

Brief History of Competition Policy - Part II

Tunç Durmaz

2. April 2020

ECONOMICS DEPARTMENT
YILDIZ TECHNICAL UNIVERSITY

- Motta, Massimo. Competition policy: theory and practice. Cambridge University Press, 2004
- Tirole, Jean. Economics for the Common Good. Princeton University Press, 2017.

- In this section, we will briefly review the main historical events in the development of competition (or anti-trust) laws in the US and in the European Union.

- In this section, we will briefly review the main historical events in the development of competition (or anti-trust) laws in the US and in the European Union.
- The purpose here is not to have a complete description of the history of competition laws.

- In this section, we will briefly review the main historical events in the development of competition (or anti-trust) laws in the US and in the European Union.
- The purpose here is not to have a complete description of the history of competition laws.
- Instead, our aim is to understand the circumstances under which competition laws were created and enforced, as well as the objectives which they purported to attain.

Competition Law in the European Communities

Competition Law in the European Communities

- The starting point of national competition law in Europe was the series of pro-competitive measures adopted by France, Germany, Italy and the Benelux countries (Belgium, the Netherlands, and Luxembourg) in the 1951 Treaty of Paris

Competition Law in the European Communities

- The starting point of national competition law in Europe was the series of pro-competitive measures adopted by France, Germany, Italy and the Benelux countries (Belgium, the Netherlands, and Luxembourg) in the 1951 Treaty of Paris
- This created the European Coal and Steel Community (ECSC).

Competition Law in the European Communities

- The starting point of national competition law in Europe was the series of pro-competitive measures adopted by France, Germany, Italy and the Benelux countries (Belgium, the Netherlands, and Luxembourg) in the 1951 Treaty of Paris
- This created the European Coal and Steel Community (ECSC).
- The Treaty prohibits trade barriers as well as discriminatory and other restrictive practices capable of distorting competition among the six countries which later became the founding members of the European Economic Community.
- The treaty was seen as producing diplomatic and economic stability in western Europe after the Second World War. Some of the main enemies during the war were now sharing production of coal and steel, the key-resources which previously had been central to the war effort.

Competition Law in the European Communities

- The starting point of national competition law in Europe was the series of pro-competitive measures adopted by France, Germany, Italy and the Benelux countries (Belgium, the Netherlands, and Luxembourg) in the 1951 Treaty of Paris
- This created the European Coal and Steel Community (ECSC).
- The Treaty prohibits trade barriers as well as discriminatory and other restrictive practices capable of distorting competition among the six countries which later became the founding members of the European Economic Community.
- The treaty was seen as producing diplomatic and economic stability in western Europe after the Second World War. Some of the main enemies during the war were now sharing production of coal and steel, the key-resources which previously had been central to the war effort.

- The Europe Declaration was signed by all the leaders present. It declared that the Treaty had given birth to Europe. It emphasized that the supranational principle was the foundation of the new democratic organization of Europe.

- The Europe Declaration was signed by all the leaders present. It declared that the Treaty had given birth to Europe. It emphasized that the supranational principle was the foundation of the new democratic organization of Europe.

Two main reasons behind the introduction of competition policy measures in the Treaty of Paris

1. the desire to reduce the danger of German power by making essential inputs such as as coal and steel available to the other European countries

- The Europe Declaration was signed by all the leaders present. It declared that the Treaty had given birth to Europe. It emphasized that the supranational principle was the foundation of the new democratic organization of Europe.

Two main reasons behind the introduction of competition policy measures in the Treaty of Paris

1. the desire to reduce the danger of German power by making essential inputs such as coal and steel available to the other European countries
2. the principle of free competition: it was beginning to be appreciated as the only viable way to attain an efficient functioning of the market

- The Europe Declaration was signed by all the leaders present. It declared that the Treaty had given birth to Europe. It emphasized that the supranational principle was the foundation of the new democratic organization of Europe.

Two main reasons behind the introduction of competition policy measures in the Treaty of Paris

1. the desire to reduce the danger of German power by making essential inputs such as as coal and steel available to the other European countries
2. the principle of free competition: it was beginning to be appreciated as the only viable way to attain an efficient functioning of the market
 - (also in view of the success of the US economy which had continuously relied upon anti-trust rules)

Competition Law in the European Communities

- Some of the key points of current competition law in Europe can be traced back to the articles in the Treaty of Paris.

Competition Law in the European Communities

- Some of the key points of current competition law in Europe can be traced back to the articles in the Treaty of Paris.
- **Article 65** of the Paris Treaty prohibits agreements and concerted practices between firms or associations of firms which tend (directly or indirectly) to prevent, restrict or distort normal competition within the Common Market

Competition Law in the European Communities

- Some of the key points of current competition law in Europe can be traced back to the articles in the Treaty of Paris.
- **Article 65** of the Paris Treaty prohibits agreements and concerted practices between firms or associations of firms which tend (directly or indirectly) to prevent, restrict or distort normal competition within the Common Market
 - This provision is clearly the model upon which Article 81 of the Treaty of Rome (1957) is based

Competition Law in the European Communities

- Some of the key points of current competition law in Europe can be traced back to the articles in the Treaty of Paris.
- **Article 65** of the Paris Treaty prohibits agreements and concerted practices between firms or associations of firms which tend (directly or indirectly) to prevent, restrict or distort normal competition within the Common Market
 - This provision is clearly the model upon which Article 81 of the Treaty of Rome (1957) is based [Link](#)
- **Article 66(7)** deals with the abuse of a dominant position by firms which use such a position to pursue objectives which are contrary to the Treaty
 - close correspondent of Article 82 of the Treaty of Rome.

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,
 - restrict production and distribution,

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,
 - restrict production and distribution,
 - distort trade among Member States,

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,
 - restrict production and distribution,
 - distort trade among Member States,
 - or create an artificially privileged position in the markets.

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,
 - restrict production and distribution,
 - distort trade among Member States,
 - or create an artificially privileged position in the markets.
- Attention to prospective mergers in these sectors can be understood by *the fear of concentration of economic power in the hands of a few firms*

Competition Law in the European Communities

- **Article 66** also deals with mergers and concentrations between firms in the coal and steel industry.
- Consent to such mergers could be given only by the High Authority, which granted approval only where the concentration did not give to the new entity the power
 - to control prices,
 - restrict production and distribution,
 - distort trade among Member States,
 - or create an artificially privileged position in the markets.
- Attention to prospective mergers in these sectors can be understood by *the fear of concentration of economic power in the hands of a few firms*
 - a fear that had justified the process of decartelisation in Germany.

Competition Law in the European Communities

- The treatment of mergers is not mentioned in the Treaty of Rome.

Competition Law in the European Communities

- The treatment of mergers is not mentioned in the Treaty of Rome.
- Mergers were not made the explicit object of European competition policy until the adoption of the Merger Regulation in 1989

Competition Law in the European Communities

- The treatment of mergers is not mentioned in the Treaty of Rome.
- Mergers were not made the explicit object of European competition policy until the adoption of the Merger Regulation in 1989
- Until the adoption, Germany and the UK wanted mergers to be judged only on the basis of competition issues, whereas France wanted also to consider criteria of industrial policy and social issues.

Competition Law in the European Communities

- The treatment of mergers is not mentioned in the Treaty of Rome.
- Mergers were not made the explicit object of European competition policy until the adoption of the Merger Regulation in 1989
- Until the adoption, Germany and the UK wanted mergers to be judged only on the basis of competition issues, whereas France wanted also to consider criteria of industrial policy and social issues.
- Eventually, the former approach prevailed.

Competition Law in the European Communities

- Treaty on the Functioning of the European Union (TFEU) deals with competition issues in **Articles 101 to 109** (Formerly, Articles 81-89 of the EC Treaty)

Competition Law in the European Communities

- Treaty on the Functioning of the European Union (TFEU) deals with competition issues in **Articles 101 to 109** (Formerly, Articles 81-89 of the EC Treaty)
- The logic of free competition is set out clearly by **Article 3(1)(g)** of the Treaty establishing the European Community, which calls for the institution of “a system ensuring that competition in the internal market is not distorted”.

Competition Law in the European Communities

- Treaty on the Functioning of the European Union (TFEU) deals with competition issues in **Articles 101 to 109** (Formerly, Articles 81-89 of the EC Treaty)
- The logic of free competition is set out clearly by **Article 3(1)(g)** of the Treaty establishing the European Community, which calls for the institution of “a system ensuring that competition in the internal market is not distorted”.

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.
- **Article 12** confirms that this is also one of the basic principles in the Treaty of the European Communities (the “Treaty”)

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.
- **Article 12** confirms that this is also one of the basic principles in the Treaty of the European Communities (the “Treaty”)
 - this has applications well beyond the rules on competition alone.

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.
- **Article 12** confirms that this is also one of the basic principles in the Treaty of the European Communities (the “Treaty”)
 - this has applications well beyond the rules on competition alone.
- Thus, one of the main objectives in European competition policy is the elimination of any discrimination based on national grounds in the economic system.

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.
- **Article 12** confirms that this is also one of the basic principles in the Treaty of the European Communities (the “Treaty”)
 - this has applications well beyond the rules on competition alone.
- Thus, one of the main objectives in European competition policy is the elimination of any discrimination based on national grounds in the economic system.
- Explains the strong position taken by the European Commission (as well as, by the European Court of Justice) with respect to price discrimination across countries.

Competition Law in the European Communities

- One of the major reasons behind the adoption of competition rules under the Treaty of Paris was to avoid discrimination on national grounds.
- **Article 12** confirms that this is also one of the basic principles in the Treaty of the European Communities (the “Treaty”)
 - this has applications well beyond the rules on competition alone.
- Thus, one of the main objectives in European competition policy is the elimination of any discrimination based on national grounds in the economic system.
- Explains the strong position taken by the European Commission (as well as, by the European Court of Justice) with respect to price discrimination across countries.

Competition Law in the European Communities

- The Commission has without exception condemned firms which have tried to segment markets across national borders and practices

Competition Law in the European Communities

- The Commission has without exception condemned firms which have tried to segment markets across national borders and practices
- forbidding parallel imports have basically a status of 'per se' prohibition within the EU.

- It is difficult to say exactly what the objectives of competition policy were for those who drafted the **Treaty of Rome**.

Competition Law in the European Communities

- It is difficult to say exactly what the objectives of competition policy were for those who drafted the **Treaty of Rome**.
- It is probably safe to say that competition was not an end in itself, but was intended as a way to promote economic progress and the welfare of European citizens, the latter being one of the objectives of the EC as stated by **Article 2**

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage
 - industrial efficiency,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage
 - industrial efficiency,
 - the optimal allocation of resources,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage
 - industrial efficiency,
 - the optimal allocation of resources,
 - technical progress,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage
 - industrial efficiency,
 - the optimal allocation of resources,
 - technical progress,
 - and the flexibility to adjust to a changing environment.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The first objective of competition policy is the maintenance of competitive markets.
- Competition policy serves as an instrument to encourage
 - industrial efficiency,
 - the optimal allocation of resources,
 - technical progress,
 - and the flexibility to adjust to a changing environment.
- In order for the Community to be competitive on worldwide markets, it needs a competitive home market.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The Community's competition policy has always taken a very strong line against

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The Community's competition policy has always taken a very strong line against
 - price-fixing,
 - market sharing cartels,
 - abuses of dominant positions,
 - and anti-competitive mergers.
- It has also prohibited

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The Community's competition policy has always taken a very strong line against
 - price-fixing,
 - market sharing cartels,
 - abuses of dominant positions,
 - and anti-competitive mergers.
- It has also prohibited
 - unjustified state-granted monopoly rights

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The Community's competition policy has always taken a very strong line against
 - price-fixing,
 - market sharing cartels,
 - abuses of dominant positions,
 - and anti-competitive mergers.
- It has also prohibited
 - unjustified state-granted monopoly rights
 - state aid measures which do not ensure the long-term viability of firms but distort competition by keeping them artificially in business.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The second objective of competition policy is the single market objective.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The second objective of competition policy is the single market objective.
- The Commission has used its competition policy as an active tool to prevent private barriers to trade, and prohibit and heavily fine two main types of agreement:

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The second objective of competition policy is the single market objective.
- The Commission has used its competition policy as an active tool to prevent private barriers to trade, and prohibit and heavily fine two main types of agreement:
 - distribution and licensing agreements that prevent parallel trade between Member States,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- The second objective of competition policy is the single market objective.
- The Commission has used its competition policy as an active tool to prevent private barriers to trade, and prohibit and heavily fine two main types of agreement:
 - distribution and licensing agreements that prevent parallel trade between Member States,
 - and agreements between competitors to keep out of one another's "territories"

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Social reasons are **also** taken into account in European competition policy.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Social reasons are **also** taken into account in European competition policy.
- The Commission has granted exemptions from competition rules for so-called **crisis cartels**

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Social reasons are **also** taken into account in European competition policy.
- The Commission has granted exemptions from competition rules for so-called **crisis cartels**
 - A significant number of industry players get together to find a joint solution to their common difficulties in times of crisis. For example,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Social reasons are **also** taken into account in European competition policy.
- The Commission has granted exemptions from competition rules for so-called **crisis cartels**
 - A significant number of industry players get together to find a joint solution to their common difficulties in times of crisis. For example,
 - reducing overcapacity

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Social reasons are **also** taken into account in European competition policy.
- The Commission has granted exemptions from competition rules for so-called **crisis cartels**
 - A significant number of industry players get together to find a joint solution to their common difficulties in times of crisis. For example,
 - reducing overcapacity
 - and/or by agreeing on a "fair" price level to avoid that some companies would go bankrupt and leave the market.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Clear that social and political considerations influence the way competition policy is implemented

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Clear that social and political considerations influence the way competition policy is implemented
 - Competition can be sacrificed when the social costs can be too high, since many firms might exit an industry under conditions of over-capacity, which would result in considerable job losses.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Clear that social and political considerations influence the way competition policy is implemented
 - Competition can be sacrificed when the social costs can be too high, since many firms might exit an industry under conditions of over-capacity, which would result in considerable job losses.
 - Even if in the long-run a restructuring of the industry would be beneficial, in the short-run there might exist considerable costs that a government might want to avoid for political and social reasons.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy:

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,
 - R&D support,

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,
 - R&D support,
 - financial guarantees and other assistance.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,
 - R&D support,
 - financial guarantees and other assistance.
- The favorable treatment accorded to small and medium firms finds its rationale in the *de minimis* rule:

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,
 - R&D support,
 - financial guarantees and other assistance.
- The favorable treatment accorded to small and medium firms finds its rationale in the *de minimis* rule: little harm can be done by firms which are of limited size.

Main Objective of the Competition policy enforced by the EU Competition Law in the European Communities

- Another element, which affects competition policy: Small and Medium-Sized Enterprises (SMEs).
- The EC looks favourably upon state aid given to SMEs in the form of
 - subsidised loans,
 - R&D support,
 - financial guarantees and other assistance.
- The favorable treatment accorded to small and medium firms finds its rationale in the *de minimis* rule: little harm can be done by firms which are of limited size.
- A further reason for a more favorable treatment might be to balance disadvantages that SMEs have in the markets because of their smaller dimensions.

Supplementary material

Treaty of Rome

- Treaty of Rome, originally (1957–93) Treaty Establishing the European Economic Community, succeeded by (1993–2009) Treaty Establishing the European Community and (2009–) Treaty on the Functioning of the European Union, is an international agreement, signed in Rome on March 25, 1957, by Belgium, France, the Federal Republic of Germany (West Germany), Italy, Luxembourg, and the Netherlands, that established the European Economic Community (EEC), creating a common market and customs union among its members.

Treaty of Rome

- Following the advent of the European Union (EU) in 1993, the treaty that had established the EEC remained one of the EU's core documents, though the EEC itself was renamed the European Community (EC), and the EC was embedded into the EU. With the entry into force of the Lisbon Treaty in 2009, the EC was eliminated, and the Treaty of Rome that had established it was formally renamed the Treaty on the Functioning of the European Union.

Back to [the slide](#)