked according to the size (turnover) of companies and that smaller countries can have high HHIs (Brinkman, 1999, p. 81).
[6]The logistic regression works with a maximum-likelihood estimator which is known to suffer from a small sample bias (King and Langche, 2001). In the current case, the dependent variable has *relatively* rare events, but still several hundred in *absolute* terms, which makes it a less critical case than typical rare-event problems. For robustness we also estimated a Firth logistic regression with bias-reduced penalized-likelihood estimation with similar results. Generally, when interpreting significance levels, it is important to keep in mind that we have the virtual universe of cases, so we do not necessarily need to rely on statistical inference.

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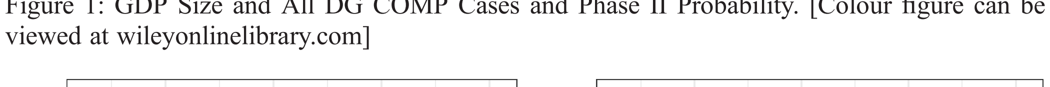
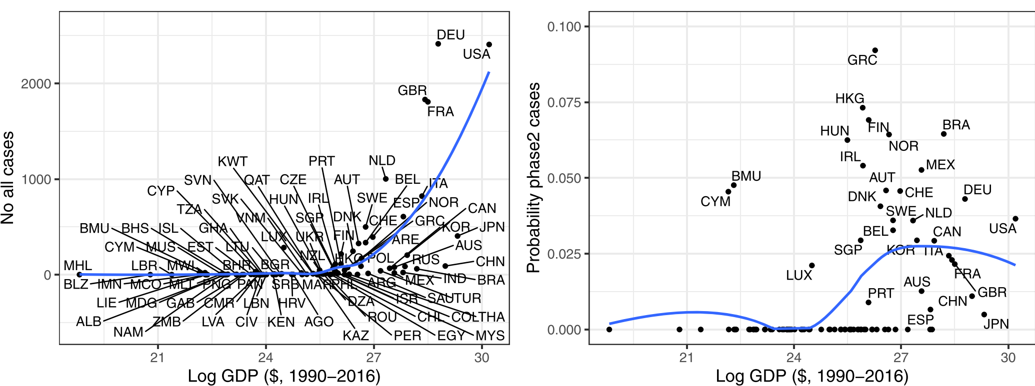


Figure 1: GDP Size and All DG COMP Cases and Phase II Probability. [Colour figure can be viewed at wileyonlinelibrary.com]



is more than twice as likely to be severe in its decisions in classic CMEs such as Austria, Germany or the Scandinavian countries. North American companies are also targeted more than those in the UK, but not when compared with other European countries, either individually or as a group. Compared to those in the UK, US companies interacting with or taking over European ones are not more likely to face a phase II decision.[7] As a basic control, a larger number of firms participating in a merger makes phase II decisions less likely. That is, mergers between a few big players are problematic. Overall, the country-specific findings support the hypothesis that DG COMP targets classic corporatist countries or CMEs with reference to the UK, the classic LME in Europe (*VoC expectation*). By contrast, Eastern European countries have one of the lowest likelihoods of being targeted. Therefore, our results qualify previous findings that the EU successfully exported its competition regime to the new members states that joined in 2004 (Böheim and Friesenbichler, 2016; Hölscher and Stephan, 2009; Hölscher *et al*., 2017).

The second column in Table 2 introduces the 'political time' dimension of commissioners' mandates. Over the period from 1990 to 2016, Mario Monti was a game changer: harsher decisions were more likely before his appointment, but during and after it they were increasingly less likely. At first glance, this challenges our expectation that merger enforcement is insensitive to the ideological context in which the European Commission operates (*ideology expectation*). Yet additional evidence qualifies this interpretation (see discussion). The third column adds the dimension of whether foreign firms are involved in a merger. If they are, the likelihood of the merger being rejected is more than six times lower: DG COMP focuses on cases that involve domestic firms only, which is in line with previous research (Carree *et al*., 2008; Bradford *et al*., 2018). This could suggest that while DG COMP does not necessarily follow a neo-mercantilist logic against American takeovers, it works against *intra-national* mergers, potentially favouring European international ones.

[7]This may be indicative of the fact that the UK participates in many mergers because it is used as a base for setting up specially adapted vehicles for mergers to take place. Furthermore, UK firms and those registered in tax havens are not significantly different from each other with regard to phase II decisions.

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Table 2: Multilevel Regression Results

	Country (1)	*Commissioner* (2)	*Domestic* (3)	*Sector* (4)	*Non-domestic* (5)
Northern America (ref. UK)	0.473* (0.195)	0.557** (0.196)	0.504* (0.197)	0.512* (0.199)	0.260 (0.251)
Africa	0.542 (0.740)	0.483 (0.743)	0.564 (0.743)	0.312 (0.751)	0.278 (0.760)
Asia	−0.999* (0.478)	−0.831 (0.480)	−0.831 (0.480)	−0.788 (0.481)	−0.507 (0.493)
Australia and New Zealand	−0.519 (1.020)	−0.419 (1.022)	−0.342 (1.022)	−0.589 (1.026)	−0.594 (1.034)
Austria	0.771* (0.339)	0.853* (0.340)	0.848* (0.341)	0.879* (0.349)	0.472 (0.466)
Benelux	0.381 (0.223)	0.442* (0.223)	0.440* (0.223)	0.461* (0.225)	0.335 (0.267)
Switzerland	0.678* (0.304)	0.692* (0.305)	0.723* (0.306)	0.782* (0.309)	0.843* (0.339)
Germany	0.704*** (0.197)	0.687*** (0.197)	0.646** (0.198)	0.682*** (0.199)	0.794*** (0.235)
Eastern Europe	−1.526 (1.015)	−1.254 (1.016)	−1.208 (1.017)	−1.371 (1.020)	−1.105 (1.026)
France	0.003 (0.234)	0.012 (0.234)	−0.017 (0.235)	0.048 (0.236)	−0.005 (0.287)
Latin America	0.770 (0.539)	0.981 (0.540)	1.002 (0.541)	0.893 (0.547)	0.481 (0.749)
Northern Europe	0.881*** (0.214)	0.897*** (0.214)	0.887*** (0.214)	0.784*** (0.218)	0.772** (0.255)
Southern Europe	−0.046 (0.258)	−0.033 (0.258)	−0.021 (0.259)	−0.064 (0.261)	0.068 (0.295)
Tax haven	−0.076 (0.416)	0.142 (0.419)	0.187 (0.419)	0.135 (0.421)	0.269 (0.434)
Brittan (ref. Van Miert)		0.487 (0.251)	0.480 (0.251)	0.437 (0.258)	0.715* (0.316)
Monti		−0.263 (0.140)	−0.253 (0.140)	−0.242 (0.142)	−0.225 (0.180)
Kroes		−0.655*** (0.148)	−0.644*** (0.148)	−0.625*** (0.150)	−0.501** (0.187)
Almunia		−0.699*** (0.161)	−0.686*** (0.161)	−0.657*** (0.164)	−0.533** (0.203)
Vestager		−0.817*** (0.205)	−0.797*** (0.206)	−0.728*** (0.209)	−0.798** (0.272)
Foreign (ref. domestic)			−0.359*** (0.105)	−0.397*** (0.107)	
Air transport (ref. other)				1.586*** (0.259)	1.031** (0.383)
Construction				−0.510 (0.458)	−0.046 (0.463)
Energy				0.558** (0.203)	0.102 (0.279)
Employment services				−13.131 (282.715)	−15.181 (883.943)
Financial services				−2.457*** (0.712)	−14.854 (262.574)
Food beverage				0.478* (0.201)	0.525* (0.236)
Mass retail				−0.451 (0.289)	−0.485 (0.348)
Paper				1.212*** (0.224)	1.423*** (0.248)
Pharmaceuticals				−0.819 (0.510)	−1.126 (0.718)
Metals				0.866*** (0.230)	0.726* (0.283)
Telecommunications				0.870*** (0.180)	0.877*** (0.215)

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Table 2: (Continued)

	Country (1)	*Commissioner* (2)	*Domestic* (3)	*Sector* (4)	*Non-domestic* (5)
No firms	-0.204^{***} (0.055)	-0.204^{***} (0.055)	-0.186^{***} (0.055)	-0.207^{***} (0.055)	-0.384^{***} (0.078)
Constant	-3.215^{***} (0.210)	-2.835^{***} (0.229)	-2.623^{***} (0.236)	-2.698^{***} (0.243)	-2.635^{***} (0.297)
Observations	13,365	13,365	13,365	13,365	9,957
Log likelihood	−1,875.283	−1,852.549	−1,846.930	−1,778.707	−1,183.246
Akaike Inf. Crit.	3,782.566	3,747.098	3,737.860	3,623.415	2,430.491

Note: * $P < 0.05$; ** $P < 0.01$; *** $P < 0.001$

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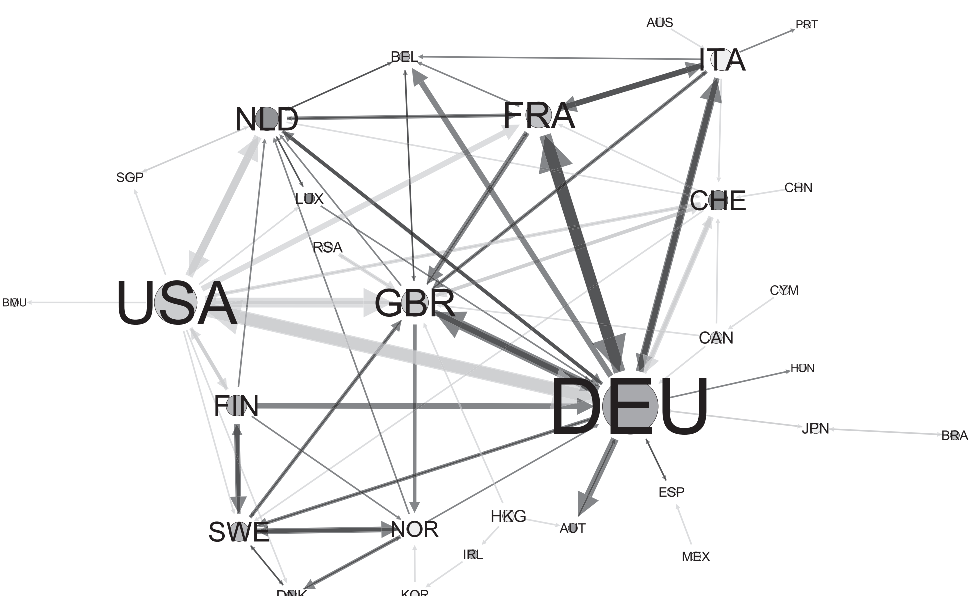
The fourth column of Table 2 introduces the sector dimension: the sector of the merging firms matters for how the cases are handled. More specifically, alongside metal and paper (two capital-intensive industries where concentration is more likely), DG COMP focused on three sectors with (formerly) heavy state intervention and control: air transport, energy and telecommunications. Yet it is noticeably lax regarding the financial service sector. Overall, the results suggest that DG COMP has potentially thwarted the rise of European champions in formerly state-owned sectors while tolerating the consolidation of the financial sector (*state-sector expectation*).

In the multilevel model results (see Appendix), we also added the sector concentration (HHI), either European-wide or country-wide, on the sectoral level. As expected, DG COMP is more likely to move a case to phase II in sectors that are known for generally high levels of concentration in Europe. The sectoral variables do not confound other associations by very much, as country and sector-specific intercepts show (see figures A1-A2).

The last column of Table 2 only contains cases involving firms from at least two different countries. This is the subset of true cross-national takeovers whose results reinforce

Figure 2: Network of Countries Linked by Critical Cross-national Takeovers (Phase II Decisions)



Notes: The tie strength (line thickness) is the number of firms. Dark ties connect EU or EEA member states. Node size is the sum of outgoing degrees. A darker node colour reflects a higher number of domestic mergers. The number of domestic ties is weighted by the number of companies a country has in the Fortune 500 Global Ranking. Two exceptions are Luxembourg and Switzerland, for which this figure was missing; the absolute number of domestic mergers was used instead. The layout is based on the Force Atlas algorithm with manual repositioning of some nodes for the sake of a clear visualization.

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our claim that EU merger control clashes with the rise of European champions in the sectors that underwent EU-led liberalization from the 1990s.

The regression analysis captures countries only as isolated cases, largely ignoring *with whom* mergers take place. Most phase II cases (282 firms out of 403 in our dataset) involve cross-national mergers. As shown in Figure 2, they link their respective countries into a network. The structure of this network is a function of DG COMP's market-centred enforcement priorities.

The network of targeted mergers focuses on the central and northern European CMEs, with Germany at its core and a strong Scandinavian cluster. Many cross-national cases involve the USA, but the ties with European countries are reciprocal: DG COMP targets both US firms acquiring European firms and European firms buying US firms. Another finding is reflected in the colour of the nodes, which varies according to the number of domestic cases that go into phase II. Relative to the number of large firms based in each country, German, Austrian, Dutch and Scandinavian stand out as being particularly targeted. Other non-European countries, such as China, are either peripheral or completely outside the network.

IV. Discussion: The Autonomy of DG COMP

What mechanisms produced the macro-level patterns that we observe ex post in the corpus of DG COMP's decisions? Broadly, there are two explanations of the motives driving DG COMP or other European institutions. The first is the explicit intentions of the actors involved, notably their ideological intention to make the EU a more market-liberal entity. In this view, green and white papers and public statements by member states' political leaders and EU commissioners contain the policy field's vision for a neoliberal revolution. The second, more structural view, embedded in negative integration theory, is that whatever their intentions, officials' behaviour is largely shaped by the institutions to which they belong. In support of this latter structural view, we propose that a certain bureaucratic autonomy led DG COMP to act against the CME network and purely domestic mergers; this was neither a grand vision or design nor a direct outcome of the ideological leaning of certain commissioners.

In the early 2000s DG COMP officials blocked a string of high-profile mergers and acquisitions (such as GE's attempt to buy Honeywell). Those decisions sparked a furore among business interests and threw EU competition policy into a legitimacy crisis. The EU CFI overturned three of the decisions blocking mergers (Airtours/First Choice, Schneider/Legrand and Tetra/Laval). To stifle growing criticism and to respond to the concerns raised by the CFI, Commissioner Mario Monti, whose academic background is compatible with neoliberal views on anti-trust, introduced a comprehensive reform that dramatically increased the role of economic analysis in merger control. A core aspect of the 2004 reforms was the "significant impediment of effective competition test" that brought European merger control up to date with the most recent advances in industrial economics. Another innovation was the creation of the position of chief economist, whose role is to review externally the work carried out by the case teams handling merger cases. Most of those reforms are in line with the prescriptions made by Chicago School economics (Quack and Djelic, 2005). It is also true that, starting from the late 1990s, merger control has become laxer and laxer, which is also in line with neoliberal ideology.

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However, the officials in charge of EU merger enforcement did not yield entirely to the power held by the transnational community of anti-trust experts and showed signs of bureaucratic resilience. It was the long-standing DG COMP officials, rather than external players, who designed the reform, alongside the competition commissioner (Interview 1).[8] The newly hired chief economists have remained isolated, with little say in decision-making. By design, the chief economist is an external academic appointed for three years. Not being career officials is supposed to make them more confident in expressing their views, without putting their career at risk. But it also involves a steep learning curve, which prevents them from fully grasping the internal bureaucratic logic of DG COMP. This, in turn, limits their ability to make decisive contributions to decision-making. A former chief economist we interviewed confessed he had little leverage over the decision-making process:

> This is a big organization, a big bureaucracy, almost a thousand people, so we had to make sure that people do not get too entrenched with the case, so you always want to have a fresh second pair of eyes, in this sense the chief economist would supervise this process. So the chief economist, in terms of the institutional setting, is somebody that comes from outside the organization, so that would be an academic typically, somebody with an academic reputation who has worked in the sector, so an economist with a background in industrial organization, you know, the field in economics that deals with the competition issues. […] The tenure for a typical chief economist is three years and so every three years there is someone new who has to come to terms with management issues to deal with these things, which are not the typical job they have done before. So you spend some time and when you have finally understood what you do, it's time to move on and to go back to academia. (Interview 2)

Another interviewee who worked as a chief legal counsel for a large European industrial firm shared a similar view of the 2004 Monti reform. To him, a more economic approach meant an extra layer of technical language but not a crucial factor in winning or losing a case, a process that hinged on the same bureaucratic processes as before:

> You have to put someone who speaks the other side's language. I'm not sure what to do this in my case, but never mind, they neutralized each other, and I could go on. You see what I mean? We put a kung-fu master against the other side's kung-fu master and we could continue playing snooker. (Interview 3)

In 2004, despite the new ideological context becoming more lax towards concentration, DG COMP prohibited the merger between Portuguese incumbents Energias de Portugal and Gas de Portugal on the grounds that in a liberalized market both companies would be the most likely players to compete with each other. This decision led to the cancellation of a long-standing plan by the French technocratic elite to merge Electricité de France with Gaz de France, out of fears that a similar decision would be made (Viallet-Thévenin, 2016).

Further evidence of continuity in enforcement criteria is offered by the decision citation data. Figure 3 explores what EU merger decisions cite. The rate at which decisions

[8]This interviewee was the DG COMP official who drafted the main provisions of the 2004 reform package. The informant confirmed that senior members of the merger task force – which had enforced the merger regulation until then – were involved in the preparation and implementation of the reform.

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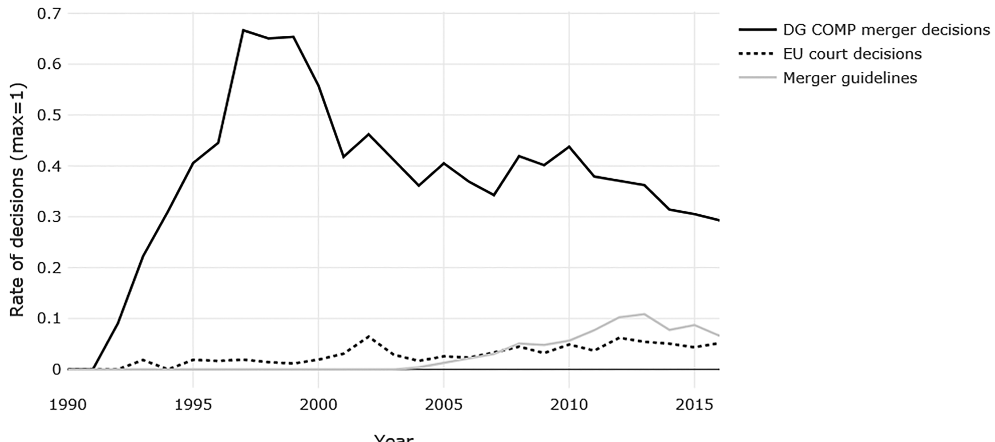
Figure 3: Main Sources Cited by EU Merger Decisions.



cite former DG COMP merger decisions is consistently high throughout the period. Since the early 2000s this rate hovers around 40 per cent. Among the merger decisions made in 2010, 43.77 per cent cited at least one DG COMP decision, 4.91 per cent cited at least one EU court decision and 5.66 per cent cited at least one of the two merger guidelines. Thus citations pointing towards the horizontal and non-horizontal merger guidelines, which were a component of the Monti package and the effort to infuse more economic expertise in merger control, remain at low levels.[9]

Those citations constitute a common thread tying together vast numbers of decisions across different eras of merger enforcement. As Figure 4 shows, new decisions made under a commissioner's term are likely to refer to citations made under previous terms. The introduction of the new merger regulation in 2004 does not seem to upset this logic. Decisions made before the reform are still referenced afterwards. In 2010, by the time Neelie Kroes's six-year term as European Commissioner for Competition came to an end, 46 per cent of citations made that year referred to decisions made before her term even started; 15.85 per cent point to decisions made under Van Miert's mandate, who was competition commissioner a decade and a half prior to Kroes.

Returning to Figure 3, we notice that citations of EU court decisions (both the lower and higher instances of the Court of Justice) have also remained low. This is striking, given that three CFI decisions made in the early 2000s (Schneider/Legrand, Tetra/Laval and AirTours/First Choice) were crucial in bringing about DG COMP's legitimacy crisis. Those court decisions overturned DG COMP's merger prohibitions on the grounds that its economic analysis was outdated. The three decisions contributed to an early spike in the citations of court cases in the early 2000s. Since then, citations of the Court of Justice decisions have remained at a low level. EU merger control is thus a paradoxical case of negative integration. While this theory views EU courts as

[9]One could object that there is an accumulation effect whereby instead of citing the merger guidelines, EU civil servants cite cases that have cited the guidelines. This, however, is unlikely due to the risk of a decision being challenged in court. As they have a higher legal standing than previous DG COMP decisions, we should expect guidelines to be cited directly.

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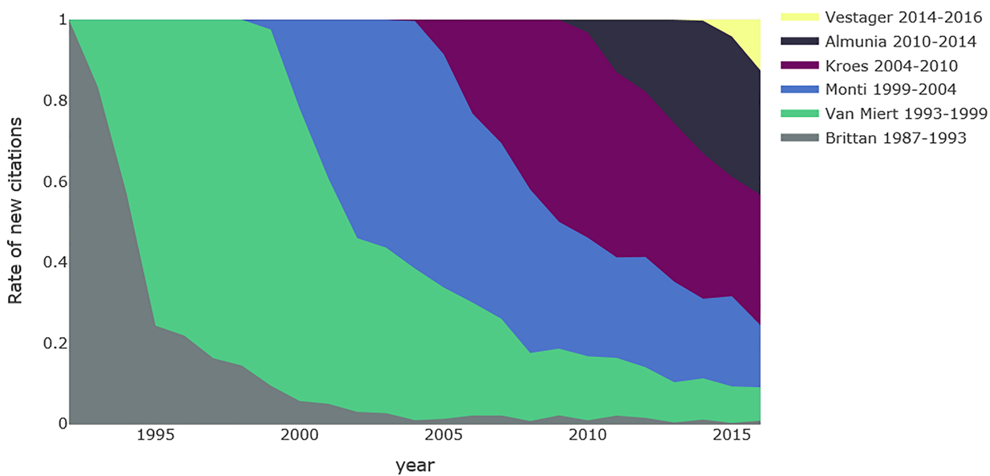
Figure 4: Citation Patterns and Commissioners' Terms. [Colour figure can be viewed at wileyonlinelibrary.com]



the main driver of such integration (Scharpf, 1999), our case suggests a clash between the ambitious integration-oriented agenda of a bureaucracy (DG COMP) and the pro-business, laissez-faire attitude of the CFI. The creation of the CFI in 1989 was supported by large businesses and corporate lawyers, who viewed DG COMP as being too heavy-handed (Avril, 2019). This ideological orientation was still present in the early 2000s. One of our interviewees who was a CFI judge during this period had publicly denounced some of his colleagues as 'ayatollahs of free enterprise' (Interview 4). Thus, all in all, a range of empirical ingredients support the second view on negative integration, which sees efficient bureaucracies at work rather than zealous ideologues as the core players.

Conclusion

European policies on mergers and acquisitions are paradoxical. EU integration has contributed to corporate integration across Europe like no other force before it (Coeurdacier *et al*., 2009). The Economic and Monetary Union lowered the costs of transferring capital from one country to another, while single-market policies removed many regulatory barriers to entry. By contrast, the 1989 merger regulation outlawed certain forms of corporate integration. What are the drivers of this policy and how did it shape EU integration? While the literature on the development of EU competition policy has shown the origins of these new rules, it has overlooked enforcement. Yet enforcement matters: as we have shown, DG COMP has gone beyond the mandate spelled out in the Regulation. Case handlers have not treated all uncompetitive situations equally and have been particularly harsh towards the forms of concentration that are typical of neo-mercantilism. These include mergers and acquisitions taking place within coordinate market economies (CMEs) or markets with a history of industrial policy and heavy-handed state intervention.

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Merger policy is a factor contributing to the institutional change in CMEs and their slow convergence with LMEs (Hall and Thelen, 2009). Other factors that might normalize corporate control in CMEs include the corporate governance reforms that spread across Europe in the early 2000s. Some of those reforms were an outcome of Court of Justice decisions, such as the one scrapping the 'golden share' system protecting Volkswagen from foreign takeovers (Werner, 2013). Other factors include the rise of the service economy, in which the institutional arrangements typical of CMEs are harder to reproduce. Turning to industrial policy, we found little evidence that European merger policy accommodates the rise of European champions (Thatcher, 2014a) or other neo-mercantilist policy goals (Warlouzet, 2017). While it is true that domestic mergers are treated less favourably than cross-national ones, a result consistent with previous research (Bradford *et al*., 2018; Carree *et al*., 2008), DG COMP seems hostile to the pan-European consolidation of formerly state-controlled sectors such as air transport or telecommunications, which is probably explained by the active role played by member states in those operations. Even in cases where states face dire economic times, state-led creation of national champions is not an option for DG COMP.[10] The only exception is the financial sector, where phase II decisions are comparatively rare. This is consistent with accounts of the post-financial-crisis push to restructure the banking sector and strong-arm national incumbents into taking over smaller, weaker banks (Tooze, 2018).

These enforcement outcomes are unlikely to result from a conversion to neoliberal ideology. Overall, it is supranational forces that underpin DG COMP's legitimacy. Although critical junctures sometimes challenge and alter the course of European competition policy (Warlouzet, 2016), the market-centred enforcement we observe is associated with the process of negative integration. Like the Court of Justice (Scharpf, 1999) and more recently the European Central Bank (Braun, 2020), DG COMP officials face little resistance from other stakeholders, such as large businesses, ideologues or member states, which remain divided as to how European economies should integrate with each other. As in the past with other procedures (Cini and McGowan, 2009), DG COMP has been able to make the most of an ambiguous mandate and to impose an ambitious interpretation of the 1989 merger regulation that contributes to the liberalization of member states' economies. As in the Court of Justice or the European Central Bank, DG COMP's staff enjoy relative stability despite a constantly evolving political and ideological environment. Over time, the staff build their own decisional practice and cultural norms. Such legitimized patterns are sometimes tied to ideational currents and specific fields of expertise, such as anti-trust law or industrial economics (Quack and Djelic, 2005). Yet these professionalized fields of expertise remain divided over core issues, such as whether larger firms yield efficiencies that make up for the reduced level of competition (Ergen and Kohl, 2019). Thus bureaucrats can cherry-pick the theories or empirical methods that support their long-standing decision standards.

ACKNOWLEDGEMENTS

Open access funding enabled and organized by Projekt DEAL.

[10]In its 2013 decision to prohibit the merger between Greek air carriers Olympic Airways and Aegean (case M.6796, recital 243), the European Commission wrote that 'in difficult economic times, such as the ones prevailing in Greece, consumers require protection from anticompetitive effects without undue delay'.

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Interviews

Interview 1: Former head of the Merger Task Force, Directorate-General for Competition (DG COMP), Brussels (7 February 2018)
Interview 2: Former chief economist, DG COMP, Brussels (21 February 2018)
Interview 3: Head of EU regulatory affairs and former general counsel at a large European industrial firm, Brussels (2 February 2018)
Interview 4: Former judge, EU Court of First Instance, Brussels (15 March 2017)

Supporting Information

Additional supporting information may be found online in the Supporting Information section at the end of the article.

Table A1: Multilevel Model of Phase II Decisions including Sector Concentration
Figure A1: Exponentiated Coefficients for Sectors (with National Herfindahl–Hirschman Indexes)
Figure A2: Exponentiated Coefficients for European Regions (with National Herfindahl–Hirschman Indexes)

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