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# DOES EUROPE MEAN AMERICANIZATION? THE CASE OF COMPETITION

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This paper traces the process whereby competition has come to be valued in our economies. Taking a step back in history, we show how it all started not with competition but with cooperation in fact, in the last decades of the 19th century. Comparing Germany and the USA, we then show how national paths diverged after that. While cooperation remained the accepted and dominant rule in Europe, a particular understanding of competition, what we call oligopolistic competition, came to triumph in the United States. After World War II, this particular understanding was diffused to other parts of the world and particularly to Western Europe. When it comes to competition, we thus show that the basic and formal rules of the game that structure Europe today owe a lot, historically, to American models. However, we ponder in the conclusion on the limits to that process of "soft convergence".

*Keywords*: Competition and cooperation; Americanization; Antitrust; Cartelization; Historical comparison

## INTRODUCTION

In July 2001, the European Commission ruled against a proposed merger between General Electric and Honeywell, on antitrust grounds. The American Department of Justice had itself already approved the deal so the European decision triggered a flurry of protest in the United States. This story is telling in quite a number of ways.

First of all, it shows that decisions touching upon the definition of competition and restrictions to competition are highly problematic and partly contextual. They are neither scientific nor objective in a universal sense. Those decisions, furthermore, can be highly sensitive, often revealing and expressing political stakes. In the case of the GE-Honeywell decision, the Bush administration reacted directly and quite strongly, the US Treasury Secretary, Paul O'Neill, saying the European move was "off the wall" (Financial Times, October 14, 2001).

This, undeniably, is a first level reading of the GE-Honeywell case, its most obvious lesson. This particular conflict should not blind us, however, to more fundamental trends. Probing further and beyond accidental disagreements, one finds in fact when it comes to competition and its restrictions a common language and discourse, similar institutions, common references and rules of the game. The GE-Honeywell story of conflict is revealing precisely because it is exceptional and rare. As Mario Monti, the EU competition commissioner, puts it,

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"GE-Honeywell represents a rare divergence in policy, the US and the EU (being) largely in agreement on antitrust matters" (Financial Times, October 14, 2001). This is true across the Atlantic but also on a much wider scale. About one hundred countries today have a competition policy and competition institutions that function along quite similar principles – albeit with lesser or greater degrees of decoupling between formal principles and implementation. And for a great number of those countries, these principles have been adopted only recently, in general during the last fifteen years (Djelic and Bensedrine, 2001; Jenny, 2002). This similarity, we propose, is much more interesting, surprising and worth pondering.

The object of this paper is to retrace a process whereby competition has come to be valued in our economies – what is more in a particular and historically peculiar meaning of the term. How and why could a particular understanding of competition and peculiar principles of competition policy come to be so widely shared? The issue of competition – its definition and understanding, the value this understanding is being granted in a particular societal context and the nature of institutions, organizations and processes that sustain and support that understanding – is highly structuring of economic arrangements in particular but also possibly of societal, political or even value choices (Djelic, 1998; Djelic and Bensedrine, 2001; Dobbin and Dowd, 2000; ENA, 2002). This in itself is a justification for this exercise. Although we extend the geographical scope from time to time, we focus mostly here on the United States and Europe.

Taking a step back in history, we show how it all started not with competition but with cooperation in fact, around the third quarter of the 19th century, in European countries but also in the United States. Looking on the one hand at the German case – as one example of the European story before 1945 – and on the other hand at the United States, we show how national paths started diverging towards the end of the 19th century on the issue of competition and the correlated dimension of cooperation. While cooperation remained the accepted and on the whole dominant rule in Europe, competition came to triumph in the United States. Even more precisely, a particular and peculiar understanding of competition – what we call here oligopolistic competition – emerged and imposed itself in the United States during the first half of the twentieth century. Then, we turn to the next episode in that story. We look at the export and diffusion of that particular understanding to other regions of the world and particularly to Western Europe in the decades following World War II. When it comes to competition and cooperation, we show that the basic and formal rules of the game as they have come to characterize the emerging European space owe a lot indeed, historically, to American models. Drawing from and building upon this reading of Europe as partial Americanization of competitive rules of the game, we ponder in the conclusion on the limits to that process of "soft convergence" (Jenny 2002).

## CARTELS AND THE EARLY TEMPTATION TO COLLUDE AND CONSPIRE

The second half of the nineteenth century was a period of turmoil in Europe and North America. The radical transformations that took place, particularly in the economic and industrial sphere, were to have a long-lasting and profound impact. We can identify three main trends that were common sources of environmental turbulence in a number of countries, including Germany and the United States.

### Common Sources of Environmental Turbulence

First, technological innovations were disturbing existing market conditions and opening new opportunities (Chandler, 1990). Railroads and the telegraph, in particular, represented a radical revolution and created significant stimuli well beyond the boundaries of both industries. And this communications and transport revolution combined and interacted with a profusion of other technological innovations that were coming to maturity during the last decades of the nineteenth century (Landes, 1969). Electricity, refrigeration techniques, and the internal combustion engine were certainly among the most striking. These and other innovations created opportunities that existing industries could seize upon to transform processes of production and invent entirely new machines and modes of production.

Second, erratic economic cycles created uncertainty and turbulence – periods of boom and bust followed each other in close succession. Until the eighteenth century, the growth rate of per capita income in Europe had been as low as 0.11% a year, which meant that per capita income had doubled about every 630 years. A direct consequence of the Second Industrial Revolution was that it took only from 1870 to 1913, a little more than forty years, for the per capita income to double or nearly double in Germany or the United States (Maddison, 1991). While growth proved to be a long-term trend both in Europe and the United States, it was not a smooth process and got regularly interrupted by economic downturns, some of which were severe. A particular source of disruption was the disparity between expanding productive capacities and stagnating consumption levels. For example, railroad freight capacity increased on the whole much more rapidly than demand for it. The term "overproduction" has often been used to describe this situation and the periods of economic downturn characteristic of the Second Industrial Revolution (Chandler, 1962; 1982; McCraw, 1984; Fligstein, 1990).

Finally, the times were marked by significant political and institutional upheaval, with an unmistakable impact at the economic and industrial level. The period beginning in 1870 was one of radical political and institutional change in Germany. Prussian victory in the Franco-Prussian war of 1870 was quickly followed by the integration of German kingdoms and states into a single political entity, the German Reich. Completed in 1871, this process of political unification built upon decades of economic cooperation between states and kingdoms, instituted through the Zollverein (customs union) of 1834. The emergence of Germany as a major industrial power was interwoven with the process of constructing a German nation and thus had a clear political dimension (Pietri, 1982). Throughout the last part of the nineteenth century, economic and industrial development took place within a political and institutional environment in flux, uncertain and ambiguous for both pre-existing and emerging economic actors. World War I was another source of environmental dislocation. The war stimulated the national economy and industry, opening up opportunities for new actors and new practices. The defeat and settlement that followed traumatized the German nation (Keynes, 1920). The direct and indirect consequences of World War I included the unstable Weimar regime, German hyperinflation of the early 1920s, and the rise to power of the Nazi party in the 1930s. For economic and industrial actors, this period of great political and institutional dislocation meant even more environmental uncertainty, turbulence, and ambiguity.

In the United States, the Civil War (1861–1865) was a distressing episode with many direct and indirect consequences for the national economy. The war itself boosted the national economy and stimulated industrial production, but not without disturbing the pre-existing economic balance. Increasingly ruthless competition and business practices, the disappearance of certain economic actors, and emergence of new ones marked the period. Those were the years when many of the Great Captains – or "Robber Barons" – of the American economy made their first profitable deals, often through tactics and practices that smacked of economic warfare (Chernow, 1990; 1998). The Civil War pitted the mills and industrial factories of the North and the agrarian and yeomen communities of the South against each other. The victory of the North seemed to foreshadow the domination of the American federation by industrial interests, both politically and economically. The victory of the North was also the triumph of a centralized and unified vision of the American nation. It heralded an evolution toward stronger federal authorities and institutions. In fact, the period between 1870 and 1930 was one of economic accumulation and industrial revolution – but also of state and institution building (Kolko, 1963; Sklar, 1988; Roy, 1997). The power and strength of the American federal government grew rapidly during the first decades of the twentieth century, a period otherwise known as the Progressive Era (McCraw, 1997).

### A Common Response and Its National Variants – Cartelization

These common trends were a source of instability for established industrial actors in Germany and the United States. Uncertainty, if not turbulence, emerged as the rule of the game. A common and dominant reaction was to try and reestablish stability and to search for solutions that would allow for a greater sense of control over environmental conditions. For that purpose, there were attempts both in the United States and in Germany – and in most if not all European countries in fact – at organizing industries. In order to achieve some control over market shares, prices, and profits, industrial actors came up with a common solution involving cooperative agreements and interfirm networks.

Although the generic solution was common, there were important differences in the way it concretely played out through time and in each country. Such variation was symbolically reflected in the multiplicity of terms and labels used to designate these networks and cooperative agreements – from cartels and pools to trusts, and from *Kartelle*, *Konzerne* and syndicates to *Interessen Gemeinschaften* (*IGs*) if we only look at our two country cases. These variations through time and across national boundaries can be directly related to important differences in institutional contexts. The picture that emerges is one of co-evolution between institutional environments and organizational dynamics. The particular path taken by cartelization was thus, in each country, the result of recursive processes involving national institutional conditions and organizational evolutions.

## GERMANY: THE NATURAL DRIFT TOWARD ORDER

The search for order and stability emerged as a priority of the German industrial community. Starting around 1860, German business leaders strove first and foremost to preserve the integrity of their firms and to protect the interests of their families. Whether in the more sluggish consumer goods sector or in fast-growing and dynamic heavy industries, this search for stability and security translated into cartelization and negotiation of cooperative agreements. The severe but relatively short slump or Gründerkrise (1874–1879) that followed the industrial boom of the early 1870s provided the initial impetus for the organization of markets and the constitution of interfirm networks (Pietri, 1982). However, the cartelization movement lasted well beyond those difficult years, increasing in scale and scope throughout the first part of the twentieth century.

### A Vigorous Cartelization Movement

In 1875 there were only four cartels or interfirm networks in Germany. By 1905, there were close to 400 (Michels, 1928: 171; Kocka,1978: vii; Kocka, 1978: 563). In 1923 the Federation of German Industry or Reichsverband der Deutschen Industrie (RDI) estimated the total number of cartels at 1,500. In 1925 the Government reported 2,500 business networks (Michels, 1928:172; Liefmann, 1938: 30). Cartels or interfirm networks were to be found in almost all sectors of German industry (Tab. I provides a partial list). In 1907, 50% of raw steel production, 82% of coal, and 90% of paper was regulated through cartels or other types of interfirm networks and agreements (Pietri, 1982).

TABLE I Number of Cartels in German Industrial Sectors, 1923.

| | |
|---|---|
| Iron and steel goods | 234 |
| Textiles | 201 |
| Machinery | 147 |
| Paper | 107 |
| Chemicals | 91 |
| Iron and Steel | 73 |
| Mining | 51 |
| Sugar and foodstuff | 24 |

*Source*: Djelic (1998: 54), compiled from Liefmann (1938: 30–1).

Interfirm networks clearly differed in power and strength. Many cartels in the textile sector reflected the structure of the industry, with its numerous small and medium-sized units. The mining sector, with fewer large firms, needed fewer cartels or interfirm networks to regulate markets effectively.

## Striving for Order: A Conducive Institutional Context

The scope and speed of the cartelization movement in Germany was a direct effect of the national institutional context of the time. Early German industrial development was one element of the larger political agenda of state and nation-building (Stolper, 1964; Pietri, 1982). German political authorities envisioned industrial development at the national level as a rational and orderly process rather than as an open, unrestricted, and competitive free-for-all. Consequently, German political and legal institutions tended to adopt a hands-off policy toward cartels and interfirm networks.

Within the dominant intellectual tradition of the time, German economists, lawyers, and politicians accepted this policy as legitimate. Economic policymaking and legislation was supposed to smooth the way for natural evolution, *i.e.* increasingly organized markets, the proliferation of interfirm networks, and the disappearance of competition. In 1879 the imperial government imposed prohibitively high tariffs with the objective of protecting national industries. It also formally sanctioned internal cartels. In 1897 German courts were ruling that cartels were legal since they promoted the interests of society at large as well as that of individual members of society (Liefman, 1938; Damm, 1958; Stolper, 1964). The reasoning was based on the belief that competition and price wars were potentially disruptive both to the national economy and to social order. The organization of markets through interfirm networks and agreements was thought to bring order and stability to the national economy. From this perspective, the evolution from free markets or family capitalism to organized capitalism was accepted and welcomed as a progressive step for society, not just for individual members of interfirm networks (Chamberlin, 1954; Marburg, 1964).

## The Coevolution of German Cartels and Environmental Conditions

While interfirm networks were a defining feature of the German economy throughout the period 1870–1930, significant variation existed in the dominant interfirm networks and their degree of formalization. This variation appeared to reflect a process of coevolution between environmental and institutional conditions on the one hand, and the cartelization movement on the other. Environmental and institutional conditions created constraints and opened up opportunities to which firms and interfirm networks reacted. These reactions in turn triggered counter-reactions in the institutional context and resulted in environmental adaptation and transformation.

In Germany, early cooperative business agreements or interfirm networks had emerged as a response to environmental dislocation. They were mostly of a horizontal type initially, and relatively loose. *Kartelle*, as Liefmann (1938) defined them, were "voluntary agreements between independent enterprises of similar type to secure a monopoly of the market". The object of these loose associations or interfirm networks was to ensure stability of business conditions; for regional cartels through market sharing, for price-fixing cartels through agreement on prices, and for production cartels through setting production quotas (Liefman, 1938). These interfirm networks, however, were relatively fragile, which resulted in a succession of dissolutions and reconstitutions.

By the early 1890s, the German business communities were largely dissatisfied with such fragile arrangements. Acute economic downturn from 1893 to 1897 combined with institutional encouragement of cartelization and positive signals from German courts and the German government to usher in the second stage of German cartelization (Liefman, 1938; Damm, 1958; Marburg, 1964). Toward the end of the nineteenth century, more structured interfirm networks started to appear. Distribution and sales were the main object of these Syndikaten. In 1893 the Rhenisch–Westphalian Coal Syndicate was the first to coalesce a large number of independent mining concerns. It created a common sales office with its own administrative machinery (Stockder, 1977). The syndicate could effectively control prices and sales, and, indirectly, production levels. All orders were first received at the syndicate, which reallocated them to individual firms according to predetermined quotas. The coal syndicate soon had imitators in the steel and other industries.

Another approach for securing greater structure and formalization of the cartelization movement was to supplement horizontal arrangements with vertical networks. The first instance of this was an invitation to a number of steel firms to participate in the 1893 Rhenisch–Westphalian Coal Syndicate (Stockder, 1977). By the end of the nineteenth century, vertical interfirm networks or *Konzerne* were becoming important players in German industry (Liefinan, 1938; Damm, 1958; Stolper, 1964). These vertical networks were highly formalized and often structured around one or a few core members. However, member firms continued to retain their legal identity and operating integrity. Beyond the traditional goal of market control and stability, *Konzerne* played the role of financial centers by ensuring control over important resources, including capital funds, for member firms (Damm, 1958).

Until the end of World War I, both horizontal and vertical networks developed and flourished in Germany. Tolerance for organized markets and cartelization was clearly institutionalized and remained strong throughout the period. However, the unprecedented turmoil that followed the Versailles treaty and the constitution of the Weimar Republic prompted German industrial communities to intensify their search for stabilizing mechanisms (Michels, 1928). Hyperinflation and financial instability characterized the period, and the consequence was an unprecedented proliferation of *Konzerne* and the emergence of profit-pooling agreements or *IG*s. Profit-pooling interfirm networks smoothed variations in profit levels that stemmed from an unstable economic environment while preserving the autonomy of member firms (Liefmann, 1938: 238).

The rapid growth of cartelization led to public concern and prompted the reaction of German civil society. Retailers proved particularly vocal. Organized in the *Reichsverband Deutscher Konsumerverein*, they petitioned Parliament in December 1921 for legislation regulating cartels and interfirm networks (Chamberlin, 1954; Damm, 1958). Discontent increased in 1923, the darkest year of hyperinflation, when it became clear that member firms were using interfirm networks and agreements to reduce environmental uncertainty by externalizing risk and shifting inflation costs to retailers and consumers (Michels, 1928). In November, a 'decree against abuses of economic power' had been adopted and the government created a cartel court. However, the purpose of the decree was not to abolish cartel organization and interfirm networks "as this would, in the long run, not favor freedom of markets". The decree declared that the abolition of cartels and interfirm networks "would probably leave small and medium-sized firms under the domination of big concerns" (Levy, 1966, p143).

The German cartel decree provided that agreements and cartels "should be made in writing" (Section 1) and that they could be voided "if they endangered the common welfare" (Section 4). Section 8 granted members the right to withdraw without prior notice "for reasons of weight", while Section 9 legalized pressure on outsiders to join a cartel or interfirm network, provided the court had been notified (as translated in Michels, 1928). In the 1920s, only 22 of more than 1,700 cases were brought to court under Section 4. The bulk of cases was brought under Section 8, while Section 9 (which could be interpreted as a step toward compulsory cartelization) was applied in sixty cases (Michels, 1928: ch. 4; Liefmann, 1938: ch. 7). By the end of the 1920s, individual German firms often belonged to several interfirm networks and agreements, which altogether spun a dense web across German industry.

The trend toward increasingly formal interfirm networks did not subside in subsequent years. In 1933 the leading German business association, the RDI, urged the new government of Hitler to make cartelization and industrial cooperation through interfirm networks compulsory (Turner, 1985). Enforcement would help protect smaller firms from the power of larger concerns and prevent their disappearance through mergers and acquisition in times of turbulence. A systematic and centrally controlled organization of markets had been part of Hitler's program (Damm, 1958; Shirer, 1959; Barkai, 1988). The Nazi government acted rapidly. In July 1933 the government passed a law giving the Ministry of Economic Affairs the power to

> federate enterprises into syndicates, cartels, conventions or similar agreements or affiliate them to already existing organizations of this kind in order to regulate market conditions, if such combinations seem desirable with regard to the demands of enterprises in question (Levy, 1966: 159).

By the end of the 1930s, the organization of German industry through interfirm networks had reached a peak, with the government enforcing or imposing different types of interfirm networks or agreements. Competition had all but disappeared as a mechanism for regulating markets.

## THE US: THE FIGHT FOR COMPETITION AND ITS UNEXPECTED CONSEQUENCES

In post-Civil War United States, markets were chaotic, competition severe, overproduction endemic, and business tactics often brutal (Josephson, 1934; Chernow, 1990; 1998). Under these conditions, economic and industrial actors felt a growing need for order and stability, which they tried to achieve through cooperative agreements. The 1870s and 1880s were characterized by a proliferation of loose networks and agreements in the form of cartels, pools, or trusts. In times of slowdown, cooperation was expected to cushion dramatic declines in prices, and in the process, protect individual firms. In periods of prosperity, sharing of markets, allocating production quotas, and reaching agreements on prices were expected to secure high levels of profit for all.

### A Rapid Move to Cartelization

The railroads led the way to forming regional federations. The Southern Railway and Steamship Association and the Eastern Trunk Line Association, created in 1875 and 1877 respectively, were the first railway pools. By 1886 nearly all railroads in the United States participated in one pool or another (Chandler, 1990). Railroad networks began by allocating traffic and setting prices. However, they soon discovered that it was easier to pool profits and divide them according to an agreed upon ratio.

In other industries as well cooperation prior to 1890 took the form of cartels or loose networks. Cartels were informal contracts, gentlemen's agreements among a number of independent firms, with the objective of setting prices, sharing markets, and rationalizing production quotas. These agreements had little structure and were rarely organized with a central office or administrative structure. The popularity of cartels and other loose interfirm arrangements within the American economy grew rapidly (McCraw, 1984; Chandler, 1990; Fligstein, 1990), and by 1890, most American industries experienced some form of cartelization, as summarized in Table II.

Those cartels or pools proved to be rather fragile constructions. They often failed, and failure was generally quickly followed by another wave of ruinous competition and a new attempt at cartelization.

## Launching the Fight for Competition

Within America, there were strong reactions to the emergence and proliferation of interfirm networks. By the late 1880s, some interfirm networks had become formidable industrial aggregates wielding unprecedented power despite their lack of formal structure. The control they exercised in many industries was often ruthless and predatory – devastating to smaller interests that remained outside the boundaries of the agreements or in weak negotiating positions. Uproar and discontent were particularly acute among small independent business owners and western and southern farmers who felt threatened by the power of large interfirm networks. The unrest of small America placed the issue of the power of trusts on the political agenda. The pressure was such that Congress ultimately enacted legislation regulating interfirm collaboration (Goodwyn, 1976).

TABLE II A List of Product Lines that Experienced Some Cartelization between 1865 and 1898 in the USA.

| | | |
|---|---|---|
| Sugar | Plumbing supplies | Bicycles |
| Oil | Agricultural implements | Sandpaper |
| Tin plate | Freight cars | Ropes |
| Steel plate | Locomotives | Strawboard |
| Rails | Shoe machinery | Iron and steel |
| Silverware | Light electrical goods | Explosives |
| Corn flour | Envelopes | Cottonseed oil |
| Aluminum | Meatpacking | Asphalt |
| Leather | Tobacco | Merchant marine |
| Malt | Wallpaper | Rubber |
| Corn oil | Shipbuilding | Whiskey |
| Steel wire | Cotton goods | Glucose |
| Shears | Baking powder | Pipelines |
| Steel hoop | Cotton bagging | Railroads |
| Stoves | Nails | Fertilizer |
| Thread | Coal | Glass |
| Paper | Pipe | Woolens |
| Salt | Pottery | Milk |
| Beer | Brick | |

*Source*: Fligstein (1990: 40–41). Fligstein gives a list of references that have documented the existence of cartelization for each product line listed here. For a list of trade associations, in the hardware trades, playing the role of cartels in the 1870s and 1880s, see also Chandler (1977: 318).

Moreover, notwithstanding societal pressure, a number of congressmen had strong ideological reasons for advancing legislative regulation of collusion and cooperative agreements. American conservatism at the end of the nineteenth century was a mix of classical economic theory, social Darwinism, and puritan doctrine. Believers in the invisible hand of the market, natural selection, or divine election all shared the view that economic and social equilibrium could and should be reached without human or social intervention. For the Republican party, competition was a key value closely related to freedom that should be preserved at any cost (Thorelli, 1954). Within this ideological framework, the preservation of a dynamic competitive environment became a central concern of federal legislators, which was given greater urgency by the calls of farmers and small business owners for curbing interfirm networks.

## The Coevolution of American Cartels and Environmental Conditions

In the context of the 1885–1887 economic downturn, the trust form had emerged as an attractive alternative to looser cartels. The objective of controlling competition and stabilizing markets remained, but trusts were an attempt to formalize interfirm networks and institutionalize cooperation on a more permanent basis. The trust form did not imply a merger or transfer of ownership. Each company remained independent, retaining its legal identity, management, and ownership structure; but the stock of member firms was transferred to a central board of trustees empowered to make certain operating and investment decisions for the group (Chandler, 1977; McCraw, 1984). The trust device was fairly short-lived. Before it could even begin to diffuse, the 1890 Sherman Antitrust Act made it illegal, together with looser forms of interfirm networks such as cartels or pools. Only eight industries – cattle, cordage, cottonseed oil, lead, oil, sugar, whiskey, and linseed oil – actually implemented the trust form at some point between 1882 and 1890 (Chandler, 1977: 320).

The Sherman Act was enacted at a time when the American business community was becoming dissatisfied with the fragility of cartels and pools. The initial intent had been to prohibit all interfirm collaboration (Thorelli, 1954). However, the very nature of American political institutions and the existence of two levels of jurisdiction, federal and state, constrained the legislative freedom of Congress. Congress could only work within the boundaries of its competencies – federal legislation, interstate legislation, or legislation governing foreign relationships. It could not meddle in the affairs of individual states. As a consequence, the Sherman Act could not regulate anticompetitive behavior within a given state. It could only regulate "trade or commerce among the several states or with foreign Nations". The limits set by this "commerce clause" as it came to be known would prove of great significance in the following years, narrowing the domain where the law could apply (Thorelli, 1954; Sklar, 1988; Fligstein, 1990; Roy, 1997; Djelic, 1998).

One of the first landmark antitrust cases, US *vs.* E. C. Knight (1895), illustrated the impact of the commerce clause on the interpretation that was to be made of antitrust legislation. In 1892 the federal government filed suit against the 'sugar trust', which, despite its name, had just reorganized as a corporation through the merger of five formerly independent companies. Altogether, the sugar trust controlled more than 90% of the sugar refining capacity of the entire United States. The sugar trust was charged with monopoly and attempt to monopolize. In January 1895, the Supreme Court dismissed the case on the grounds that all production sites were within the state of Philadelphia. Supreme Court Justices made a distinction between manufacturing and production and interstate and foreign commerce. Since all production was within a single state, the Supreme Court argued, the Sherman Antitrust Act could not apply. Competency rested with state judiciaries (Thorelli, 1954).

The interpretation made by the Supreme Court of the commerce clause would be used by lower courts and by the Supreme Court itself in many future cases. Somewhat unexpectedly, tight combinations and mergers were able to escape regulation under the Sherman Act, since they did not fall under the commerce clause – at least based on the interpretation chosen by the court. At the same time, as long as cartels, trusts, and other loose interfirm networks had an impact on interstate commerce (which was most of the time), they were outlawed under the Sherman Antitrust Act. The consequence was that, in its early years, the Sherman Antitrust Act was primarily applied against loose combinations. Of 322 cases brought to court on antitrust grounds between 1890 and 1930, more than 85% were against loose networks of small or medium-sized firms (McCraw, 1984).

Antitrust legislation in the United States and its early interpretation clearly limited the solutions available to American business leaders in search of stability and control over their environments. It triggered a frenetic search for governance structures that would be lawful while still fulfilling the earlier role played by cartels and loose interfirm agreements. In 1888 and 1889, New Jersey amended its corporate charter to allow unrestricted intercorporate stock ownership, thereby becoming the first state to allow a corporation to be created for the sole purpose of owning stock in other corporations (Roy, 1997). The holding company, as this device came to be known, became a powerful and legal tool through which industries could organize and check competition.

Drawing conclusions from the US *vs.* E. C. Knight case, corporate lawyers were soon advising their clients to incorporate into holding companies rather than cooperate informally through cartels and trusts or other loose interfirm networks (Thorelli, 1954; Sklar, 1988; Fligstein, 1990). In a clearly related development, the E. C. Knight case gave rise to the first American merger wave. Between 1895 and 1904, 300 firms per year on average were entering mergers and integrating into holding companies – frequently in New Jersey. By 1901, 66% of American companies with $10 million capital or more were incorporated in New Jersey (Parker-Gwin and Roy, 1996; Roy, 1997: ch. 6). Simultaneously, loose interfirm networks were rapidly disappearing from the American industrial scene (McCraw, 1984; Chandler, 1990). In an irony of history, the fight for competition in America led in an indirect way to the emergence of large, integrated firms. An institutional context relatively unfavorable to cartelization turned out to be fertile ground for oligopolies (Thorelli, 1954; Bittlingmayer, 1985; Fligstein, 1990). In the United States, collusion and cooperation between independent firms had become morally unacceptable and in fact institutionally and legally impossible. Instead, competition was being valued – but a peculiar type of competition that can be labeled "oligopolistic competition".

## THE POST WORLD WAR II TRANSFER OF AMERICAN ANTITRUST AND OLIGOPOLISTIC COMPETITION

The transfer took place in two main stages. The first stage started immediately after the end of World War II. Competition regulation principles were then exported from the United States into Western European countries as well as into the emerging set of cross-national institutions such as the GATT, the European Coal and Steel Community or the European Economic Community. The second stage came after 1989 with the opening and radical transformation of former communist countries. The logic behind the transfer was, in both periods, at least as much political and geopolitical as it was economic. Both stages of transfer corresponded to periods of American geopolitical strength. In 1945, the USA had achieved unprecedented weight, both geopolitical and economic. In the years that followed, former allies and enemies alike, in the Western sphere, became dependent upon the superpower for survival and revival means. In 1989, communist promises were fully exposed as a sham. The American dream was left relatively uncontested and the USA remained as the only world superpower.

In both periods, power on one side and dependence on the other led to the temptation of homogenisation. There was an attempt to lay the foundations of a new economic and political world order in 1945 and an attempt to expand it in 1989. The transformation of economic and social structures was seen as the surest way to anchor weak and dependent countries on the side of "peace and democracy" (Hoffman, 1951; Hogan, 1985). In both periods, American models and actors played a significant role. In this paper, we focus on the first period and on the transfer of the American antitrust tradition and understanding of oligopolistic competition to the emerging Western European economic space. We have looked elsewhere at the second stage of transfer (Djelic and Bensedrine, 2001, see also Pittman, 1998).

## American Missionaries and European Modernizers

In the post Second World War period, American public agencies in charge of foreign affairs set themselves an ambitious goal. The State Department in Washington, the American Military Government in Germany or the Economic Cooperation Administration, the agency running the Marshall Plan, saw it as their mission to fight in Europe the "communist party line" thanks to the "American production line" (Hoffman, 1951). This meant a radical structural transformation of European economies and industries and the redefinition, in particular, of trade patterns on the old continent using the American economic space as the model of reference (Hoffman, 1951; Van der Pijl, 1984; Hogan, 1985; Djelic, 1998). A small group of progressive American businessmen, active in Washington since the New Deal, was particularly involved in this project. In their desire to give the rest of the free world "an opportunity to learn of the principles and advantages of free enterprise", these American missionaries singled out as one of their core priorities the transfer to partner countries of American competition legislation (Hoffman, 1951; Hogan, 1985; Djelic, 1998). They saw the American antitrust tradition as both a key element of the American model and as a potentially powerful tool of its transfer to other countries.

The idea of such transfer was relayed by a few European "modernizers". American missionaries worked together with local actors to push along their ambitious objectives. In Germany, the main local counterpart was Ludwig Erhard, Minister of Economic Affairs and then Chancellor. In the context of European negotiations, the network around the Frenchman Jean Monnet turned out to be key. Interestingly, these small groups of European actors were originally quite marginal in their own country. Their real influence depended upon the control they managed to gain on key positions of institutional power, on their ability to preserve this control over time and on the support granted to them by foreign and in particular American actors.

In the period following 1945, there were two main paths for the transfer to Europe of the American antitrust tradition and oligopolistic understanding of competition. One was through Germany and the American Military Occupation Government in that country played there a significant role. The other was through the emerging European institutions. Americans proved instrumental in stimulating and encouraging European cooperation and the setting of transnational institutions at that level. Those institutions would become powerful relays of the American tradition of competition regulation.

## The Case of Germany – from Coercion to Imitation

In 1945, Allied forces assimilated the horrors of the Nazi regime with the peculiar structure of German industry. Parallels were drawn, in particular, between political authoritarianism and state-coordinated cartelization of the industry (Martin, 1950). When West Germany became, in 1947, a key bulwark in the fight against communism, Western occupying powers thus defined it as their task to bring about not only a democratisation of the political regime but also a radical transformation of the German economic and industrial structure. The overwhelming power of the USA in the western alliance meant that the economic model would be American and an important feature of that model was the peculiar definition of competition regulation embodied in the antitrust tradition (Berghahn, 1986; Schwartz, 1991; Djelic, 1998).

In 1947, the American Military Government imposed a decartelization and deconcentration law with effect in what would become the Federal Republic of Germany. This law could easily be traced to the American antitrust tradition (Damm, 1958; Taylor, 1979; Djelic, 1998). With respect to restrictive practices, cartels, combines or trusts, it was a prohibition law but it said little about size or concentration of production. While intent on transferring to Germany the characteristically American fight against cartels and restrictive practices, American occupation authorities also advocated in fact for the German industry an oligopolistic structure. The expectation was that American inspired competition regulation would lead in Germany – as it had done in the USA – to the emergence of oligopolies in most sectors, with firms large enough to allow economies of scale and scope. Americans were of the mind that "oligopolies, when policed by the vigorous enforcement of antitrust and anti-cartel laws as in the United States, yield pretty good results" (OMGUS, Bd18).

At the same time, American missionaries were quite aware that radical transformations of that sort would only outlast the period of acute geopolitical dependence if Germans themselves actively appropriated them. In March 1948, American occupation authorities thus asked German agencies to prepare and submit a trade practice law dealing with the problem of agreements and cartels. This law, it was agreed, once accepted by German and Allied authorities, would replace the 1947 legislation. It took ten years for the Germans to finally agree on a bill and the Federal Law against Restraints of Competition was only enacted in July 1957.

The final version of the German law was on the whole quite congruent with American antitrust tradition. Cartels and loose agreements were identified as unreasonable combinations in restraint of trade and outlawed *per se*. However, the German legislator provided for a number of exceptions. The Cartel Office (*Bundeskartelamt*) created in 1958 and modeled on the American Federal Trade Commission was granted and would come to exert a certain amount of leeway through enforcement of the law and monitoring of the exceptions (Damm, 1958).

## Towards European Competition Regulation

While the United States were encouraging or imposing the adoption by individual nations of their antitrust tradition, they were also pressing for initiatives with a cross-national dimension. In Western Europe, the French led the way by proposing in May 1950 a plan for pooling European coal and steel industries. Jean Monnet and the French Planning Council were behind the proposal. To alleviate American fears that this project might lead to the emergence of a European wide cartel, Monnet insisted that the goal was to create a competitive space to stimulate an increase in production and productivity (Monnet, 1976; Djelic, 1998). And in fact, a small group of American experts were hard at work in the background, preparing antitrust provisions for the future coal and steel community. Robert Ball, a long-term friend of Jean Monnet was one of them. But the key figure was Robert Bowie, legal counsel to the High Commission in Germany, who was also closely involved in the drafting of the German anticartel act. A former Harvard Law School professor, Robert Bowie was an antitrust specialist. He came down to Paris in June 1950 and wrote the provisions that would become articles 60 and 61 of the ECSC treaty (Monnet, 1976).

Article 60 dealt with cartels and loose agreements, prohibiting them in principle. However, the European enforcement agency, the High Authority, was granted a certain amount of leeway to authorize, in times of crisis, a number of exceptions. Article 61 of the ECSC treaty dealt with abuses of market power due to concentration. In line with American antitrust tradition, only "unreasonable" concentrations were prohibited. Concentrations and mergers that could be shown to lead to increased efficiency and productivity without representing a threat to competition could be authorized.

The introduction of these two articles into the ECSC treaty was at the origins of disagreements and conflicts during negotiation proceedings even endangering at a time the project as a whole. For more than three months, between October 1950 when the anticartel dimension of the ECSC became clear and articles 60 and 61 entered the treaty until the first days of 1951, negotiations were stalled. The resistance on the anticartel dimension came in particular from French, Belgian and even more from German industrial communities. It took a strong support and backing from the Americans for the team around Jean Monnet to stand firm on that issue. In October 1950, Walter Hallstein who headed the German delegation, was making the following analysis:

> Monnet's ideas are probably also influenced by the American desire that all cartel-like institutions be rejected – a desire that gains special weight due to the fact that it is supported by the funds that Americans are to provide at a later stage ('Walter Hallstein to German government, October 19, 1950', quoted in Berghahn, 1986: 140).

The role of John McCloy here was particularly key (Berghahn, 1986). John McCloy was the official representative of the American government in Germany and as such he had significant authority over German affairs, particularly in a domain like decartelization that remained a 'reserved field' under full control of Occupation authorities until the end of the Occupation period. He could thus – and did – exert strong pressure on the Germans or legitimately threaten to do so. At the same time, John McCloy was also a close friend of Jean Monnet dating back to the interwar period.

This unofficial channel proved to be a quite powerful one, allowing in the end to go over strong resistance. This Franco-American axis was instrumental in bringing national delegations back to the negotiating table. Jean Monnet would in fact later recall that the treaty "would never have been signed but for McCloy's support" (Monnet, quoted in Schwartz, 1991: 198). On April 9, 1951, when the treaty was finally about to be signed, the German Minister of Economic Affairs, Ludwig Erhard, reminded the Chancellor Konrad Adenauer that the final German decision had been "influenced by the American negotiating partners in a fashion which amounted almost to an ultimatum" (quoted in Berghahn, 1986: 153). The final ECSC treaty endorsed anticartel and antitrust objectives and articles 60 and 61 were incorporated as a major dimension of that treaty.

Those articles then take a particular historical significance when they are transferred in 1957 to the Rome treaty. The coal and steel community, as it turned out, prepared the way for the creation of a wider common market and the European Economic Community, formalized in 1957, integrated the coal and steel pool and appropriated its institutions. In fact, the Treaty of Rome extended to most sectors of Western European economies those principles initially defined for coal and steel by the ECSC treaty. Articles 60 and 61 of that early treaty became articles 85 and 86 in the Rome treaty. In the words of Jean Monnet, those articles, "drafted with great care by Robert Bowie, represented a fundamental innovation in Europe". According to him, "the essential antitrust (sic) legislation reigning over the common market today ha[d] its origins in those few sentences for which [he did] not regret to have fought during four months" (Monnet, 1976). And indeed, articles 60 and 61 of the ECSC treaty laid the foundations of antitrust legislation for the common European market and later for the European Union. Such antitrust tradition and the oligopolistic understanding of competition that was associated with it were clearly foreign to European industrial traditions and had direct and unmistakable American origins.

## CONCLUDING REMARKS

An historical perspective thus points to a common thread – a common genetic code – between competition regulation in Europe and competition regulation in the United States. The origins lay in American antitrust tradition and in the peculiar understanding of competition – oligopolistic competition – that was associated with it. This original model was then transferred to Western Europe but also to other parts of the world during the second half of the twentieth century. Another powerful channel of transfer not mentioned here has been the General Agreement on Tariffs and Trade (GATT) that took over and incorporated those same principles and this peculiar understanding of competition.

### Toward an Americanization of Rules of the Game

A consequence is that, in our contemporary world, rules of competition appear to transcend national boundaries. Over the past fifty years or so, around a hundred countries have adopted very similar sets of principles that set limits to anti-competitive practices and, in particular, regulate cartels and loose agreements. Under the labels "antitrust" or "antimonopoly", these principles justify and frame the intervention of national or cross-national agencies in charge of regulating competition. The American Federal Trade Commission (FTC) or the European Commission might reach different conclusions on a given case. Their overall philosophy, though, is not far apart. Neither is it in contradiction with the general principles that shape the understanding of competition regulation characteristic of the World Trade Organization (WTO), heir to the GATT.

A foray into history shows, we have argued, that similarity is not a chance happening. Nor has it been driven by a pure logic of efficiency or by the presumed natural laws of the market economy. We point for example to a direct thread linking the European versions of antitrust or anti-monopoly standards, policies and procedures to the 1890 American Sherman Antitrust Act. And we could do the same with versions of those standards that exist in other parts of the world (see for example Pittman, 1998; Djelic and Bensedrine, 2001; Jenny, 2002). Without prejudging of the legitimacy, in economic and efficiency terms, of antitrust or anti-monopoly standards, we argue that these standards are neither universal nor neutral. What we find is that a particular understanding of competition regulation, that originally emerged in the United States under unique institutional and historical conditions, came to be diffused and transferred during the twentieth century to Western Europe for what interests us here and in fact on a much wider scale altogether. This transfer or diffusion reflected particular geo-political conditions and the logics and mechanisms of transfer were highly institutional – with coercive, mimetic and more recently also normative dimensions (DiMaggio and Powell, 1983).

So, at a first level at least, an answer to the question put in the title to this paper is undeniably "yes". With respect to competition, Europeanization does mean at least to some degree an Americanization of the rules of the game. What we have shown, furthermore, is that in an historical perspective this Americanization is in fact deeply built into the process of European integration. Together with the antitrust rules of the game comes, we have seen, a particular understanding of competition and the competitive game. The ideal is not "perfect competition with hundreds of firms competing in the production of each product". Rather it is "an oligopolistic structure policed by the vigorous enforcement of antitrust or anticartel laws" that reconciles size with the idea of (limited) competition (OMGUS, Bd18).

The vocabulary used by the American Antitrust Division of the Department of Justice in its reaction to the European decision in the GE-Honeywell case is interesting in that respect. Brussels' decision, it was claimed, "punished efficiency" and "punished success" in violation of the antitrust spirit. Whether this is so or not in this particular situation is really not the issue. What is interesting however is that the discourse around competition policies remains framed in very much the same way as it has been from the early decisions following the passing of the Sherman Antitrust Act. Competition is not opposed to size as this is traditionally the case in neo-classical economics. Rather the main objective of competition policies remains to reconcile size and scale efficiencies with competition or rather with the prohibition of non-competitive practices – the latter being defined through a long tradition of American and now European judicial precedents (ENA, 2002).

**Recent Developments and Trends**

This particular understanding of competition and its associated competition policies have spread only further and more rapidly in the recent period. The last fifteen years have been quite striking in that respect (Djelic and Bensedrine, 2001; Jenny, 2002). The German case is an interesting one where there were two main channels of influence and at that early ones. One such channel was through the forceful and direct impact of American occupation authorities. The other was more indirect and going through the process of European construction. There was an early attempt in France to push for competition policies, partly under direct American pressure (Djelic, 1998: 142, Kipping, 1994) and the French government issued a decree on August 9, 1953. However, the "Sherman Act of the IVth Republic", as it was labeled by some, proved fairly weak and was in fact rarely used. Competition policies in the sense defined above hence had all but no impact in a country like France until 1986. But then, they came to that country with force and speed. The French *Conseil de la Concurrence* (Competition Council) was created on December 1st 1986. This creation came with an end to state-led price controls and with a progressive divestment of the French state from its direct involvement in the national economy. Undeniably, a key pressure there for France has been the process of European construction and its associated policies on competition. The principles associated with the French 1986 decree have been in a very direct manner inspired from the articles in the European Treaty dealing with restrictions to competition and monopolies – formerly and originally Articles 85 and 86 now Articles 81 and 82 (Pons, 2002). The European definition of competition and the tools and practices associated with its monitoring have trickled down during the late 1980s in France but also in most other European Union member countries (Jenny, 2002).

The process, it seems, is reaching maturity within the European space. This appears to be so to the point where the European Commission is ready to redefine the nature of its control over European competition policies. There was originally a relative decoupling between European level competition policies and national black boxes. European policies could apply only in the space across and between nation states. What was happening within nation states remained under the sole jurisdiction of national authorities. The parallel is striking here with the early history of the Sherman Act recounted above. With time, national relays have been structured and strengthened as the German and French experiences show – even though somewhat differently. By now, the culture of competition in the meaning defined above is apparently sufficiently institutionalized, within member states as well as at the European level, for the Commission to envision working differently.

In 2000, a European association of Competition authorities was created with a view to share knowledge and experiences and to build the foundations of a more solid and systematic cooperation. At the same time, a reform has been launched where the European Commission is transferring some of its responsibilities and prerogatives to national authorities – following in that the general European principle of subsidiarity. This partial divesting reflects the growing homogeneity of reflexes and traditions within the European space when it comes to competition and its monitoring. And it does come with a further and more systematic effort at structuring and stabilizing cooperation between competition authorities. A network of competition authorities will be formalized in the very short term. This network of national agencies will share responsibilities for applying articles 81 and 82. A partial division of labor will be specified while clear rules will be formulated for the sharing of information. The commission hopes that such an evolution will create even greater homogeneity in the implementation of competition policies, deepening even further the common culture (ENA, 2002).

The European Union is in all likelihood the space where appropriation of the originally American antitrust culture has gone furthest. Recent developments show, however, that this is a process with a much wider scope. Over the past ten years or so, all Eastern European countries have enacted competition acts that are highly compatible with if not simply mirroring articles 81 and 82. The objective is clear there – being ready for a more or less distant integration into the European Union space (Djelic and Bensedrine, 2001; Pittman 1998; Jenny, 2002). A great number of countries with no prospect in the medium term to integrate the Union have nevertheless done the same to preserve the privileged links they might have with the European Union. This is in particular the case of the Maghreb countries. Many other countries in peripheral regions – Africa or South America – have endowed themselves with competition policies and competition act in the spirit defined above, under pressure this time of institutions like the World Trade Organization or the World Bank (Jenny, 2002). When in 1945, the antitrust tradition and its associated competition policies were the unique trademark of the United States, there are about a hundred countries today in the world that have a competition and competition policies in line with this peculiar tradition (Djelic and Bensedrine, 2001; Jenny, 2002).

## Constraints and Limits to Homogenization and Convergence

Rules of the game, however, do not tell everything about the way the game is in reality being played. Convergence is "soft" at the most in the sense that local institutions, traditions and legacies are intervening and filtering dimensions (Jenny, 2002). To go back to the cases on which we focused in this paper, local versions of antitrust exhibit, beyond common origins a number of important differences. These differences can be explained by the fact that the transfer has been and is a contested process. They also reflect local institutional constraints that have an impact on the reading of the rules of the game and on their implementation.

The project of transferring on a large-scale the peculiar American understanding of competition regulation was not, historically, an easy process. It had to face, at each stage, pre-existing legacies, obstacles and resistance. In Germany and in Western Europe, the most violent reactions initially came from local business communities. In Germany, a powerful and organized opposition slowed down considerably negotiations around a German anticartel act. In fact, to prevent these negotiations from failing altogether, Americans had to keep up pressure for nearly ten years and to provide significant resources, in particular legal counsel. The resistance of business communities to a foreign understanding of competition also created difficulties for ECSC negotiations. This time again American pressure proved instrumental in preventing negotiations from falling apart (Damm, 1958; Djelic, 1998).

The consequence of resistance and obstacles was that the transfer has implied partial reinterpretation and local translation. At each stage of the transfer, foreign advisors and local legislators have had to adapt the original tradition to local conditions and constraints. The American

Sherman Act was a prohibition law when it came to cartels and loose agreements, outlawing all of them. In its dealings with mergers and tight combinations, it was an abuse law allowing most of them except in cases of abusive or monopolistic market power. The German anticartel law was in principle still a prohibition law but it reflected a difficult drafting process and in the end it was a compromise. Under pressure from the German business community, the legislator had allowed a number of exceptions. Under certain conditions, some cartels were treated as "reasonable restraints of trade" that could be tolerated and even fostered. The European version of antitrust has retained the principle of allowing for exceptions and, as a consequence, it has become in practice an abuse law not only in its dealings with mergers or tight combinations but also in its dealings with cartels or loose agreements.

Beyond the text of the law and its evolution at each stage of the transfer, it is also important to consider the problem of implementation. The Sherman Antitrust Act already left a lot of space for interpretation. The role of the Supreme Court and enforcement agencies in shaping the act through its implementation have been quite significant. This space for interpretation through implementation remained at all stages of the transfer process, which turned an American tradition into a universal regulation. The German Cartel Office or the European High Authority had a certain discretion in their interpretation and use of the various clauses of exceptions allowing the constitution of cartels in times of crisis or in certain core industries (Berghahn, 1986; Maxeiner, 1986).

Similarities in the text and in the contents of the law are therefore not enough to point to a universal antitrust legislation. Important questions are those of implementation and enforcement. The nature and characteristics of the institutions in charge of interpreting the act and of enforcing it are important variables. The agenda, value structure and set of resources of the groups managing to gain control over these institutions are also naturally important. In the case of Western Europe, the transfer of the American antitrust tradition after the end of the Second World War had come together with a large scale and institutionalized training and technical assistance program. The objective had been to familiarize with or even socialize into the antitrust tradition those Europeans who would be in charge of interpreting, implementing and enforcing antitrust acts.

This has not yet been the case to the same extent in other regions of the world where the antitrust tradition has also formally come to impose itself. Without going into systematic comparison,which would fall beyond the scope of this paper, it seems reasonable to make the following hypothesis. The more recent the adoption and the further away a particular country is from the two main centers – the United States and the European Union – the more decoupling there is bound to be between formal competition acts and policies and real implementation (for a parallel argument see Meyer *et al.*, 1997; Meyer 1999; Venit and Kolasky, 2000).

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