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Introduction to the Special Issue

Business History and European Integration: How EEC Competition Policy Affected
Companies' Strategies

By

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Today there is a largely unquestioned assumption among European leaders that competition is 'the driving force for economic efficiency and for the welfare of society'.¹ Hence, an active and vigorous competition policy which covers cartels, abuse of dominant position, mergers and (in the European case) state aids, is regarded as a key element of a successful economy. In this respect the two dominant competition authorities in the world are arguably those of the USA and the European Union (EU), which have similarities, though some significant differences still remain.² If anything competition policy in the European Union has had the higher profile in recent years given the newsworthy antitrust cases against Microsoft, Intel and the ongoing investigation into Google, the large fines for international cartels (€2.9 bn on truckmakers in 2016 being the largest) and the vetoing of mergers between major companies (including some between US companies which were felt

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¹ Vives, 'Introduction', p. 1.

² Amato, *Antitrust*; Damro and Guay, 'Transatlantic Merger Relations'; Gifford and Kudrle, *Atlantic Divide*; Kovacic, 'Competition Policy'; and Poli, 'Antitrust Institutions'.

to harm competition in the EU market).³ In a number of these cases US competition authorities had already given their approval or come to an agreement with the company concerned before the EU stepped in to take action against what it viewed as anti-competitive behaviour.⁴

At the start of the twentieth century the situation was markedly different: the USA had introduced the Sherman Act in 1890, followed up by the Clayton Act in 1914.⁵ In Europe, by contrast, it was not until after the Second World War that anything substantive in the form of national competition policy began to exist. Indeed, when the Treaty of Rome was signed in March 1957 to create the European Economic Community (EEC), which included provision for competition policy, only a few Western European countries had provisions dealing with what was called in those days 'antitrust' or the 'fight against restrictive practices'. In other words, competition policy in Europe has undergone a fundamental change over the last seventy years and with the European Union and its predecessors at the forefront of this change. Conventionally, the late 1980s and 1990s are often seen as a turning point when EEC/EU⁶ competition policy came of age.⁷ Prior to this EEC competition policy has been described as being in its infancy and immature. Thereafter, the Commission acted with more confidence, becoming more litigious and adversarial.⁸ Some suggest a further turning point

³ See Aydin and Thomas, eds, *Globalization*; Damro and Guay, *European Competition Policy*. On particular cases see Gavil and First, *Microsoft*; Renda, 'Searching'; Morgan and McGuire, 'Transatlantic Divergence'; and Lyons, ed., *Cases*.

⁴ Such as the GE-Honeywell merger, authorized by US antitrust authorities but banned by the EU Commission in 2001.

⁵ For an overview see Freyer, *Antitrust*; and Kovacic and Shapiro, 'Century'.

⁶ This special issue covers EEC competition policy, that is, prior to the creation of the European Union in 1992. When 'EEC/EU' is used it is to denote competition policy in both the EEC and EU.

⁷ Cini and McGowan, *Competition Policy*, 29-35; Harding and Joshua, *Regulating*, 116; and Harding and Edwards, *Cartel Criminality*, 21.

⁸ Buch-Hansen and Levallois, 'Scale', 737; and Harding and Edwards, *Cartel Criminality*.

in the activism of EU competition policy from the early 2000s (though this relates solely to cartels) and, significantly, there has been no evidence of this commitment weakening in the light of the financial crisis.⁹

Yet, in one key respect competition policy in the EU remains unique since it is still, as it was in 1957, the most advanced supranational competition policy in the world, despite debates on the possibility to create an international competition authority since at least 1945.¹⁰

Competition policy is often called the EU's 'first supranational policy':¹¹ 'first' because it has lain at the heart of European integration from the outset, appearing in both the 1951 Treaty of Paris which created the European Coal and Steel Community (ECSC) and the Treaty of Rome; 'supranational' because of the power over the implementation and enforcement of competition policy which was centralised within the Commission in particular from 1962 onwards, when the first regulation on cartels was adopted.¹² Moreover, EU competition policy has had a very large range from the start, as it covers not only cartels, abuse of dominant position and mergers, but also national state aids. Lastly, it was based on provisions of the Rome Treaty of March 1957, at a time when there was no proper competition policy in any of the six founding members of the EEC.¹³

⁹ On a turning point in the early 2000s see McGowan, *Antitrust*, 14; and Simonsson, *Legitimacy*, 1. On policy after the financial crisis see McGowan and Morgan, "Today's Softness".

¹⁰ Neven et al., *Trawling for Minnows*, 15; on the debate since 1948 see Warlouzet, 'La Contribution'

¹¹ McGowan and Wilks, 'First Supranational Policy'.

¹² Warlouzet, 'Centralization'.

¹³ Germany enacted its law in July 1957, whereas the Treaty of Rome was signed in March 1957. There were provisions on cartels in French and Dutch law but they were rather weak. Although technically part of what we call now 'competition policy', they were considered in those days only as part of other economic policies (such as price policy in France). The UK had provisions regarding monopolies (1948) and restrictive practices (1956) but it was not part of the EEC until 1973. See: Hesse and Roelevink, 'Cartel', 198-203; Petit, Van Sinderen and Van Bergeijk, 'Tortoise', 71-9; Warlouzet, 'Competition', 49; Warlouzet, *Choix*, 271-3 and 292-4.

For a long time the study of these developments in EEC/EU competition policy remained within the disciplinary domains of law and economics.¹⁴ Gradually, over the last twenty years interest in other subject areas, notably political science, has developed. Even with this surge of interest in EU competition policy amongst political scientists less has still been written by such political scientists than on other aspects of the European Union.¹⁵ Much the same story can be applied to historical analyses of EEC/EU competition policy. An impressive historiography of European integration has emerged over the last forty years or so, beginning with the European Coal and Steel Community before moving on to the European Economic Community as archival sources became available.¹⁶ However, it is only in the last ten years that a distinct historiography of ECSC and EEC competition policy has developed, with several PhDs devoted mainly or partly to this topic,¹⁷ and interdisciplinary works gathering historians and other social scientists¹⁸ Nevertheless, this historiography remains predominantly institutional and political. In particular, an important issue was the balance of power between member states on the one hand, and supranational institutions on the other. Some of these works have touched on business and EEC competition policy but it is clear that a significant gap in the literature continues to exist here. This special issue aims to begin to address this gap by bringing together a mixture of business historians and historians of European integration to address aspects of the relationship between business and EEC competition policy, in particular, how business responded to EEC competition policy.

¹⁴ McGowan, *Antitrust*, vii; and Aydin and Thomas, 'Challenges', 532.

¹⁵ Buch-Hansen and Wigger, *Politics*, 4.

¹⁶ For an overview of this very rich literature see Kaiser and Varsori, *European Union History*.

¹⁷ Hambloch, *Europäische*, Leucht, *Transatlantic*; Pitzer, *Interessen*; Ramirez, *Public Policies*; Seidel, *The Process of Politics*; Warlouzët, *Le Choix*; Witschke, *Gefahr*;

¹⁸ Bussière and Warlouzët, eds, *La Politique*; Jullien and Smith, eds, *Le Gouvernement*; Patel and Schweitzer, eds, *Historical Foundations*.

This is important because business historians have played a significant role in the study of cartels and monopolies and have informed wider debates on competition policy but have, to date, contributed very little on the period after the Second World War. In this respect, the special issue is a direct response to criticism of business historians for this failure made by Buch-Hansen and Levallois: 'Whereas business historians have documented that cartels were an important and widespread phenomenon in Europe prior to World War II..., they have done little to illuminate the scale of collusion after the war and to the present day'.¹⁹ Griffiths and Brusse did begin to attempt to document at a macro-level the number of post-war cartels in Europe but ultimately this project ran into the ground.²⁰ Some authors have used cartel register to assess cartelization after 1945, in particular for the Netherlands, Sweden and Australia, but the problem of under-reporting looms large: the most detrimental cartels are seldom declared.²¹

In this special issue, the approach is different, presenting a range of cases where companies or industries were faced with the challenge of EEC competition policy and the articles track and explore those responses. Moreover, the existing historiography is focussed strongly on cartels with little to say about abuse of dominant position and even less about state aids. This special issue is not limited to the study of cartels – covered in the contributions by Bertilorenzi on aluminium, Jensen-Eriksen on paper products, Ramírez Pérez on the automobile industry, and Rollings on Babcock and Wilcox, producers of water boilers and related products - but also covers the issue of a dominant position – Van Laer on IBM - and

¹⁹ Buch-Hansen and Levallois, 'Scale', 738.

²⁰ Brusse and Griffiths, 'Incidence'.

²¹ Bouwens and Dankers, 'The Invisible Handshake'; Petit, 'The Dutch'; Sandberg, 'Cartel Registration'; Shanahan, 'The Secret Register'.

state aids – Warlouzet on Normed. We argue that the contribution of this special issue goes much further than simply beginning to open up this field. First, through the cases presented it gives some illumination to the nature and extent of anti-competitive behaviour by businesses in the period from the Second World War through to the 1980s. Related to this, it moves beyond the existing tendency to focus on business associations to look as well at individual companies' responses to EEC competition policy, thereby providing further insight into company strategies in relation to competition.²² Secondly, it throws light on the issue of periodisation of EEC/EU competition policy but without considering this public policy as an isolated phenomenon. Rather, by looking closely at the interaction between business actors and the Commission, it reveals how EEC competition policy was implemented in practice, the symbiotic relationship with business practices and how up to the 1980s it was embedded in other policies, in particular industrial policy.²³

Finally, the special issue illustrates the continuing potential of business history to contribute to our broader understanding of the operation of competition policy. This is in three respects: a) the value of business archives as a source for the study of competition policy, because there is such a paucity of information on the anti-competitive behaviour of firms; and, following from this, b) the value of business history for exploring and understanding business behaviour when not only is there limited information, but also where business behaviour seems somewhat at odds with the expectations drawn from standard neoclassical economics, and c) the value of the business perspective to assess the effectiveness of competition policy. Was the Commission a paper tiger or an authority able to force

²² For an example of peak level associations' consideration of EEC competition policy see Bühner and Warlouzet, 'Regulating Markets'; and Rollings, *British Business*, 193-217.

²³ On the linkage between competition policy and industrial policy considered by a lawyer, see: Sauter, *Competition*.

companies to alter their restrictive practices? These are fundamental problems in the study of competition policy across disciplines and we hope that this special issue goes some way to showing the added value from a business history approach in developing the study of this subject. This introductory article continues with a consideration of the state of the existing debate before going on to elaborate the contribution that business historical approaches can make. It then introduces some of the themes explored in the contributions and their key findings.

Development of the literature

There is already a vast literature on EEC/EU competition policy, much, as noted above, in law and in economics but also increasingly coming from political science and from an historical perspective. One key issue in this literature has been the degree of effectiveness of competition policy. Much of the analysis comes from a legal or an economic perspective. Even the political science literature for a long time centred around the institutional aspects of policy in a similar hunt for greater effectiveness, in line with the views of the former EU Competition Commissioner Mario Monti.²⁴ This approach can be criticised as it is rather formalistic: it takes a purely institutional view without looking at the consequences for effective business practices. The story of US antitrust law has shown that the same provisions can be implemented with great leniency or with great severity, as much depends on the leaders in place and their legal and economic thinking.²⁵ Moreover, there is a risk of teleology if the historical narrative simply purports to show 'how European competition regulation, despite occasional setbacks, turned into an increasingly efficient and sophisticated regulatory tool that was vital for the successful management of the European

²⁴ For example Cini and McGowan, *Competition Policy*. On Monti see Levy, 'Mario Monti'.

²⁵ Kovacic and Shapiro, 'Antitrust'.

integration project' as Buch-Hansen and Wigger have suggested.²⁶ In this vision, competition policy has developed mechanically in the 1980s as a logical complement to the Single Market programme. In other words, it was not developed before because there was no strong economic rationale.

Such a Whiggish approach inevitably casts the early history of EEC competition policy in a poor light, and disregards other factors such as divisions among the actors who had promoted and implemented competition policy over the time. The Treaty of Paris, which set up the ECSC, included competition policy in the form of action against restrictive practices (Article 65) and against dominant position abuse and merger control (article 66), and Jean Monnet liked to refer to the treaty as 'Europe's first antitrust law'.²⁷ Originally, competition policy was developed for a mixture of reasons, which include the US desire to export their model of economic growth, the French willingness to control the German mighty companies, a functionalist vision of some experts and a general mood against cartelization, which was associated with fascist regimes.²⁸ Yet it is clear that the implementation of these articles remained extremely limited with cartels and concentration existing in both the coal and steel industries within the ECSC.²⁹

In 1957, the Treaty of Rome creating the EEC was more general in terms of competition policy so everything was left to the implementation. Article 85 EEC (now art 101 TFEU) dealt with cartels, making clear that 'all agreements between undertakings, decision by associations of undertakings and concerted practices which may affect trade between

²⁶ Buch-Hansen and Wigger, *Politics*, 5; and Buch-Hansen and Wigger, 'Revisting'. For a typical and widely cited work of the genre criticised here see Motta, *Competition Policy*.

²⁷ Dell, *Trade Blocs*, 72.

²⁸ Leucht, 'Transatlantic'; Witschke, *Gefahr*

²⁹ Barthel, 'European Steel Cartel'; Warlouzot and Witschke, 'Difficult Path'; Witschke, *Gefahr*.

Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market' were prohibited, but many exemptions were set out in Article 85(3). Article 86 EEC (art 102 TFEU) dealt with 'abuse of dominant position', a concept loosely defined at the time,³⁰ while Articles 92-4 EEC (article 107-9 TFEU) set out the policy on state aids, also following rather general rules. There was no merger control at this stage.

The real turning point occurred in 1962 with the first regulation interpreting the Treaty of Rome in this domain, named "Regulation 17/62" for it was the seventeenth regulation of that year.³¹ It concerned the implementation of article 85 EEC to cartels. It established a system centralized on the Commission, both in terms of information (all cartels must be notified to Brussels) and in terms of decision (the Commission decided alone, with the member states' experts having only a consultative voice). Besides, competition policy was established as a fully-fledged independent public policy, considered by its promoters as indispensable to fulfil the main goal of the EEC: the creation of a common market. Indeed, if companies were able to divide up national markets through cartels, the removal of custom duties and of quotas was pointless. Regulation 17/1962 was clearly a break with the past given the lack of independent and fully-fledged national competition policies in the six member states at that time, except in Germany.

The debate on the role of German ideas in the birth of EEC competition policy has been lively in the literature. On the one hand, some scholars have underlined the influence of

³⁰ Schweitzer, 'Parallels'.

³¹ Warloutet, 'Centralization', 730; on the negotiation of Regulation 17/62, see also: Hambloch, *Europäische*; Montalban, Ramírez Pérez and Smith, 'Competition'; Pace and Seidel, 'Drafting'; Pitzer, *Interessen*; Warloutet, *Choix*

ordoliberal thinking and of the German example of competition policy among many German officials who had decisive positions in the 1960s, in particular Hans von der Groeben, the first commissioner for competition.³² Ordoliberals associated cartels with the national-socialist past. For them, the reconstruction of a democratic Germany meant strong provisions to preserve not only political but also economic liberties. Competition policy played a central role in this process as it was part of an 'economic constitution' designed to ensure that individual freedom was guaranteed. On the other hand, some academics have argued that German competition policy was not as severe as is sometimes said as many exemptions subsisted.³³ Indeed, Germany epitomized the 'coordinated market economy' where there is strong inter-firm cooperation.³⁴ In the same vein, other scholars have underlined that non-ordoliberal thinking was also taken into account during the debate on the Treaty of Rome and on Regulation 17/62.³⁵

To settle this debate, Warlouzet has developed a twofold argument.³⁶ On the one hand, regulation 17/62 clearly bears the mark of the German experience, itself influenced by ordoliberal thinking, as it established competition policy as a fully-fledged policy, independent both from member states and from other EEC policies. Moreover, detailed examination shows that von der Groeben was responsible for most of its content, with the broad support of Müller-Armack, the representative of the German government who is usually portrayed as close to the ordoliberals, and that this was imposed over a French counter-proposal. As a matter of fact, many officials both inside the Commission and within

³² Gerber, *Law*; Hambloch, *Europäische*; idem, 'EEC Competition Policy'; Pace and Seidel, 'The Drafting'; Pitzer, *Interessen*; Seidel, *The Process*, 155-8. On von der Groeben, see also Elvert, 'Hans von der Groeben'. On ordoliberalism in EEC/EU competition policy, see also Mestmäcker.

³³ Berghahn, *Americanisation*; Hesse and Roelevink, 'Cartel Law'.

³⁴ Hall and Soskice, *Varieties of Capitalism*, 27.

³⁵ Akman, 'Searching'; Akman and Kassim, 'Myths'; Buch-Hansen and Wigger, 'Revisiting', 9; Ramírez Pérez and Van de Scheur, 'The Evolution'.

³⁶ Warlouzet, 'Centralization', 731-3; more details in Warlouzet, *Le choix*, 269-338.

national government had envisaged other ways to implement article 85, such as setting up an independent cartel authority, or a consultative body which would have involved societal actors. On the other hand, the French experience also influenced the Commission with its focus on vertical practice, and in particular on exclusive distribution agreements. Those contracts usually link a producer and a distributor. The legislation about exclusive dealing agreement was more severe in France than in Germany. That is why French negotiators managed to insert a specific article dealing with this practice in Regulation 17/62, and indeed the first cartel banned by the Commission was an exclusive dealing agreement, much to the German government's dismay.³⁷ From a business perspective however, the main features of EEC competition policy during the 1960s and the 1970s was its ineffectiveness.³⁸ EEC competition policy in this period has been variously described as one of 'incremental development' or, less positively, 'hesitant, patchy and largely ineffectual' and 'declamatory politics' where DGIV was 'a sleepy backwater of Community administration'.³⁹ Explanations for the weakness of implementation vary. Gerber suggests that the Commission was reluctant to move quickly towards an active and vigorous competition policy because it was so radical.⁴⁰ Others argue, in a related way, that policy was 'relatively easy-going' and 'business-friendly'.⁴¹ Another argument focusses on the efficiency of the Commission. In the 1960s, DG IV was relatively small but determined to centralise power in itself in order to implement policy. Given this and the resistance at the outset of national governments to the granting of block exemptions (block exemptions allow the Commission to clear one type of agreement without judging each case individually), DG IV then found itself swamped by the

³⁷ On the German opposition to Grundig-Consten see Warlouzet, 'Difficult Quest'.

³⁸ Ham, 'Rules', 41.

³⁹ Cini and McGowan, *Competition Policy*, 21; McGowan, *Antitrust*, 15; Bütte, 'Politics of Competition', 182; and Wilks and McGowan, 'Competition Policy', 225.

⁴⁰ Gerber, *Law and Competition*, 353.

⁴¹ Harding and Joshua, *Regulating*, 109-10; Buch-Hansen and Wigger, *Politics*, 62.

number of notifications of agreements that it received: it was drowned under more than 36000 notifications in 1964, and in December 1982 there was still a backlog of 3715 cases.⁴² The advent of more efficient and bolder commissioners in the 1980s, with Andriessen, Sutherland and Brittan, also played a role, as well as the general move towards more market-oriented policies.⁴³ The rise of new neoliberal ideas such as those of the Chicago school also supported a strengthening of competition policy, although those ideas sometimes clashed with the earlier tradition, more inspired by ordoliberalism.⁴⁴

There is a consensus that it was around that time in the early 1980s that EEC competition policy was invigorated and the gap between the wording of the rules and their practical implementation closed.⁴⁵ DG IV became more confident and assertive and a new Merger Regulation, long proposed, was finally introduced in 1989.⁴⁶ Much of the literature emphasizes the technocratic improvement of EEC competition policy. Hubert Buch-Hansen and Angela Wigger chose to put the focus on the wider political and ideological dimensions of EEC/EU competition policy.⁴⁷ They argue that these policies and their development over time can only be understood when embedded in the existing political and social systems, in their case arguing that the change in policy around the 1980s was another manifestation of the more general swing from 'embedded liberalism' to neoliberalism. One element of this change was to privilege the role of competition above other economic objectives. No longer constrained by, or embedded in, those other policies, EEC competition policy became more

⁴² Forrester and Norall, 'Laicization', 14.

⁴³ Cini and McGowan, *Competition Policy*, 31; Montalban, Ramírez Pérez, and Smith, 'Competition Policy'; and Warlouzet, 'Centralization', 734-5.

⁴⁴ Montalban, Ramírez Pérez, and Smith, 'Competition Policy'; Warlouzet, 'Competition Policy', 61; and Warlouzet, 'Difficult Quest'.

⁴⁵ McGowan, *Antitrust*, 10; Wigger, 'Competition', 183.

⁴⁶ For a review on the literature on the 1989 merger regulation see Warlouzet, 'Centralization', 727 and 734.

⁴⁷ This began with Buch-Hansen, 'Rethinking'; and Wigger, 'Competition', before their joint work. See also: Montalban, Ramírez Pérez, and Smith, 'Competition Policy'; Warlouzet, 'Rise'.

adversarial and vigorous and, with that, the status of DGIV (now called “DG Competition”) within the Commission rose.

Another related debate concerns the role of the US example. The historiography has developed markedly from a rather crude analysis that EEC competition policy was simply exported from the US.⁴⁸ There is clear evidence of US involvement in the drafting of the competition policy provisions in the Treaty of Paris of 1951 but, even here, this was no straightforward importation of the ideas of others, as said earlier.⁴⁹ Several years later, when the Treaty of Rome was signed in 1957, the US influence had markedly declined. This can be explained by the general context of the Cold War, but also by economic history: Western European States had mostly finished their reconstruction and were thus less dependent on foreign aid. Moreover, provisions to control restrictive business practices had been adopted in France in 1953 and in the Netherlands in 1956, while Germany was in the final stage of the debate on its competition law, not to mention the various British laws on this issue (in 1948 and in 1956), so there was now a European experience in this domain. Comparison between US and EEC/EU competition policy also emphasize the fact that, for a long time, the latter has been generally more severe against exclusive distribution agreements.⁵⁰ Even now, a recent assessment by a law firm of the possible consequences of a Brexit on British business indicated that a future UK competition policy devoid of any EU influence could be more lenient towards exclusive distribution agreements.⁵¹ This focus on vertical agreements can be explained by the fact that EEC/EU competition policy has been concentrated for a long time on the creation of a unified internal market.

⁴⁸ Djelic, *Exporting*; and idem ‘Does Europe?’.

⁴⁹ See Witschke, *Gefahr für den Wettbewerb?*; and Leucht, ‘Transatlantic Policy Networks’.

⁵⁰ Martin, *Goals*; Leucht and Marquis, ‘American’, 147-9.

⁵¹ McGuire Woods, *Competition*.

Acknowledging the bargained nature of EEC competition policy broadens the range of actors involved beyond the officials in the Commission. For some this widening stops with national governments in addition to legal experts and the Commission by emphasising the intergovernmental nature of the compromise.⁵² However, other historians, including two contributors to this special issue have gone further by incorporating the influence of business actors into their accounts.⁵³ This can be seen as part of a wider movement in the historiography of European integration. Conventionally, this historiography was dominated by diplomatic historians exploiting the records of national governments and often only those of respective foreign ministries.⁵⁴ Even critics of such accounts of European integration, like Alan Milward, have remained wedded to governmental sources.⁵⁵ And while they have emphasised the economic basis of integration, they have focussed on trade issues, saying little about competition policy. However, more recently, the historiography of European integration has widened its coverage to include other actors.⁵⁶ One element here is the role of business actors and business lobbying in influencing the course of European integration. An increasingly extensive historiography has appeared looking at this from a national level and from a European level.⁵⁷

⁵² For example Pitzer, *Interessen*.

⁵³ Bühner and Warloutzet, 'Regulating Markets'; Montalban et al., 'Competition Policy'; Ramírez Pérez, 'La Politique'.

⁵⁴ See Dinan, 'Historiography'; Loth, ed, *Experiencing*; and Kaiser and Varsori, eds, *European Union History*.

⁵⁵ Milward, *European Rescue*; idem, *Politics*; and Milward et al., *Frontier*. See also Guirao et al., *Alan S. Milward*. For a critique see Kaiser, 'From State to Society'. One factor explaining this was that Milward mainly studied the years before 1962 when EEC competition policy really took off.

⁵⁶ Kaiser and Starie, *Transnational*; Kaiser et al., *History*; Kaiser et al., *Transnational*; and Kaiser and Meyer, eds, *Societal actors*. A second strand focussing on technology, networks and experts has also developed since Misa and Schot, 'Inventing Europe', for example Lagendijk, *Electrifying*, van der Vleuten and Kaijser, eds, *Networking*, and Badenoch and Fickers, eds, *Materializing*.

⁵⁷ Badel and Michel, eds, *Patronat*; Bussière, Dumoulin and Schirmann, eds, *Europe*; Kipping, *La France*; Rhenisch, *Europäische Integration*; McKinlay et al., 'Reluctant Europeans'; Rollings, *British Business*; Geven, *Transnational Networks*; Morival, 'Passage'; idem, 'Les Europes du Patronat'; Moguen-Toursel, *L'Ouverture*;

The majority of this historiography on business and European integration continues to focus on the creation of the EEC. There has been much less on the response of these actors when faced with the complex and varied reality of European integration. Business historians should have much to contribute here given how this fits into a fairly conventional business history framework of exploring how companies responded to changes in their environment, but with regard to the impact of European integration they have been relatively silent.⁵⁸ As already mentioned, Buch-Hansen and Wigger have pointed out that this is also the case with regard to EEC/EU competition policy. To a large extent Buch-Hansen and Wigger make this point because of the importance of the contribution of business historians to our understanding of cartels prior to the Second World War. Many works were published in the aftermath of the Second World War on the extent of international cartelization as part of a critique of their role in supporting fascist regimes.⁵⁹ Thereafter relatively little was written until the 1990s at which point academic interest re-emerged with business historians as active participants in the debate. As Dominique Barjot wrote at the time: 'International cartels currently constitute one of the pioneering areas for research in business history'.⁶⁰ Business historians contributed to the literature in three key ways. First, they provided

Moguen-Toursel, ed, *Stratégies d'Entreprise*; Ramírez Pérez, 'Public Policies'; idem, 'Role'; idem, 'French Automobile Industry'.

⁵⁸ One exception is Jones and Miskell, 'European Integration'. A number of case-studies have also been explored in collective volumes edited by Eric Bussière, Michel Dumoulin and Sylvain Schirman (see a summary in Bussière, Dumoulin and Schirmann, 'Le développement') but none of the contributions based on archives deal with competition policy except those of Sigfrido Ramírez Pérez and of Laurent Warloutzet published in Bussière, Dumoulin and Schirmann, eds, *Europe*.

⁵⁹ Wells, *Antitrust*. For examples see Stocking and Watkins, *Cartels in Action*; idem, *Cartels or Competition?*; and Hexner, *International Cartels*. For a recent summary see Connor, *Global Price Fixing*. One who continued to publish in this area was Corwin Edwards, *Cartelization*; and idem, *Control of Cartels*.

⁶⁰ Barjot, Introduction', 39.

detailed accounts of various individual cartels.⁶¹ Secondly, their explorations of these cartels showed that assumptions in the economics literature on cartels did not seem to be founded in real world experience. For example, economic instability did not seem to be the problem for cartels that economists expected. Rather, these cases showed there was a 'picture of dispersion in cartel outcomes'.⁶² Similarly, this diversity of experience has been found across sectors and economic environments, highlighting that simplistic typologies around market structures did not hold.⁶³

Where business historians have been less influential has been in questioning the assumption that cartels are inherently bad. Harm Schröter, in particular, has defended cartels and argued that 'their public reputation is unwarranted'.⁶⁴ Instead, he has since argued, there has been a continuum here from 'devilish collusion to heavenly cooperation'.⁶⁵ Certainly, the historiography has shown that such an attitude was the dominant view of cartels before the Second World War, especially in Europe. The interwar period is often seen as the highpoint of international cartels.⁶⁶ This was not simply because they were more numerous than at other times but also, as Bertilorenzi has recently reminded us, because this was when cartels were most legitimised – in public discourse and by governments, as well as in the minds of business people – to an extent that seems unimaginable today.⁶⁷ From the 1920s onwards various European businessmen and statesmen, most notably the Frenchman Louis Loucheur, promoted international cartels as a

⁶¹ See Barjot, ed., *International Cartels*; Kudō and Hara, eds, *International Cartels*; Wurm, *Business*; Barbezat, 'Price'; Phimister, 'Chrome Trust'; Levenstein, 'Do Price Wars?'.

⁶² Levenstein and Suslow, 'What Determines Cartel Success?', 54.

⁶³ Barjot and Schröter, 'Why?', 963.

⁶⁴ Barjot and Schröter, 'Why?', 957; Schröter, 'Cartelization and Decartelization'; and idem, 'Cartels Revisited'.

⁶⁵ Schröter, Foreword', xviii. See also Fear, 'Cartels'.

⁶⁶ Fear, 'Cartels', 276.

⁶⁷ Bertilorenzi, 'Legitimizing Cartels'.

way of reducing trade barriers, reconstructing the European economy and, ultimately restoring international peace: 'From being seen exclusively as a means to regulate and limit economic cooperation before 1914, cartels had turned into a widely-advocated strategy for overcoming political as well as economic conflicts'.⁶⁸

Unsurprisingly, therefore, historians have found evidence of business wanting to re-establish this and other forms of private governance after the Second World War and that there was strong resistance from business to the idea of competition policy which banned all cartel-like cooperation outright without exception.⁶⁹ Rather, business cooperation as a form of private transnational governance, including cartelization, was seen as the way to bring about European integration, not to stop it, as it was later portrayed in justifying the importance of competition policy to European integration. As Kaiser and Schot have recently suggested, from this perspective European integration did not begin after the Second World War but much earlier.⁷⁰ It also means that the issue of EEC competition policy highlights that there were competing notions of European integration, each with different supporters, in the aftermath of the Second World War. Business historians have played an important part in illustrating the strength of these notions of integration by means of cartels in the interwar period but have not taken this far into the post-1945 period to date, nor how business responded to the radically alien environment which the competition policy provisions of the Treaty of Rome and Regulation 17/62 implied.

⁶⁸ Kaiser and Schot, *Writing the Rules*, 195-96. On Loucheur see Bussière, 'La SDN' and Barjot, 'Les Cartels'.

⁶⁹ Kipping, *La France*; Rollings and Kipping, 'Private Transnational Governance'.

⁷⁰ Kaiser and Schot, *Writing the Rules*, 293.

The potential contribution of business history to the understanding of EEC/EU competition policy

That business historians have not to date seized on this opportunity to contribute to our understanding of EEC/EU competition policy is disappointing but can be explained. We argue that the papers in this special issue illustrate that business historical approaches can offer significant insights here, in particular in relation to cartels. This is important because of the difficulty of studying cartels in the contemporary world. There are two aspects to this: the subject's complexity and its obscurity.⁷¹ Beginning with the issue of complexity, the standard economic approach to the existence and ending of a cartel is to think in terms of a cost-benefit analysis of the incentives and constraints to acting collusively – how do the perceived benefits of membership of any cartel for a firm compare to the costs, in terms of penalties, of discovery, discounted by the chance of discovery and prosecution?⁷² Thus firms regularly re-compute this sum to see whether to continue membership and, if the costs exceed the benefits, the firm will stop the anti-competitive behaviour as rational profit maximisers. Accordingly, if competition authorities want to stop anti-competitive behaviour they need to increase the deterrent effects of punishment, that is, larger fines and more aggressive investigations. Inversely, if cartels continue to be created it suggests that the fines and the chance of discovery remain insufficient to outweigh the perceived benefits to the firm: 'How the regulators respond and pursue cartelisation ultimately determines the scale, intensity and number of such anti-competitive practices, at least in theory'.⁷³ The

⁷¹ Harding and Edwards, *Cartel Criminality*, xiv.

⁷² For a textbook analysis see Motta, *Competition Policy*.

⁷³ McGowan, *Anti-trust Revolution*, 19.

continued existence of cartels in Europe suggests that EEC/EU competition policy has not been severe enough and the penalties have not reached the optimal level of deterrence.⁷⁴

However, McGowan's conditional clause 'at least in theory' is significant. It is widely accepted that the penalties for anti-competitive behaviour have become more severe, including the introduction of individual criminality by some competition authorities. At the same time competition authorities have become ever more diligent in pursuing potential anti-competitive behaviour and leniency programmes for whistle-blowers have been introduced. Yet there seems little change in the proclivity of business to form cartels: they continue to thrive and can be seen as 'constant endemic realities of business life, past, present and future'.⁷⁵ More than this, empirical evidence has shown that despite the radically different regulatory regime in place, cartel duration seems to have changed little over the course of the twentieth century.⁷⁶ A further issue, highlighted in empirical studies, is the widespread prevalence of recidivism: one study of 283 cartels found over 170 instances of recidivism in the period 1990-2005 with eleven companies having at least ten convictions.⁷⁷ Thus, while there is some empirical evidence to support the idea that firms do adopt a cost-benefit analysis approach, either the benefits of cartel membership have been far greater than commonly thought or factors other than simple economic rationality have been and remain at work in promoting such anti-competitive behaviour.⁷⁸ In this vein Stucke has adopted a behavioural economics approach, where rationality is limited and other factors such as social norms, personal relations and peer pressure can be influential, to

⁷⁴ Motta, 'Cartels'.

⁷⁵ McGowan, *Antitrust Revolution*, 23.

⁷⁶ Levenstein and Suslow, 'Breaking Up', 463-64.

⁷⁷ Connor and Helmers, 'Statistics'. See also Harding and Edwards, *Cartel Criminality*, 199-203.

⁷⁸ For an empirical example of firms using some form of cost-benefit analysis see Feinberg, 'Enforcement'.

consider anti-competitive behaviour.⁷⁹ Similarly, although uncertainty is conventionally regarded as a cause of cartel instability and break-up, cartelisation can also be a mechanism for dealing with uncertainty.⁸⁰ More generally, in practice business cooperation takes many complex forms: there may be elements of anti-competitive behaviour at the same time as perfectly legal interaction between firms. As a result, even after much case law has developed it can be difficult to assess what could refer to normal cooperation between companies and what could be considered as an unfair collusion. A classic example is a pharmaceutical company which charges high prices for medicine which had cost billions to develop. The practice can be considered as an abuse of dominant position, or as a legitimate return on costly investment.

This mismatch between expectations based on rational behaviour and empirically-recorded behaviour highlights the complex motives behind, and influences upon, anti-competitive behaviour. Straightforward and general explanations of business behaviour in this field are likely to be misleading: 'Examining individual cartels reinforces this picture of dispersion in cartel outcomes'.⁸¹ Harding and Edwards conclude, therefore, that a major problem 'resides in the difficulty of penetrating the motivations for and the dynamic of collusive cartel business behaviour' and that 'explaining both the original motivation of cartelists and the endurance and persistence of cartels in the face of heavier sanctions is largely a matter of speculation, based on either sociological or legal guesswork or abstract econometric modelling'.⁸²

⁷⁹ Stucke, 'Am I a Price Fixer?'

⁸⁰ Harding and Edwards, *Cartel Criminality*, 11; and Levenstein and Suslow, 'Breaking Up', 456.

⁸¹ Levenstein and Suslow, 'What Determines Cartel Success?', 54.

⁸² Harding and Edwards, *Cartel Criminality*, 20.

Given this, there is a clear need for detailed case studies to improve our understanding of this type of business behaviour. Although there is the ever present risk of anecdotal evidence with the case study approach, the diversity of experience discovered cautions against overgeneralisation and it is only through case studies that one can gain evidence to understand and attempt to explain the motivations behind cartel behaviour.⁸³ This requires 'some appreciation of, and insight into, the "internal" perspective of the firm'.⁸⁴ There have been a few accounts by convicted cartelists that have been published but these may take the form of ex post apologia rather than a rounded account of cartel activities.⁸⁵ Harding and Edwards's solution to this need was what they term 'cartel biography', that is 'longitudinal narrative accounts of corporate participation in cartels'.⁸⁶ Their approach is 'retrospective and historical' and draws upon the body of evidence created by the various legal actions against cartels over the last 30 years or so: legal investigations, prosecutions, sanctions and appeals plus relevant circumstantial evidence. Harding and Edwards outline six advantages of such an analytical approach:

- a) It allows a longer-term historical analysis in which the role of corporate cultures and individuals in the formulation of corporate policy can be taken into account;
- b) It can provide data on corporate and individual contributions to delinquent behaviour;
- c) It can incorporate the impact and influence of corporate restructuring over time and shifting corporate identities.
- d) It enables cross-jurisdictional and international comparisons;

⁸³ Harding and Edwards, *Cartel Criminality*, 102; Levenstein and Suslow, 'What Determines Cartel Success?', 45; and idem, 'Studies of Cartel Stability'.

⁸⁴ Harding and Joshua, *Regulating Cartels*, 33.

⁸⁵ Harding and Edwards, *Cartel Criminality*, 24.

⁸⁶ Harding and Edwards, *Cartel Criminality*, 21. In many ways this is similar to the approach used by Connor, *Global Price Fixing*.

- e) It provides a picture of the evolving relationships between companies, the regulatory authorities and law firms
- f) It may provide some insight into recidivism.⁸⁷

However, there are weaknesses with using legal case records too. The evidence is the product of the legal process and this has implications. First, they have been selected as part of that process, not to provide an account of the cartel. Secondly, the evidence may be contestable given the adversarial nature of such legal processes.⁸⁸ Thirdly, there is no way of knowing whether there is sample bias here: 'We simply do not know whether cartels that run afoul of legal authorities are similar to or different from cartels that manage to escape unnoticed'.⁸⁹ Certainly, the samples will reflect the legal regime in place. This is why it has been possible to build up substantial material of evidence in recent years: it has been a product of the greater degree of litigation in this field.

Business historical approaches, using company records, offer an alternative means of creating cartel biographies and also deliver many of the same advantages that Harding and Edwards outline. In addition, there are two further advantages over using legal case material: there are not the same selection biases and the records are not dependent on an aggressive legal regime for their production. Indeed, there is a fundamental problem with the legal approach in this sense, in that the evidence is a product of fiercer regulation but fiercer regulation prompts firms to avoid the production of such evidence. In other words, recidivists might just be seen as recidivists because the regulatory authorities focus on that

⁸⁷ Harding and Edwards, *Cartel Criminality*, 20-21.

⁸⁸ Harding and Edwards, *Cartel Criminality*, 99.

⁸⁹ Levenstein and Suslow, 'What Determines Cartel Success?'

sector once they know there have been cartels there or because they keep documentary evidence which incriminates them, rather than simply having been recidivist.

This is not a problem limited to evidence made available to researchers as a by-product of legal cases. One of the fundamental challenges facing all researchers in this field is the paucity of information readily available to them and the resulting obscurity of the subject.⁹⁰ Research is inevitably difficult because of the covert and clandestine nature of the activity given that it is illegal and companies are wary about creating evidence which might incriminate them.⁹¹ This explains why business historians have been active in outlining the nature of international cartels before the Second World War but have been criticised for not providing similar studies for the second half of the twentieth century: cartels were largely legal in the first period and not in the second. However, this does not mean that there are no business records outlining cartel activities after the Second World War. As shown in the contributions that follow, documentary evidence does continue to exist, although it may not be so readily available as for earlier periods and firms today can be unwilling to let researchers use records to research these topics directly.⁹² Coming at the topic obliquely, as for example Niklas Jensen-Eriksen does in this special issue, can provide a window through which it is possible to construct a bigger picture of what was happening. Since each cartel involves a number of firms it really only requires one member's records to get an insight of this bigger picture and, equally, companies can be unaware of what material is actually available in their archival collections.

⁹⁰ Connor, *Global Price Fixing*, 3;

⁹¹ McGowan, *Antitrust Revolution*, 24.

⁹² One potential contributor to the special issue who knew from previous research that relevant material existed in a company's archive was refused access to study the topic while another contributor found that some records, which had previously been consulted, had been recalled by the company and were no longer available.

Exploring cartels through such records is particularly important if our understanding of the anti-competitive behaviour of businesses and, hence, the degree of effectiveness of EEC competition policy is to be enhanced. There is currently even less knowledge about cartel activity in the period from the 1950s to the late 1980s than either before or after. Before, when cartels were legal in Europe records are more plentiful, while after this the greater legal activism of competition authorities has provided a source for documentary evidence, even if it is far from a full record. The only way that cartel biographies which get inside a cartel can be created for this formative period of European competition policy is through the use of business records. The same could be said about abuse of dominant position, a domain which had been much less studied as it led to rather few cases within the EEC, and as the notion in itself is quite vague and disputed. Two lawyers have recently used archives to argue about the significance of article 86 EEC establishing this notion of abuse of dominant position, and in particular its linkage with ordoliberalism, without settling the debate.⁹³ State aids is another domain largely untouched by the historical literature, mainly because it is specific to the EEC, but also for practical reasons. Since historians need a 30-year gap to access archives in most cases, promising studies on this field are only now only beginning to appear. Michelle Cini (a political scientist), David Spector (an economist) and Claus-Dietes Ehlermann (a former Commission official) all provide some historical background in their articles but without recourse to archival records.⁹⁴

Therefore, business historians have a key role to play in developing our wider understanding of the anti-competitive behaviour of firms and the extent to which EEC competition policy

⁹³ Akman, 'Searching'; Schweitzer, 'Parallels'; see also: Mestmäcker, 'Developments'.

⁹⁴ Cini, 'Soft Law'; Ehlermann, 'State Aids'; Spector, 'State Aids'.

affected this behaviour. It is hoped, therefore, that this special issue acts as a spring board for business historians and other historians to open up this field and develop a fuller set of cartel biographies and biographies of other forms of anti-competitive behaviour.

Thus further work in the field can inform our understanding of the development of the EU and its predecessors, our knowledge of cartel behaviour in response to this developing regulatory regime and play an important part in helping us to analyse and explain why businesses are motivated to operate in this way given the complexity of the subject, which limits the ability to make meaningful generalisations, and the strictly limited sources of evidence available.

The contributions to the special issue

The six other contributions to this special issue (in addition to this introduction) bring together business historians and historians of European integration. Some of the contributors are business historians who have written elsewhere about cartels (Bertilorenzi and Jensen-Eriksen), two others have written about the creation of EEC competition policy and business reaction to that (Rollings and Warlouzet), while the last two have worked on the intersection between business and the EEC from a sectoral point of view (Ramírez Pérez and Van Laer).⁹⁵ Beyond bridging the currently rather separate communities of business history and the history of European integration the aims of the special issue are three-fold, reflected in the comments already made above. First, it addresses a gap in the current historiography of the development of EEC/EU competition policy, that is, the absence of

⁹⁵ Notably Bertilorenzi, *International Aluminium Cartel*; Jensen-Eriksen, 'Industrial Diplomacy'; Rollings, *British Business*; Warlouzet, *Le Choix*; Ramírez Pérez, 'Public Policies'; Van Laer, 'European Community'.

business actors from existing accounts, particularly in respect of the response of business to the development of competition policy.

Secondly, the special issue aims to make a contribution to the broader debate about anti-competitive business behaviour and attempts to understand the motivations and implications of such behaviour by business. The six case studies each elaborate a biography and resulting analysis of the actions of business when faced with EEC competition policy, in respect of cartels (Bertilorenzi, Jensen-Eriksen, Ramírez Pérez and Rollings), dominant position (Van Laer) or state aids (Warlouzet).

Thirdly, the special issue hopes to act as a catalyst for developing a research agenda in this field. As has been argued above, historical records have been relatively underused for studying this field after 1945, certainly in comparison with that before, and, as such, have made little contribution to date to the understanding of anti-competitive business behaviour. Unsurprisingly, the majority of the papers in the special issue deal with cartels because these are usually seen as the most egregious breaches of competition policy, but it is particularly heartening to have as well papers on abuse of dominant position and on state aids because these fields of competition policy were underdeveloped during the first decades. Given the complex diversity of experiences discovered and the paucity of data, there is a real contribution to be made by business historians and others exploiting those records which do provide information of anti-competitive business behaviour in this period where information seems to be even less readily available than before or after.

In this respect it is important to highlight the sources that have been used in this special issue to illustrate what is available and to prompt others to explore these and other similar sets of records. Company archives referenced include Normed (for the Dunkirk shipyards),

Péchiney and British Aluminium, the French computer company, Bull, the British boilermaker, Babcock and Wilcox, Fiat and IRI from Italy and various Finnish pulp and paper producers and their trade association. These are supplemented by the archives of various national governments, the Bank of England, the OECD and, naturally, the European Commission.

Turning to the contribution of the papers, this can be found in two broad areas: with regard to how EEC competition policy operated, that is to say how the provisions were implemented in practice, and, secondly, the response of business when faced by this new competition authority and how this response changed over time. Taking the policy dimension first, the papers illuminate three key areas. These are implementation, the relationship between competition policy and industrial policy, and, finally, the chronological development of policy. On implementation the papers confirm and substantiate the perceived gap between the terms of the legislation and how it was implemented, but also develops this further. The extent of uncertainty at the outset about how severe implementation would be is illustrated by Rollings. Others then show how implementation remained weak thereafter. In part this was a question of insufficient staff, as shown by Van Laer with regard to IBM, but it also reflected the institutional weakness of DG IV and the divisions within the Commission. Block exemptions could help, but as Ramírez Pérez shows with regard to the automobile industry, this could be at the cost of effective competition policy in the area. Also, as shown by Warlouzet, the gap between the legislation and the policy implemented was not related solely to cartels but also was found with regard to the use of state aids. Where the articles add to the existing literature is in relation to the conventional accounts of competition policy implementation. These tend to focus on the

firms and the Commission, especially DG IV. However, Bertilorenzi and Warlouzet show the involvement of national governments, often defending their country's firms remained influential even if this meant supporting cartels or supporting ailing shipbuilding companies. Bertilorenzi also adds to our understanding of the German position by showing that the German government was not averse to supporting cartels in the 1960s and early seventies. On the whole, competition policy has rarely been the single most important factor that led to the termination of non-competitive practices. Financial issues also played a role in the reduction of national state aids (Warlouzet), as well as the emergence of new non-Atlantic producers which had contributed to disrupt the old agreements between companies in aluminum, car industry and in shipbuilding (Bertilorenzi, Ramírez Pérez, Warlouzet). Another factor was technical innovation which disrupted previous dominant positions (Van Laer on IBM).

Building on this, the papers clearly illuminate the relationship between competition and industrial policy in considerable detail. Warlouzet, Ramírez Pérez and Jensen-Eriksen all show ongoing disputes between DG III, responsible for industrial policy, and DG IV in the 1970s and 1980s, particularly when the influential European Commissioner Etienne Davignon wanted to reinforce European industrial policy. Van Laer's paper on IBM takes this further by showing that the desire for Eurochampions to exist to compete against the major US players, like IBM, in the computing industry, was such that competition policy – used to attack IBM's dominant position – was simply a tool within the broader framework of industrial policy. Competition policy can indeed be part of a strategy to empower indigenous champions by fostering internal mergers and discouraging cartels, while at the

same time attacking foreign competitors for abuse of dominant policy.⁹⁶ This is not what happened in the IBM case however, as Van Laer shows how, in the 1980s, the industrial policy 's perspective became less important for Commission officials as IBM was less dominant and as European companies were divided on how to treat it. In the end, the IBM case was pursued at DG IV's own influence, probably to fit into Andriessen's strategy to assert DG IV. The contest between industrial policy and competition policy was also present at the national level. Warlouzet shows how certain French officials used the legal constraint of EEC competition policy to oppose their national industrial policy, sometimes considered as too costly and inefficient.

This leads into the third area of contribution, the chronology of EEC competition policy and cartelisation. Bertilorenzi and Rollings both show that there was no substantive watershed in 1945: cartels continued from before the war and developed in the light of changing circumstances. Some cartels may have been coming under pressure in the 1960s but most of those considered here only changed markedly in the aftermath of the oil price shocks and the rise of market-based regulation. Nevertheless, Rollings and Jensen-Eriksen show that there was a certain concern among companies, even those based outside the EEC/EU, about European competition policy despite its limited developments. Companies tried to adapt their agreement to render them more discreet. This was particularly obvious in the paper industry, where cartelisation was disguised under social events.

On the whole, however, competition policy was not perceived as particularly effective in those years. In the 1970s, the weak commissioner for competition Vouel was completely

⁹⁶ Defraigne, 'From National Champions'.

superseded by the dynamic commissioner for industrial affairs Davignon as illustrated by Warlouzet. This was also the case in the cartel of chemical fibres, not examined in this special issue but studied elsewhere, a typical case of a crisis cartel, which was tolerated by the Commission under the pressure of Davignon against Vouel.⁹⁷ The Commission did become more aggressive in the 1980s, as shown by Warlouzet, Bertilorenzi and Ramírez Pérez in taking action against anti-competitive behaviour though not always with success. This chronology fits well into the broader evolution of economic ideas and of economic policies, from “embedded liberalism” to the rise of neoliberal ideas in the 1980s.⁹⁸ As a matter of fact, market-based regulations rose in the 1980s, with the aluminium cartel being replaced by a future market (Bertilorenzi), and with the growing role of consumer lobbies (Ramírez Pérez), which could be useful to feed the Commission with data. This evolution was especially visible in the air transport sector too.⁹⁹

Companies engaged in exclusive dealing agreements were subjected to particular scrutiny, as this was the priority of the Commission since its early days. The first case, Grundig-Consten (1966), banned a clause which forbade parallel imports. The Commission kept this line when it treated the automobile case where impediments to trade within the common market loomed large (Ramírez Pérez). In other words, the focus was on intra-brand competition (the possibility of distributors of the same products to compete with each

⁹⁷ This cartel was examined in particular in Schröter, ‘Kartelle’ and in Marx, ‘European’. On Davignon and Vouel’s opposition about this cartel see Warlouzet, ‘Difficult Quest’, 58-59.

⁹⁸ This relationship has been particularly examined in Buch-Hansen and Wigger, ‘Revisiting’ and Jullien and Smith, *The EU*.

⁹⁹ On the role of EEC/EU competition policy to break the network of bilateral agreement in the air transport sector see Kassim and Stevens, *Air transport*.

other), rather than on inter-brand competition (the competition between distributors of different products).¹⁰⁰

The papers also provide plenty of evidence of how firms responded to the changing regulatory framework in the EEC. The first point relates to the specifics of some of the sectors considered. For example three of the papers on cartels relate to intermediate goods (Bertilorenzi on aluminium, Jensen-Eriksen on paper and pulp products, and Rollings on boilers and related products), often highlighted as prime sectors for cartelisation.¹⁰¹ In addition, a number of the papers highlight the pressure imposed on the anti-competitive behaviour by the growth of competitors from outside the traditional cartel members. This can be seen as part of the wider issue highlighted by Levenstein and Suslow that cartels are in a constant process of revision if they are to survive.¹⁰² These adjustments took different forms. Rollings and Jensen-Eriksen both illustrate calls for the destruction of documentary evidence as their cartels became more clandestine and secretive as part of their evolution.

Equally, these two papers plus those by Ramírez Pérez and Van Laer show how the prospect and reality of EEC competition policy led to adjustments by firms based outside the EEC. The papers also corroborate the belief that many firms decided not to notify their agreements, but, at the same time, this was not a straightforward decision (Rollings). In this respect EEC competition policy is shown in many of the papers to have changed behaviour and did act a deterrent, but was not successful in getting firms to give up their anti-competitive arrangements. This was often not a straightforward choice for firms as the boundary

¹⁰⁰ On this focus on vertical agreements and its subsequent alteration see Amato, *Antitrust*, 51.

¹⁰¹ Spar, *Cooperative Edge*; LeClair, *International Commodity Markets*.

¹⁰² Levenstein and Suslow, 'What Determines Cartel Success?'.

between legal and illegal acts was often fuzzy or even unknown. This itself highlights the important advisory role of business lawyers in helping their clients understand their changing environment. Ramírez Pérez's paper underlined in particular the role of Michel Walbroeck, one of the first specialist of this domain.¹⁰³ Unfortunately, most of the lawyers were often as unclear about the implications of EEC competition policy as their business clients.¹⁰⁴

While highlighting these themes found across a number of the contributions we also need to remember that the cases also illustrate the diversity in experience outlined in each contribution. In addition, the papers highlight a greater degree of complexity in the field – the key actors are not just the firms and the Commission. National governments and legal advisers were also important, as well as lawyers' firms¹⁰⁵. In being able to illustrate this, the articles do show that a business history approach, drawing on company records and official papers, does offer material which adds to our understanding of EEC competition policy and business anti-competitive behaviour in Europe from the 1950s onwards, and can make an important contribution to our understanding of what are inherently opaque subjects. It is hoped that this acts as a stimulus for others to use historical records to open the subject up even further.

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¹⁰³ Michel Waelbroeck delivered a paper in one of the first conference organized on EEC competition policy in 1967 entitled 'Coopérations, Concentrations, Fusions d'Entreprises dans la CEE'. It was published in the *Revue du Marché Commun* in 1967.

¹⁰⁴ Vauchez, 'Making'; and idem, *Brokering Europe*.

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