

Supranational Regulation of Competition: The Politics of Institutional Change in EU Regulatory Authority

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Supranational Power to Regulate Mergers

EU Regulation of Mergers Today

- 4000+ transnational mergers, acquisitions & joint ventures reviewed by EU Commission since 1991

Multiple Avenues of Influence

- outright prohibitions (0.5%)
- "conditional" approvals (7%)
- withdrawals (3%)
- extensive influence via anticipation (??%)

Prestige, Power & Authority of EU Dir.Gen. Competition

- very high level of compliance
- most highly respected competition authority in surveys of government & private sector legal experts

It hasn't always been that way ...

EU Directorate General Competition

- founded in 1958 as "Directorate General IV"
- "sleepy, ineffectual backwater of Community administration" (Wilks & McGowan 1996:225)
- ca. 20 staff to deal with distortions due to
 - anti-competitive practices (market-sharing agreements, etc.)
 - monopoly/oligopoly
 - state aid (government subsidies etc.)
- little prestige
- vague antitrust provisions in the Treaty of Rome, *no authority to regulate mergers & acquisitions*

Historical Institutionalism

- Broad notion of institutions: rules and organizations
- No "historical efficiency" of creation and adaptation
=> Institutions have causal effect
- Institutional feedback
- Embeddedness of individual institutions in broader configurations
- Traditional HI: focus on explaining institutional stability
- Recent HI: incremental change weakening existing institutions
- My work: explain incremental Δ that may strengthen institutions

Actor-Centric Historical Institutionalism

Key Actors & Their Preferences

- **EU member state governments**
 - on electorally salient issues: pursue constituents' interests
 - safeguard independence & policy autonomy
 - unless substantial benefits outweigh losses of autonomy
- **EU-level institutions as actors, esp. Commission, Court**
 - seek importance/power => more supranational governance
 - constrained by EU institutional context
- **Subnational/transnational *private* actors, esp. firms**
 - firms seek profits/profitability => competitive advantage
 - economic (fin mkt) integration => transnat'l mergers => stakes
 - EU institutions & admin law procedures as political opportunity

Empirical Analysis: Merger Review

- *No Legal Provisions in Treaty of Rome*
- 1960s:
 - Internal Commission studies of usability of vague antitrust provisions
- 1970s:
 - Commission attempts to gain authority over mergers, rejected by member states
 - Continental Can case (ECJ 1973)
- 1980s:
 - Council rejects overt Commission request for authority (1981/82, '84, '86)
 - Companies push for review/restrictions of competitors' mergers
 - BAT v. Commission, RJR v. Commission cases (ECJ 1987)
 - 1989 Merger Regulation

Empirical Analysis: Merger Review

- 1990s:
 - Further consolidation of authority
 - More high-profile cases of blocking mergers
- 2000s:
 - Increasingly global role
 - Regulation 139/2004: "decentralization without re-nationalization"

Conclusions

- Actor-centric historical institutionalism provides political-economic explanation for institutional change in IPE *against* state preferences
- Explains shift/creation of supranational regulatory authority in EU
- Can be extended to other issue areas of competition policy
 - => explains differences in timing across
 - antitrust enforcement,
 - merger review,
 - regulation of government subsidies ("state aid")
- Allows us to see and explain information not even observed through, or unexplained by, alternative theoretical lenses:
 - intergovernmentalism (Moravcsik 1991, 1998; Schwartz 1993)
 - principal-agent theory (Pollack 2003; Tallberg 2000)
 - constructivism (Jabko 2006; McNamara 1998; Parsons 2003)

Thank you

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