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The Evolution of European Merger Regulations and the Power of Ideas: A Pan-institutional Interpretation

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Abstract

The aim of this paper is to generate an understanding of the evolution of European competition policy in the context of the globalising economy of the 20th and early 21st centuries by analysing the role of ideas in influencing merger policies. Normally competition policy is framed by legal and economic studies as the set of regulations leading market competition according to criteria of efficiency and/or economic welfare. By advancing this analysis, the paper investigates on how abstract economic concepts and theories on the one hand, and material interests such as welfare and efficiency on the other, by influencing political actors' understanding of reality, have shaped the decision-making process behind specific European competition policies. My analysis develops on the basis of what I call a pan-institutional methodology, a synthesis of an institutional understanding of competition policy and sociological theories of isomorphism. Pan-institutionalism reveals that the corpus of ideas, which favoured the neoliberal transformation that invested European institutions in the 20th and early 21st century, can be identified as German Ordoliberal and the Chicago paradigms of competition policy. To a degree, this latter US-originated approach has been internalised by Europe through formal and informal institutions, and adapted in light of the major oil crises of the 80's. At the same time however, the reliance of Europe on the traditional Ordoliberal understanding of market practices has prevented a total harmonisation of EU competition policies with the American ones.

Keywords

Antitrust; Institutions

European competition policy has normally been analysed from economic and juridical perspective as the body of theoretical models and regulations that had to settle the market according to specific economic and social interests, namely economic efficiency and social welfare. For instance, Gerber and others have outlined that the traditional meaning of European competition policy, inspired by Ordoliberal theories, laid in the necessity to primarily foster general economic welfare by enhancing the political and economic integration of Member States into the common market (Gormsen 2006: 6-25). Differently from US antitrust policies, where efficiency and immediate profits represents the key interest to be pursued, European competition law had, above all, to defend economic freedom of market players - even though their actions were not economically efficient per se, in order to allegedly provide for long-term efficient economic trends. This was considered a fundamental action to foster general welfare by avoiding the aggregation of big business that would affect the economic performances of smaller competitors and reduce market integration (Amato 1997: 69).

Still, although European competition policy had not only a slightly differentiated structure¹ but also very different goals from the US one, the political and economic instability caused by the oil crises of the 80's has given rise to an unprecedented neo-liberalisation of European merger practices inspired to the US model. Mergers, or a combination of two or more companies into one, have normally been adjudged by the European Commission as anti-competitive when they affects the level of prices and consequently reduce consumers' welfare. However, in the aftermath of the oil crises, the EU settled new regulations, which allowed mergers to be judged primarily on an efficiency basis. Scholars from an economic background would suggest that the neo-liberalisation of merger policies occurred in Europe is a mere consequence of the raise of new economic interests. However, an international political economic approach allows analysing this phenomenon not only as the result of political-economic needs but also as the consequence of ideas' influence over social understanding of reality. Starting from a similar perspective, scholars such as Hubert Buch-Hansen and Angela Wigger have recently examined the spread of neo-liberalism across Europe in the fields of state aid,

cartel prosecution and merger control (Buch-Hansen and Wigger 2011). However, they did not thoroughly explain the role played both by ideas and interests in leading Europe to institutionalise some of the Chicago principles.

In order to fill this gap, this paper analyses the internalisation process of neo-liberal ideas occurred in Europe through what I call a pan-institutional approach. In fact, by taking into account the contributions developed by traditional economic institutional scholars and theories of isomorphism, pan-institutionalism allows to explain the internalisation of several ideas coming from a traditional US theoretical school of antitrust: namely the Chicago School. Chicago principles were in fact adapted to the Ordoliberal European traditions because of specific economic interests. However, once enforced, they modified the perception of reality and the understanding of what was considered efficient or socially beneficial at a European level. Therefore the aim of this paper is to analyse the evolution of European competition policy towards mergers from an international political economic perspective to comprehend whether, how and why both ideas and economic interests played a fundamental role in changing traditional common market viewpoints and understanding of competition mechanisms.

IDEAS AND INSTITUTIONS

In order to explain the diffusion of neoliberal competition policy occurred in Europe by the end of the Oil Crises it is necessary to analyse the process that led to the internalisation of specific neo-liberal ideas and the consequent enforcement of ad hoc institutions. Among the several institutional scholars, Douglas North appears to be the one providing the most useful definition to explain the above-mentioned process. First of all North solved the dichotomies dividing institutional economics. In fact, while old institutionalists, such as Thorstein Veblen and John R. Commons, believed that institutions could control individuals; new institutionalists, on the contrary, theorise the power of each individual rationality to shape the institutional environment according to his interests. Instead, according to North, institutions are 'humanly devised constraints' that rule a society by shaping human interactions and the way those interactions have to evolve (North 1990: 3, North 1994b: 360). 'They are made up of formal constraints (e.g. rules, laws, constitutions), informal constraints (e.g. norms of behaviour, conventions, self-imposed codes of conduct), and their enforcement characteristics. Together they define the incentive structure of societies and specifically economies' (North 1994: 360). In North's perspective individual's actions are controlled within the institutional frame; however by simply acting, the individual can change the framework itself according to his necessities. 'Economic change is a ubiquitous, on-going, incremental process that is a consequence of the choices individual actors and entrepreneurs of organizations are making every day' (North 1994: 361). Indeed, while institutions are the rules of the game, organisations and their actors shape the institutional environment, the 'fundamental political, social, and legal ground rules that govern economic and political activities' (North 1970: 133). In this means, Douglas North's conceptualisation of institutions works in line with the old-institutionalism, Commons and the new institutionalism. Individual is constrained by the institutional structure but he can change it according to his necessities (North 1994: 362); the comprehensive outcome of his actions can create an efficient or inefficient institutional structure that can be comprehended only by understanding the ideologies and the historical specificity of that particular period (North 1994: 361). In other words, North maintains that institutions are the product of models used by actors to interpret the world around them. By not disposing of all the necessary information, human beings cannot acquire a perfect knowledge and elaborate it, thus it is clear that those models and the institutions that derive from them cannot be perfect, but they can perfectly represent the structural culture, knowledge and ideas that characterised a particular society (North 1970: 131-149). Although scholars have not paid much attention to study the process through which ideas affect policy-making and thus become powerful tools in themselves, North

has also the merit to introduce the concept of idea as a fundamental tool in influencing policy outcomes (Campbell 2002: 21-38).

From another perspective, a reflectivist one, scholars such as Alexander Wendt, have strongly insisted over the power of ideas in generating interests themselves. Specifically, reflectivists study how language, culture and beliefs can impose constraints on the individual ability to define and act in line with objective interests. Interests are not as exogenous to social actors but they are rather an endogenous part of individuals. This makes knowledge itself becoming the prior subject of analysis (Wendt 1992: 392). However, many academics have criticised those 'ideas-matter' enthusiasts for ignoring the important role of interests as determinants of change (Larsen and Andersen 2009: 240). For instance, according to Blyth, 'attributing a change in behaviour to a change in ideas is tenable only if it is counter factually demonstrated that the change could not have occurred without the ideas. The lack of such a methodological check is a weakness on two counts.' (Blyth 1997: 236)

As a result, the main critique to reflectivists scholars is that the role of ideas in influencing policy-making is largely epiphenomenal. Indeed, according to a functional approach, every time there is a situation of instability, actors modify the institutional framework in order to maximise their interests. In this context, behaviourism, especially the rational-choice versions, do not directly investigate the role of ideas in the process of institutionalisation. While ideas are taken as facts, in particular as a rational response to economic necessities, the concept that receives most attention is institution, as well as its effect on the market in terms of interest-seeking behaviour. In other words, there is no need to analyse ideas, because 'behaviour can be adjudged objectively to be optimally adapted to the situation' (Simon 1985: 293-304; Woods 1995: 161-180). As maintained by Judith Goldstein and Robert Keohane, the rational explanation of beliefs and policy outcomes questions the influence of ideas on policy-making (Goldstein and Keohane 1993: 4). Similarly, Sikkink argues that the prevalence of interest-based explanations of political decisions underestimated the role played by ideas and that 'much theoretical energy is expended demonstrating that it is not necessary to know what political actors think in order to explain how they will act' (Sikkink 1991: 1). Hence, ideas have a purely utilitarian role: individuals, specifically political actors, use them to build strategies, pursue specific utilities, and overcome problems. The capacity to enact reforms depends on the policymakers' capability to construct 'coordinative' and 'communicative' discourses and, in this process, the ideological frame of reference does not shape interests; these exist *per se*, as part of the individual free will (Goldstein and Keohane 1993: 4-5, Schmidt 2002: 168-193, Schmidt 2003: 127-146). However, according to Vivien Schmidt, discourses, as a set of ideas, serve to promote an 'interactive consensus for change', as they may be a 'reflection of the interests of key policy actors and an expression of institutional path dependencies'. They also 'exert a causal influence on policy change, serving to overcome entrenched interests and institutional obstacles to change by altering perceptions of interest and showing the way to new institutional paths' (Schmidt 2002: 168-193). Furthermore, in each historical period, ideas and discourses have been used to formulate strategies and to respond to specific social and economic necessities. However, at the same time, they have also defined actors' perceptions of the costs and benefits of particular political choices and influenced the way they identify achievable objectives (Sikkink 1991, Goldstein 1993).

Hence, both ideas and interests have a causal weight in the explanation of human actions; indeed, while each individual acts rationally to pursue his or her interests, their rationality is always influenced by the social beliefs of the time (Goldstein and Keohane 1993: 4). In the case of antitrust, it is evident that the interests pursued by competition regulation and reflected by theories revolve around the maintenance of an effective level of competitiveness in the interest of efficiency and welfare. Nonetheless, the way in which efficiency and welfare are perceived, and therefore institutionalised, are determined by ideas. The theoretical approach adopted in this paper will follow the one

outlined by Goldstein and Keohane. These scholars do not reject rational-choice theory and strongly believe that individuals are driven by the will to fulfil their needs; however, they do not underestimate the role of the ideological substratum. In their view, ideas and interests play an equal role in determining social actions and are never mutually exclusive (Goldstein and Keohane 1993). Thus, it is possible to maintain that the power of ideas stands in their ability to promote what philosopher Thomas Kuhn defines as paradigm shift or capacity to transform the way people live and understand social realm (Hall 1993: 275-296). This can happen because ideas become shared beliefs and because they are supported by specific elites. The choice of an ideological framework is not politically neutral but it is always interrelated with specific interests represented by actors involved in the decision making process. Ideas 'do not float freely'; on the contrary, they develop through individual interactions within the social environment and they can be theoretically organised by schools of thought. (Risse-Kappen 1994: 185-214). What makes the mechanism evolutionary is the fact that not all ideas survive; they are implemented into policy only if they are 'politically salient', in other words, only if they respond to specific and contingent necessities (Risse-Kappen 1994: 185-214, John 1999: 39-63). Therefore, although it is assumed that all political decisions are driven by specific interests, the definition of interests, such as the achievement of economic efficiency or welfare, is influenced by the cultural, theoretical, and ideological background of each specific social organisation. Still, the dilemma on how some economic beliefs influenced the EU needs further analysis.

INTERNATIONALISATION OF INSTITUTIONS

Having understood the process of institutional change, it is now essential to explain why European Union eventually adopted throughout the course of history similar antitrust approaches to the ones selected by the U.S., even though the former's ideological framework of reference was completely different from the American one. The internalisation process of antitrust institutions can in fact be understood through a pan-institutional interpretation of organisations' isomorphism theory. Isomorphism states that organisations tend to assume similar connotation or adopt equal structure. To date, organisations can be described as structures defining actors' goals orientations (Pfeffer *et al.* 1978: 23); thus it is possible to consider the state as an organisation itself or 'a bureaucratically organized administrative structure empowered to govern a geographically delimited territory' (Scott 1995: 94-95; Lindblom 1977: 21).

The theory of organisational isomorphism can be interpreted according to two different schools of thought. From a sociological perspective isomorphism is a mimetic or normative process in which organisations tend to copy each other. Mimetic isomorphism occurs as a response to uncertainty, for instance when organisational technologies are poorly comprehended, or when the goals are vague, or again, when the environment itself creates incertitude (March *et al.* 1976). Normative isomorphism instead, originates primarily from professionalization (Larson 1977: 49-52, Collins 1979: 58-59). In other words, actors inside organisations tend to have similar ideas and analogous worldviews by sharing similar background. Those ideas are internationally spread also through the networking processes actors undergo inside professional and trade associations, which become 'the empirical arena' where ideas are widely disseminated. (Larson 1977: 49-52, Mizuchi *et al.* 1999: 653-683) For instance, the creation of the International Competition Network in 1997 can be considered as an attempt to build an arena where antitrust practitioners can share information. Indeed, the set-up of the ICN and its study groups has allowed the development of normative isomorphism among states, thus favouring harmonisation between antitrust practices (Todino 2003: 283-302, Budzinski 2004: 223-242, Fox 2003: 911-32).²

Differently from the sociological perspective, scholars dealing with population ecology interpret isomorphism as a competitive phenomenon, which 'involves pressures toward

similarity resulting from market competition' (Mizruchi *et al.* 1999: 656-657). In fact, Michael Hannan and John Freeman outline how competitive pressure forces organisations to adopt similar behaviours and structure in order to be economically efficient (Durkheim 1984: 338, Hawley 1950: 201-203, Hannan *et al.* 1977: 929-964). Since the competitive explanation has failed to clarify why specific models are adopted even though they are not efficient, scholars as Rosabeth Moss Kanter, Paul DiMaggio and Walter Powell have tried to introduce other explanations based on coercion to implement the institutionalised interpretation of isomorphism (Kanter 1972: 152-156). According to them, coercive isomorphism occurs when an organisation is in a condition of dependency from another one because the latter can exert formal and informal pressure upon the former (Mizruchi *et al.* 1999: 656-657). Such pressure can have the form of persuasion or it can be a simple invitation to adopt a collusive arrangement. In this perspective, the most powerful organisation can exert pressure over the weaker to conform to its own cultural and ideological standards. In fact, as Geoffrey Pfeffer and Gerald Salancik maintain, coercive isomorphism can be understood as a resource dependence model. Organisations are obliged to homogenise their features because they find themselves in a situation of dependency from those who can provide resources (Pfeffer *et al.* 1978: 46-47).

According to DiMaggio and Powell, mimic, normative and coercive mechanisms' effects over the social realm are not always easily identifiable because they can coexist and together they can impose isomorphism over organisations by operating through different trails (DiMaggio *et al.* 1983: 147-160). By advancing on the path of DiMaggio and Powell it is possible to maintain that the competitive mechanism is equally important and it can coexist with the sociological definition of isomorphism; states can adopt similar patterns also for competitive reasons. An example of combination of mimetic and competitive mechanisms can be detected in the promotion of Chicago-oriented antitrust policies in the UK and then in the European Union that traditionally had been following very different patterns. For instance, the enforcement of the 1990 Merger Regulation (MCR) was the first European step towards a neo-liberal efficiency-oriented competition policy. Even though the Ordoliberal cause of common market protection remained in the MCR, Hubert Buch-Hanse and Angela Wigger maintain that with the approbation of this regulation EU member states' interests started to be heavily excluded in the context of the competition evaluation process in favour of a sort of efficiency-oriented discourse (Buch-Hanse *et al.* 2010: 20-44).

Concluding, the adoption of competition policies in Europe that reflected US ideas can be explained through pan-institutional isomorphic mechanisms. Indeed, on the one hand the EU did not want to be less economically efficient than the U.S, thus it was influenced by the latter's ideas. On the other hand, after having adopted a similar ideological framework and institutions the EU started to share a common antitrust working language with Washington. This process facilitated the mimetic and especially the normative trends, creating also a path dependence circle that influenced antitrust policy-making. Additionally, as it will demonstrate in the following section, although the US could not materially force Europe towards the adoption of neo-liberal institutions, it still held enough influence to persuade the Commission to do so.

EUROPEAN INSTITUTIONAL CHANGES TOWARDS COMPETITION

The US is the country where all the major contributions to the theorisation of antitrust were first put forth and applied. The development of antitrust policy dates back to July 2, 1890 when President Benjamin Harrison signed Bill S. 1, which later became known as the Sherman Act, the first antitrust law applied in the American territory (Boork 1978: 19). Even though the Canadian antitrust law, namely the Canada's Combines Investigation Act, was promulgated before the Sherman Act, it was less rigorous and never quite received the same degree of public attention. American competition policy

has been studied and developed by several schools of thought such as Marginalist in the 30's, Harvard scholars in the 40's and the Chicago school thinkers in the 60s. By adopting a pure neo-liberal approach and privileging economic efficiency as a premotor of social welfare, this latter group is the one that contributed the most to the formulation of the current US antitrust policy.

Differently for the US, the history of European competition policy and its theoretical background dates back to the German Freiburg School and the Ordoliberal movement. Developed during the Weimar Republic in the 1920's, the Ordoliberal school proposed a rather innovative competition model, which underlined the necessity of national competition laws to direct the market without limiting individual freedom to invest. Thus, it is undeniable that the European competition policy has a very different background and a dissimilar approach from the American antitrust one; however, the first antitrust law introduced in the European Coal and Steel Community was drafted by Harvard School Professor Richard Bowie and, according to Jean Monnet, this was an adaptation of the Sherman Act principles to an European frame (Clifford 2006: 24, Acheson 1969, Dinan 1994). Since Roosevelt administration considered the creation of the European Coal and Steel Community anything but a bright excuse to conceal and protect a huge European cartel, the U.S. decided to influence it through a competition policy that, at the same time, reflected a European tradition of thoughts as the Ordoliberal one and was not in contrast within the American necessity to abolish the cartelisation of economy in Europe. This process can be defined as one driven by coercive isomorphism. Europe, destroyed by the World War II, did not have any other choice than to follow American directives over the reconstruction of its market, in order to obtain financial and economic aid.

The post-war American liberal institutional influence generated economic welfare in Western Europe; market economy started to regain prosperity and competition reacquired the allegiance it had lost during the Great Depression and the two World Wars (Gerber 1994: 25). This was the incipit for one of the longest economic booms in Europe, a "golden age" of capitalism (Monnet 1978: 352–3, Harding 2003: 95, Jones 2006: 26). However, since the beginning of the Oil Crisis until the late 1985 the EC experienced negative rate and its share of world trade in manufactured goods fell from 45 to 36 per cent (Price 1988). The economic downturn developed disparities among EC economies and the influence of the American liberal model of capitalism in Europe waned considerably. Since tariffs could not be raised within the EC's consumer-free zone, and the GATT and the OECD prohibited the adoption of proper protectionist policies, anticompetitive practices, such as improper state aid and national grants, became the optimal strategy to handle the recession (Lyons 2009: 16, Judt 2005: 460, Cini *et al.* 1998: 31, 135, Schroter 2005: 127). This trend lasted until the early 1980s, when EU members states, impressed by the initially positive outcomes of deregulation in the United States, feared an increasing competition and determined to face the 'industrial malaise' that had characterised Europe, finally decided to reinforce the common market by promoting a gradual liberalisation and a deeper integration in competition regulation through the Single Act (SEA) of 1986 (Buthe *et al.* 2007: 175).

While Reagan's administration apparently welcomed the SEA as a further development of European integration, it generally feared the development of a stronger European market that would combine liberalisation within the protection of smaller enterprises and labour (Lundestad 2003: 230). The European competition policy, in fact, seemed to grow as a sort of alternative to the U.S. system in the region. Following the fall of the Berlin Wall, Europe started to be very dynamic in exporting and influencing "competition regulation" in Eastern and Central European countries and competition policy became also one of the criteria to the accession to EU membership (Rouam *et al.* 1994: 7-11).³ Moreover, because the EC Treaty did not provide any specific juridical tool to control mergers, the Commission persecuted concentrations that involved many American multinational corporations through Article 82's anti-dominant position provisions

(Aldcroft 1978: 240, Freyer 2006: 245). However, after controversial outcomes of the 1973 *Continental Can*⁴ and the 1989 *British American Tobacco*⁵ proceedings, a proper EC merger regulation became effective in September 1990 (Van Bael 2005: 730-731).⁶

The new regulation attempted to neo-liberalise European competition policy by preventing forms of state interventionism. It introduced a package of reforms that modified the division of jurisdiction in the case of large mergers and empowered the Commission (Morgan and Spring 2000: 153-194). The MCR made mandatory the notification to the Commission of any kind of concentration and it clarified that, in the case of mergers or acquisitions with a community dimension, only the Commission had the power to verify the compatibility of those activities within the “common market” (Morgan and Spring 2000: 153-194). Apart from the British Clause under article 21(3), which allowed member states to use their existing powers to protect certain “legitimate interests” not taken into account by the MCR competition test, the MCR blocked any national attempts to introduce, in merger evaluations, any consideration related to employment or industrial policy (Buch-Hanse and Wigger 2010: 20-44). According to Commissioner Leon Brittan this merger regulation ‘beat back the supporters of an industrial policy’ and gave ‘clear primacy to the competition criterion, with only the smallest nod in the direction of anything else’. (Brittan 2000: 1–7).

Even though the Ordoliberal clause of common market protection remained in the MCR, Hubert Buch-Hanse and Angela Wigger maintained that this was the first step made by the European Competition General Directorate towards neoliberalism. This was fostered by a mimetic isomorphic process, through which the European competition policy was directly inspired by the same Chicago ideas that shaped antitrust in the US. For the first time, the interests of member states were heavily excluded in the competition evaluation and a sort of efficiency-oriented discourse that reflected business interests started to emerge (Buch-Hanse and Wigger 2010: 20-44). This process resulted from competition mechanisms too. Europe began to move its policy towards a more efficiency-oriented approach because of a rising tendency among the EU member states to consider the neo-liberal system applied in the US as the best model for the development of efficiency and welfare.

However, traditional European interpretations of competition were usually not as much oriented toward economic efficiency as the American one. On the contrary, in interpreting any violation of competition regulations, the Commission and the Court normally focused on the extent to which a particular economic behaviour in contrast with European laws was affecting the common market, rather than how profitable it was in terms of economic performance. Hence, the 1990 MCR did not alleviate American fears of an uncontrolled development of the European welfare oriented competition system; on the contrary, this regulation fostered the idea of a Communitarian policy that would have a deep effect on mergers involving not only European but also American corporations by not completely following an ‘Americanised efficiency-seeking political economy’ (Theffry 1990: 543-551). Consequently, since the US did not have the material power to coercively influence Europe, in 1991 it launched discussions with the European Commission. Those discussions were designed to promote a formal competition agreement, which could in turn foster cooperation among competition authorities and allocate jurisdiction in transnational merger cases (Griffin 1993-1993: 1051-1065). In other words, while the agreement was a normative instrument to reduce conflicting decisions, it was coercively promoted by the US into Europe to facilitate collaboration in a field where the Europeans had increasingly enforced their decisions over cases that involved US companies’ interests. Indeed, although the US did not have enough material power over Europe as after World War II, it still detained the political and economic influence necessary to push Europe to ratify the Cooperation Agreement and start the institutionalisation of American-oriented antitrust ideas. Through the cooperation agreement, the US found the right institutional tool to indirectly promote the consensual adoption of its neo-liberal oriented antitrust approach over business conducts. In fact, in

the days after the agreement, the Commission began to move the intellectual foundations of European Competition toward a different approach: a Chicago one.

The above-mentioned modernisation process introduced neo-liberal practices and consolidated a more efficiency-oriented analysis of business activities and more importance started to be given to short-term consumer welfare considerations (Wigger *et al.* 2007: 498). Such a market-based approach was strongly sustained by many DG Competition Commissioners, especially Mario Monti, who regarded it as 'a silent process of convergence towards US competition law and practices' (Buch-Hanse 2010: 37, Monti 2001). The shift can be explained not only by the need for modernisation of merger regulation approved in 2004 by European Ministers that introduced the analysis of 'overall market context and efficiencies', but also by the approbation of many guidelines.⁷ For instance, the Horizontal Mergers Guideline outlined the necessity to divert the attention from a simple revelation of an existent dominant position in the market to a more liberal understanding of whether the merger could negatively affect competition (Vickers 2004). In order to measure concentration levels, the Horizontal Mergers Guidelines formalised the use of the Herfindahl-Hirschman Index (HHI)⁸, which reshaped the European test for concentration, the so-called "Dominance Test", towards a more Chicago-oriented approach. This allowed efficient mergers to be permitted even though they could generate economic concentration (Davidow 2002: 495).

From 2004 to June 2008, only two out of the 1466 notified mergers were prohibited by the Commission (Buch-Hanse 2010: 37). The enforcement of the reform, which effects were similar to the ones generated by the American 1982 Horizontal Merger Guidelines, not only emphasised a European will to achieve the same economic benefits of the U.S., but it also detected a growing European general consensual acceptance of the Chicago-inspired antitrust approach implemented by Washington two decades before (Levy 2005: 1).⁹ According to the US Deputy Attorney General for Antitrust James Rill, European merger evaluation became 'as close as it could get to the US-style without copying the whole caboodle' (Rill 2003: 39, Wigger *et al.* 2007: 499). This process can be identified as a combination of mimetic normative, coercive and competitive isomorphism. On the one hand Europe wanted to overcome the crisis as soon as possible in order to handle competition generated by Japan and U.S., on the other, since the U.S. had the most powerful economy at the time, it was easier to copy its approach and reconverted it for a European framework. Moreover, the institutional legitimacy held by the US over Europe, allowed the creation of a cooperative agreement, which in turn favored a normative isomorphism and provided room for a constant exchange of opinion and information between US and EU antitrust practitioners.

Currently, while the EU is struggling to re-settle its economy, the effect of the recession has pushed the Commission to regulate once again mergers and the use of state aid. In order to manage a rising anticompetitive trend and a 'beggar your neighbour policy', European institutions have promoted a 'Temporary framework' in order to regulate the use of state aid and non-horizontal merger guidelines, covering vertical and conglomerate mergers in 2008 (Quigley 2009: 352).¹⁰ While the EU is trying to strongly regulate the common market, the U.S. seems not to be able to define a new antitrust approach. However, the neo-liberal path seems hard to be challenged.

CONCLUSION

Pan-institutionalism is a fundamental tool to understand the power of antitrust ideas and interests over the institutionalisation of competition policy in Europe. Indeed, on the one hand it allows studying the institutionalisation of merger policy by taking into consideration both the role of ideas and material interests in influencing policymakers. On the other it permits to comprehend the internalisation and diffusion of specific principles by the EU through the use of a broader interpretation of organisations'

isomorphic process. As it has been demonstrated, the dynamic succession of particular competition institutional frameworks adopted by the European Union after the oil crises of the 80's can be linked to the influence exerted by US antitrust ideas. Those ideas were adopted because of specific interests or necessity. However, once they became part of the European market understanding, they also became the only way to comprehend reality, modifying social perception of interests.

In fact, the internalisation of neo-liberal principles by Europe - made possible through the above-mentioned isomorphic mechanisms - happened because Europe had to face contingent necessities, such as mere economic interests or obligations. However, once institutionalised, those principles modified the European understanding of competition towards a more efficiency-based understanding of the market. In other words, the necessity to overcome the downturn and to reach economic interests pushed the European Commission to make competition policy to follow a more efficiency driven logic, then the general common market welfare. At the one and the same time, neoliberal ideas began to be the unique way to interpret reality and shaped the way interests were perceived. For this reasons, although the current crisis has underlined the necessity to restructure the institutional competition framework in order to generate adequate responses to the economic challenges, changes are hard to be implemented as neoliberalism has become so embedded in the EU understanding of competition that it seems the unique way to face the challenges. However, as William Kovacic maintains, the pendulum that characterises the antitrust changes is slow to implement, and it is probably too early to credibly predict the development trend of a new antitrust institutional framework (Kovacic 2003:377-478).

In conclusion, the paper makes two claims. First, institutional analysis, by allowing a balanced investigation of the role of both ideas and interests, is especially helpful to better understand the evolution of European competition institutions. Secondly, while the implementation of specific competition ideas has been caused by the need to reach specific objectives, the EU has modified the traditional way of perceiving reality and material needs, by applying particular theoretical conceptions. This is what I define 'the power of ideas'.

¹ European competition structure is based on a civil law system, while the US one is based on a common law one.

² For more information about the ICN,

<http://www.internationalcompetitionnetwork.org/about/history.aspx>

³ European Association Agreements were in fact signed with Poland, Hungary and Czech and Slovakian Federal Republic in December 1991, and with Romania and Bulgaria in February and March 1993.

⁴ *Europemballage Corporation and Continental Can Company Inc. v Commission of the European Communities*, Case 6-72, 21 February 1973.

Available at:

http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61972J0006&lg=en

⁵ *British American Tobacco Ltd and RJ Reynolds Industries Inc v Commission*, 1987, ECR 4487.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989TJ0064:EN:PDF>

⁶ Council Regulation (EEC) no 4064/89 of 21 December 1989 on the control of Concentrations between Undertakings, J 1990L257/14.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989R4064:EN:HTML>

⁷ Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, Section 9. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0802:EN:NOT>

⁸ European Commission, 'Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings', 05/02/2004.). Available at: http://europa.eu/legislation_summaries/competition/firms/i26107_en.htm. Last accessed 12 December 2012.

⁹ See U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, issued 1992, revised 1997, *at* http://www.usdoj.gov/atr/public/guidelines/horiz_book/hmg1.html.

¹⁰ See European Commission, Guidelines on the Assessment of Non-Horizontal Mergers Under the Council Regulation on The Control of Concentrations Between Undertakings, 2008 O.J. (C265). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:0025:EN:PDF> (adopted on Nov. 28, 2007 and published on Oct. 18, 2008) [hereinafter E.C. GUIDELINES]. Last accessed 12 December 2012.

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