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The Modernisation of European Competition Policy: networks, convergence and corporate governance

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Introduction

What follows is a speculative paper that deals with work in progress; in fact it is sufficiently speculative to be ranked as 'thought in progress'. The ideas and research possibilities reviewed here will be explored in future research and this paper invites comments on research design, and how the hypotheses could be tested, as well as comments on the hypotheses themselves.

The background to this discussion is, of course, the reforms in the enforcement of Articles 81 and 82 which travel under the heading of 'Modernisation' and which include the European Competition Network (ECN). The ECN came into operation in 2004 and serves as an enforcement network in respect of some, but not all, of the competition rules. It is a central element in the Modernisation package brought about through Regulation 1/2003. Modernisation constitutes the most important transition in the fifty years of EU competition evolution and it affects the operation of the agencies, the priorities of the Commission and the effectiveness of enforcement. Further, it is argued here, the ECN clears the way for the development of a supranational redefinition of the philosophy or principles of competition policy itself. In the past I have argued that DG Comp has enjoyed such a unique degree of independence that it can be analysed as a supranational agency (Wilks with McGowan, 1995; 1996; Wilks with Bartle, 2002). In like fashion it is now possible to argue that the ECN can be analysed as a uniquely independent supranational network. There is no international regime or equivalent of the WTO for competition but we do now have a regional equivalent in the form of the ECN. Here we have something that comes very close to Slaughter's (2004, p.42) vision of 'executive transgovernmental

networks', especially if we can visualise the ECN as part of a trans-Atlantic, and possibly a global, network of competition regulators.

This paper is therefore organised around four hypotheses, each of which have a political science origin but which have also to draw upon insights from law and economics. The common theme is the 'golden oldie' of EU studies, the question of convergence and divergence. In this case convergence has a trans-Atlantic dimension and includes policy enforcement, policy making, economic governance and economic systems – a modest roll call. The four hypotheses can be stated by way of introduction:

i) that the ECN is operating successfully under the control of DG Comp
ii) that Network dynamics may lead to the emergence of a group of leading, activist and agenda-setting NCAs
iii) that European convergence is energised by, and is facilitating, trans-Atlantic convergence
iv) that effective policy will clash with the Rhenish or 'Coordinated Market Economies and will challenge German-style corporate governance

The ECN and the enforcement of competition policy

Hypothesis i) 'the ECN is operating successfully under the control of DG Comp'

Analysis of the ECN, rather like analysis of DG Comp, falls into a no man's land between theorising the position of non-majoritarian European agencies, and dealing with the majoritarian Commission. Thus, in a recent critique of EU agencies, Williams (2005, p.88) notes that 'agencies should form nuclei for inter-national networks, in a way the Commission's DGs (or their departments) simply cannot'. But in fact this is exactly what DG Comp *has* done. The design of the ECN should therefore be seen in the context of the pre-existing power of DG Comp. Competition policy has famously been the Commission's most powerful competence in which it applied EU law directly to European business and, in fact, also to European governments in respect of the control of state aid. There is no need for the frustrations of comitology and the Council is effectively excluded from this policy area except when pressed for new regulations in areas like mergers, state aid and utility liberalisation. This was a cherished area of supranational competence which meant

that proposals for decentralisation through modernisation appeared positively revolutionary. The details of the modernisation package have been outlined thoroughly elsewhere (DG Comp, 2004; Wilks, 2005 a); b)). Essentially they involve the Commission giving up the exclusive power to apply Articles 81 and 82 (TEU) which comprise the core prohibitions on restrictive practices and abuse of dominance. These powers can now be applied by National Competition Authorities (NCAs) and adjudicated by national courts; in fact the NCAs are obliged to employ EU rather than national law for any agreements that meet the test of effect on inter-state trade. At first glance this looks like a recipe for incoherence, divergence and fragmentation, which is the nightmare prospect that the ECN is designed to dispel.

The Commission's decentralisation proposals were conceived at a time of increased interest in subsidiarity and enthusiasm for alternative modes of policy coordination, including European agencies and policy networks (Dehousse, 1997). The White Paper proposed 'that the burden of enforcement can now be shared more equitably with national courts and authorities' (CEC, 1999, p.5). It recognised, of course, the risk of incoherent and inconsistent enforcement but made only passing mention of 'a network of authorities operating on common principles and in close collaboration' (p.32). At this stage there remained substantial uncertainty as to whether Europe would see a fragmentation of policy making. The Network concept was steadily refined in a process nicely captured in Ehlermann and Atanasiu (2004) and led eventually to the modernisation package and the key Commission Notice (4/2004) which formalised the Network (Ehlermann and Atanasiu, 2004, p.xvii). As the Network arrangements were finalised it became clear that the ECN was to become a very distinctive and disciplined network.

The ECN is primarily concerned with implementation rather than policy making. It is animated by legally defined cases working in a culture of European law and is very squarely centred on DG Comp. Unlike many other European policy networks it is not organised by Committees drawn from member states. Competition policy enforcement does provide for Member State Advisory Committees and use of these committees was canvassed in the White Paper but rejected in favour of DG Comp 'managing' the Network directly. Jordan and Schout (2005, p.39) argue that network management is important but relatively unusual in the EU. DG Comp appears to provide an important example of this model of a managed network and, if

the central role of DG Comp is accepted, then it implies that the ECN is centralised as well as supranational. So what does the ECN actually do?

The ECN undertakes a number of collaborative activities which resonate with themes in the network literature. Its main functions are to share information and allocate cases under sections 81 and 82. The shared information is confidential and commercially sensitive which means that only formally designated national bodies are participants in the electronic pooling of information through the DG Comp website. This raises interesting points about the role of information in regulation (Majone, 1997) but has raised anxiety in the world of competition lawyers (Reichelt, 2005). The allocation of cases is potentially highly controversial. If any NCA opens a case against an undertaking it has to notify the Network within 30 days. Cases which involve more than three member states will be dealt with by DG Comp, otherwise handling of the case is subject to negotiation within the Network. A pattern has developed that the NCA opening the case typically continues to handle it and insiders are adamant that the anticipated disputes simply have not materialised and that the system operates far more smoothly than feared by critics such as Budzinski and Christiansen (2005). DG Comp possesses the ultimate power to step in and to take over prosecution of a case if the NCA concerned is acting slowly, incompetently or is becoming at variance with established EU legal or economic principles. There was much initial concern that this would allow DG Comp to 'cherry pick' cases but up to the end of 2006 the Commission had never employed that final sanction. In addition the Network allows for systematic collaboration in aiding investigation by other NCAs including a national NCA using its nationally based powers to undertake investigations and 'dawn raids' on behalf of other NCAs. Less formal exchanges also take the form of advice on the specifics of the case, on law or economics and it would be very interesting to track the 'trade' in advice, the British authorities, for instance, concede that they export far more advice than they import. Overall the ECN is a rather shadowy creature, there is relatively little transparency and relatively little comment on the operation of the Network. There are plenary sessions, workshops and opportunities for the Network participants to meet (DG Comp, 2006, p.62) but so far its activities have been low key and have generated very little public comment. In short the pessimistic predictions put forward by quite a wide range of legal and academic observers have not been borne out by practice. At least up to the present the ECN appears to be quietly successful.

Table 3 supplements this picture by providing data on activity within the ECN (note that of the agencies named only the UK Commission and the Spanish Tribunal are not formally designated members of the ECN). It indicates the number of cases opened over the first 32 months of the operation of the Network and illustrates some interesting variations in activism. The French and the Germans are predictably active but the British are not, with both the Dutch and the Danes opening almost as many cases as the British. More particularly, the figures show a very marked actual decentralisation of implementation with only 20% of cases being handled by DG Comp.

What we see, then, is a very distinctive network of agencies. It is exclusive, made up largely of national competition agencies with no non-governmental members; circulation of information is restricted to the network; there are tight rules of procedure; and the whole is managed by officials from DG Comp. This is a very disciplined Network but it does remain nominally voluntary and has no formal legal authority. It is constituted merely by a Notice from the Commission which has been 'adopted' by the member states. The basis for the ECN is therefore soft law. It is worth emphasising that the vast majority of the Network participants are themselves national agencies (rather than ministries) which are independent within their own administrative systems. In other words this is to a large extent a Network of non-majoritarion or delegated agencies. This has important implications to which we will return below.

Before pursuing further hypotheses about the operation or implications of the Network one caveat is that it is still early days and turmoil within the ECN may yet emerge. It is widely accepted that there are problems with the operation of the ECN, especially in respect of the crucially important leniency programmes, where the diverse legal arrangements across the Union make filings and negotiation highly uncertain; and in respect of criminal actions which are possible in a minority of countries and which create problems in using shared information. But these are essentially technical issues and no strong unease has as yet been expressed by Network members. The provisional conclusion is then that the hypothesis of successful operation of the Network under the control of DG Comp is confirmed. The first three years of operation appear to have endorsed the judgements of those who designed the ECN.

The operation and coherence of the ECN

Hypothesis ii) ' Network dynamics may lead to the emergence of a group of leading, activist and agenda-setting NCAs'.

This hypothesis deals with the remarkably complex convergence dynamics established by the Modernisation reforms. On one level we have a simple and elegant model of centrally made uniform substantive rules and decentralised enforcement. But of course the reality is far less simple. These rules coexist with national competition laws and rely upon effects on inter-state trade to become applicable; the rules co-exist with the merger regime and with the state aid regime which rest an alternative relations of decentralisation; and further, a hundred years of administrative theory have attested to the difficulty of divorcing 'policy making' from 'policy implementation', means become ends and the pragmatics and experience of enforcing policy can transform the effect of policy. There is a vast literature dealing with the pros and cons of decentralisation, or of subsidiarity in the European context, and also a substantial literature on the pros and cons of international coordination of competition policies (Bergh, 1997; Fox, 2001; Shenefield, 2004; Damro, 2006 a); b)). Before engaging with the literature let us explore the dimensions of the ECN and the sheer variety of the agencies concerned.

Table 1 sets the scene by setting out the 'global elite' of competition agencies. The ranking relates to competence in enforcement and derives from the annual survey undertaken by a specialist journal, the *Global Competition Review*. The survey shows eight globally admired competition agencies but of particular note is that the top ranking traditionally attached to the US agencies is now equalled by the EU DG Comp and by the UK's much more specialist Competition Commission. This has implications for the US/EU cross fertilisation discussed later in this paper. Table 2 details the full range of EU agencies. It shows the rankings and also gives information about financial and staffing resources. It includes data on the 12 EU agencies that are not ranked by the *Global Competition Review* because they are too new, small or inactive. Table 2 illustrates the very substantial variation in resources and standing of the EU authorities and implies what many would concede, that whilst many agencies are highly effective, others are not.

On a somewhat impressionistic ranking we could identify four 'leagues' of effectiveness and activism within the ECN:

		No.	% cases opened
- Elite:	EU, Fr, Ge, UK, (It)	5	53
- Good	Den, Fin, Ire, Neth	4	19
- Problematic	Sp, Swe, Port, Aust, Pol	5	17
- Less effective	Gr, Belg, Lux + 11 new MS	14	11

The league table indicates that the 'elite' (in which Italy is included due to its size and improving standing) and the 'good' NCAs handle nearly three quarters of all cases. But all the authorities are active and even the 'less effective' category has opened 11% of the cases with the Hungarians being particularly energetic.

The growth in transnational networks of regulatory agencies has excited considerable analysis within political science. It has been concluded that networks provide the possibility for a form of international governance stretching beyond Europe (Slaughter, 2004); that they constitute a novel form of governance within Europe (Sabel and Zeitlin, 2007); and that they can be analysed as a form of sectoral governance independent from the respective nation-states (Eberlein and Grande, 2005, but see also Coen and Thatcher, 2006 who are more sceptical). In this context the ECN is a leading example of a powerful network and, while noting the reservations explored by Coen and Thatcher, this paper is more constructivist in emphasising the normative understandings which appear to animate the Network and it analyses the possibility that the Commission could become more open to innovations originating with other well resourced agencies within the Network.

As hypothesis ii) suggests, the politics of the ECN offer room for quite variant interpretations. An important question concerns the balance of influence within the Network between the Commission and the 27 NCAs. My argument has been that, despite an early rhetoric of decentralisation, DG Comp has created a system within which it and European law are almost completely dominant (Wilks, 2005a). Other analysts such as Kassim and Wright (2007) are sceptical of this thesis of centralisation and put more emphasis on negotiated outcomes mediated through an epistemic community of policy specialists. A diagnosis of Commission dominance would suggest that the ECN is a 'steered' Network, or even a 'directed' Network or, to enter oxymoron territory, a 'hierarchical Network'. To use a looser analogy, Marc van de Woude (2003) has referred to the Commission as 'the headmaster' and its ability to remove NCAs from cases as 'the headmaster's stick'.

It is, however, possible to suggest that the dominance of DG Comp might be unstable. This would be consistent with the Kassim and Wright (2007, p.12) view of the Commission as operating 'within a complex institutional setting that imposes requirements and constraints' In other areas of European regulation it has proved difficult to create effective sectoral coordination. In areas such as the environment and energy there remains wide divergence in regulatory practice (Jordan and Schout, 2006) and even in well coordinated areas such as telecommunications and financial services the mechanisms of coordination have difficulty in reconciling diverse sectoral and stakeholder interests (Coen and Thatcher, 2006). One argument is, of course, that such diversity is no bad thing. There is an 'Austrian' argument that competition between regulatory regimes is productive and creative in that it operates as a learning process (Bergh, 1997, p.154). In the context of competition policies regulating structurally diverse economic systems there is considerable value in this argument and there are some very well understood centrifugal forces which would lead us to suppose that diversity would be the norm and that such pressures could threaten the coherence of the Network and the central position of DG Comp. The obvious centrifugal forces are:

- the striking disparity in size and competence of the NCAs as demonstrated by Table 3
- disagreements over the allocation of enforcement work with resentment at the tendency for substantial prestigious cases being handled by DG Comp and the routine cases being handled at the national level
- disagreements over economic analysis and the basis for infringement decisions, disagreements which would emerge from different national economic traditions and the differing economic conditions of the member states
- disagreements over independent decision making and the possibility that DG Comp might be seen as too politicised, as less independent than many NCAs (a regular criticism from many German commentators) and with the risk either of national political intervention, or of an unwelcome link to other policy areas such as the Lisbon agenda or media plurality
- disagreements over the treatment at the European level of important and influential national companies, whether they be IKEA, Philips or Endasa
- resentment at the displacement or marginalisation of national law

Such disagreements could give rise to a variety of strategies pursued by the more powerful and well resourced NCAs such as the UK and Germany. Some NCAs might feel impelled directly to oppose the Commission (for instance Germany); some may be more assertive negotiators within the framework of the ECN (perhaps Italy and France) while others might pursue a strategy of seeking to mould the Network by 'uploading' their own preferred priorities and methods into the European system (perhaps the UK). Such expectations would seem to be reinforced by the existence within the Network of some extremely impressive agencies, well resourced with money, staff and the intellectual firepower of very able economists and lawyers. Table 2 indicates that DG Comp commands a budget of E90 mn. and 382 staff against a combined budget of the three NCAs of France, Germany and the UK of E132 mn. and 931 staff. In economics expertise alone DG Comp has 134 economists, 13 of whom hold PhDs. In contrast the three leading NCAs have 286 economists with 46 PhDs (the US agencies have 121 economists all of whom hold PhDs) (GCR, 2005). DG Comp looks seriously outgunned. It is hardly likely that the leading European agencies will be wholly in agreement with advice and initiatives emerging from Brussels and they may be influenced by the distinctive industrial politics and industrial organisation of their respective countries. The BKA in particular has fought hard to defend the German cartel laws against the override from Brussels (Quack and Djelic, 2005). On this basis one might have expected oppositional strategies not only from individual NCAs but also the development of coalitions lobbying for change in the design or enforcement of policy. Indeed, many early critics of the modernisation reforms anticipated a 'renationalisation' of competition law. Yet such tensions have not emerged and the ECN, along with the other dimensions of EU competition enforcement appear successful and coherent. How is one to account for this striking success?

The two possible explanations for the success of the ECN advanced here are sectoral agency solidarity and the common competition culture. As regards sectoral agency solidarity, almost without exception the NCAs are depoliticised agencies with delegated powers who are fiercely jealous if their independence (Wilks, 2002). Their legal foundations, their self-esteem and their operational credibility all rely upon maintaining independence from politicians, government ministries and powerful indigenous business interests. In this setting external support from sister agencies and from DG Comp is a powerful weapon of defence. In a characteristically perceptive

anticipation of this solidarity Majone suggested 'the network as a bearer of reputation' arguing that:

> an agency that sees itself as part of a transnational network of institutions pursuing similar objectives and facing analogous problems, rather than as a marginal addition to an established bureaucracy pursuing a variety of objectives, is more motivated to defend policy commitments and/or professional standards against external influences (Majone, 1997, p.272).

This sense of solidarity can stretch almost into a social community, Dieter Wolf, when Head of the BKA, liked to refer to the European agencies as members of 'the cartel family' and, whilst the Germans might not need to invoke the influence of Brussels and the ECN, it is likely that this source of support is very important in internal bureaucratic negotiations, especially in the new accession countries such as Hungary. The solidarity argument thus draws on the familiar idea that experts or professionals (who largely dominate the competition agencies) will look for esteem and peer appreciation to fellow professionals in the community as much as to their home administrations. We can thus envisage NCAs as located in a matrix which involves vertical responsibilities up to national politicians and down to national stakeholders; but also horizontally 'across' to DG Comp and to collaborating agencies in the Network. This can be expressed in P-A terms as a 'double delegation' in that the agencies have two principals (Coen and Thatcher, 2006). The interesting implication is how these competing loyalties will play out when national policy preferences collide with pan-European Network priorities, as has happened recently in merger control through the confrontation over protection of so-called 'national champions' in Poland and Spain (for instance, the resistance to the takeover of the Spanish energy company Endesa by the German Eon in Autumn 2006).

The second explanation for the smooth running of the ECN is more explicitly normative and lies in the idea of a 'common competition culture' across Europe. Time and again the Commission has advanced this proposition both as a justification for Modernisation, arguing that the member states are now mature enough to be trusted to defend competition; and as a basis for pan-European coherence and convergence of enforcement. It would be possible to argue that the smooth operation of the ECN is dependent on the shared common competition culture which DG Comp is self-consciously nurturing. Kris Dekeyser, the well-respected Commission official

who has had the responsibility of managing the Network since its inception, has noted that:

> we have a whole area of less formal cooperation within the ECN which is also very important because it pursues the objective of promoting a common competition culture. …. The ECN has proven to be a very good tool in this respect. It is really a broadly functioning framework for discussing all issues of mutual concern and for agreeing on a common approach which is, indeed, needed to foster the common competition enforcement culture and promote convergence (Dekeyser, 2005, p.3).

This concept of the 'common competition culture' is therefore central to an adequate interpretation of the ECN but it is also important in two other respects. It helps to interpret the present and future impact of competition policy on the shape of the European political economy; and it is the key variable in determining whether the ECN is *sui generis* or whether this model could be generalised to other policy areas. We need therefore to devote some attention to unpacking the elements of the common competition culture.

A focus on the common competition culture stresses the ideational elements of this policy area and is far from original. There has been a consistent resort to the concept of the 'epistemic community' in analysis of competition law convergence across Europe (Wilks, 2004; Kassim and Wright, 2007). The most effective deployment of this approach, drawing directly upon Haas, has been by van Waarden and Drahos (2002). They put the greatest emphasis on law as a unifying source of expertise and essentially advanced a concept of a European legal epistemic community as the mobilising force behind convergence. As Slaughter (2004, p.42) points out, Haas's early work needs to be supplemented with an organisational account of how the influence of an epistemic community is brought to bear. In response to this challenge we can deploy the ideas of Schmidt and Radaelli turning to the concept of a 'discursive institutionalism' in which discourse 'represents both the policy ideas that speak to the soundness and appropriateness of policy programmes and the interactive processes of policy formulation and communication that serve to generate and disseminate those policy ideas' (Schmidt and Radaelli, 2004, p.193). The following paragraphs hence attempt to unpack the concept of the common competition culture exploring how the legal epistemic community exerts influence through DG Comp and the ECN and going on to set the scene for a possible

adaptation of the epistemic community as a legal discourse is supplemented, and possibly transformed, by economic expertise and an economic discourse.

The common competition culture can be unpacked into a legal discourse, a market discourse and a depoliticised discourse. We start with the legal discourse which articulates a legal culture. The legal constituents of the European competition regime are relatively familiar. They originate from the crucial early decisions to include competition rules in the ECSC and Rome Treaties, the direct application of the competition rules by the Commission, the remorselessly supportive and teleological judgements by the ECJ, the creation of expansive legal doctrine and its embodiment in precedent and case law. By the time that the later accession countries came to join the Union they were required to sign up to a competition *acquis* that was elaborate, relatively comprehensive and provided a hegemonic package of public law. EU competition policy developed as essentially a legal system influenced by German thinking and the ordoliberal tradition and hence giving priority to legal principles as a framework within which the European economy should develop. German cartel enforcement is dominated by lawyers and so, until very recently, was DG Comp. They formed part of a larger legal network or epistemic community across Europe and across the Atlantic embracing legal scholars, the big law firms, the courts and the Commission itself. The whole process and language of competition law enforcement is infused with legal norms regarding due process, the rights of the parties, the standing of evidence, the weight of precedent, the role of hearings, questions of proportionality and the need to sustain those norms in the event of challenge through appeal to the ECJ or the CFI. Increasingly scholars are reflecting on the self-interest of the legal profession in sustaining and expanding the competition regime and the law firms play a part not only in developing doctrine and animating the regime but in enforcing policy through advice to business firms on compliance. They are valued and important players in the pan-European implementation of policy but they are also substantial beneficiaries (Wigger, 2007). The ECN floats in this sea of legal discourse which is manifest in the multitude of conferences, workshops, training events, legal journals, cases and commentaries which reflect the status of competition law as a major and lucrative specialism of most international law firms. It provides a comprehensive set of typical norms – tacit but specific – which will be shared by all participants in the Network and which are a necessity for understanding and operating within the ECN.

The second component of the common competition culture is a market discourse. Competition policy takes its meaning, and its complexity, from its role in defending the operation of the market. Competition is the process of rivalry that provides the dynamic of market economies but market structures and competitive dynamics can produce wildly variant outcomes and the hundred year history of antitrust and competition policy has produced only a small number of unambiguous or *per se* rules. European competition policy is above all else about promoting and defending the free market but that is a mission fraught with ambiguity and susceptible to widely varying definitions. In a stimulating recent study (which he calls 'strategic constructivist') Jabko has argued that the Commission has used 'the market' as a 'strategic repertoire of ideas' leading to a 'quiet revolution' of dramatically deepened European unity and a transformation in European economic governance (Jabko, 2006, pp.39,5,2). But, he argues, the Commission employed multiple meanings of the market in a discourse that was tailored to the circumstances of particular negotiations and left a deep ambiguity about what sort of market Europe should embrace. This account meshes nicely with the evolution of the ECN which is a manifestation of a political strategy pursued by the Commission but which appears to conceal any particular market biases behind a technical assessment based on precedent and formal legal tests.

Historically European competition policy had a distinctive and dominant mission in giving priority to market integration. The OECD asserts that 'the market integration goal (is) largely accomplished' (OECD, 2005, pp.9,12) but it remains an important context, especially for the new accession states. Defining the market mission of competition policy after the achievement of market integration poses a debate about goals, and especially about how competition policy can help or hinder the economic competitiveness of European industry and the achievement of the Lisbon objectives. It also encounters a complex assessment of economic doctrines which offer conflicting interpretations of how particular competitive conditions will influence efficiency, economic welfare, consumer welfare and productivity. Hence, it is argued, the common competition culture is characterised by a 'market discourse' but that it might be evolving towards a neo-liberal, consumer welfare dominated. 'economic discourse', a proposition to which we return below.

The third element in the assessment of the common competition culture is a discourse of depoliticisation. The independence enjoyed by DG Comp is mirrored in the independence of the majority of NCAs. This emphasis helps to justify the closed and inter-governmental nature of the ECN but it also arguably contributes to a sense that competition policy should not be influenced or 'tainted' by extraneous political or policy considerations. There are some clear possibilities for conflict between competition policy outcomes and the goals of other policy areas. Policies in areas such as the environment, regional development, research and development, or energy self-sufficiency have all in recent years fallen foul of competition enforcement. There is a tendency to see competition as enjoying a higher priority in the hierarchy of policies so that it is almost a 'meta-policy'. An equivalent perspective is to suggest that competition has a 'constitutional' status. The early community was explicitly an economic rather than a political construct and defined by reference to economic aspirations. The ordoliberal origins of German and then European policy were quite explicit in looking to an economic constitution and an objective legal framework which would control both private and public economic power. This traditional perspective on economic policy has undergone something of a renaissance in the aftermath of the single market programme. In the formulation of the OECD:

> with encouragement from the judiciary, competition law framed an economic constitution. …. The Court's encouragement of the Commission in setting the terms of market integration gave the Treaty rules about competition a quasi-constitutional status (OECD, 2005, p.11; see also Stone-Sweet, 2004, pp.19,241).

This component of the discourse of the ECN stresses the importance, or perhaps self-importance, of the agencies concerned and the possibility that the ECN is insular and resistant to outside influence.

This analysis therefore means that hypothesis ii) cannot be confirmed. There is at this point no evidence that a coalition of leading NCAs is attempting to set the agenda of the ECN, the motive force remains that of the Commission. The explanations for this lack of national activism lie in the two propositions first, of agency and Network independence, and second, of the growth of the common competition culture

From European to Transatlantic Convergence

Hypothesis iii), ' European convergence is energised by, and is facilitating, transatlantic convergence'.

There is a venerable and recently intensifying debate about the prospects for a global competition regime comparable to, or even combined with, the WTO. It embraces theoretical arguments and a more specific literature dealing with the modes of cooperation and especially the growth and influence of the ICN (International Competition Network) (Damro, 2006a); b)). This section does not deal directly with that debate within international political economy but instead concentrates on a more limited discussion of the cross-fertilisation between European reforms and US antitrust. Having argued that Modernisation has reinforced convergence of European competition policy through effective centralisation, the argument goes on to speculate on whether US antitrust has served as a model and inspiration for recent European developments, and whether European competition policy makers are pursuing further 'Americanisation'. In fact the stage of the debate is such that we can almost take Americanisation as given. A recent issue of the *Antitrust Bulletin* was devoted entirely to the question of '*converging or diverging paths?*' on which the editors simply noted 'that overall EC competition law has been moving much closer towards U.S. antitrust' (Niels and Kate, 2004, p.17) so perhaps we can simply look more closely at the specificities of transatlantic borrowing.

The paper thus addresses two complex and highly significant aspects of transatlantic convergence, the 'turn to economics' and the promotion of private actions. European competition law has long been criticised for the inadequacy of its economic analysis and the way in which enforcement has traditionally been dominated by lawyers and relatively formalistic legal tests. This follows very much in the German ordoliberal tradition in which competition policy was visualised as a structure of economic laws rather than as a way of pursuing economic efficiency. The increased emphasis on economic analysis is particularly apparent in the UK with the shift to an explicit focus on an economic assessment of competition in the Competition Act 1998 but there has been an equivalent if more gradual shift in Europe. The OECD comments on an increased reliance on economic reasoning which it characterises as the 'economic reconstruction' of DG Comp and which it dates from

1997 (OECD, 2005, p.12). But the widely noted deficit in DG Comp economists and economic reasoning was not decisively addressed until the DG encountered major embarrassing shortcomings in respect of the hugely controversial blocking of the GE/Honeywell merger in 2001 and the loss at appeal of Airtours and two other merger cases (Tetra Laval and Schneider) in 2002. In each case the DG was coruscatingly criticised for the gross inadequacy of its economic analysis (Morgan and McGuire, 2004, p.53). The response was to appoint for the first time a Chief Economist (Lars-Hendrick Roller and then Damien Neven), to create an economics unit, an economic advisory council and to recruit more economists. Mario Monti, an economist and the then Commissioner, was pivotal in this turn to economics which has been consolidated by the appointment of Neelie Kroes, also originally an economist by training.

The introduction of economists and economic analysis into organisations has been the subject of extensive organisational analysis. In the case of antitrust Marc Eisner (1991) has undertaken a fascinating study of the introduction of economists into the DoJ during the Reagan period. He analyses not only the introduction of economic doctrine, most obviously Chicago doctrine, but examines the effects of incorporating economists as direct case handlers rather than expert advisers. The effect, he establishes, was to reinforce the 'disarmament' of antitrust during the 1980s. It would be intriguing to draw US/EU parallels and speculate on the impact of intensified economic analysis in Europe. Unfortunately we have no equivalent in European literature of the magisterial examination by Kovacic (2003) of the norms of US antitrust enforcement. He warns against simplistic interpretations of the swings in US enforcement (what he calls the 'pendulum narrative') and argues for a pattern of cumulative intensification. In Europe a comprehensive study of the impact of economic doctrine on European competition enforcement has yet to be written. Identifying an enhanced role for economics in the enforcement of European competition policy is therefore easy enough, but it is far more demanding to analyse its effect on the goals of policy, the effectiveness of enforcement, the certainty of policy, the bias in administration and the substantive impact on national and the European economies. Despite Kovacic's contribution, drawing parallels with the US is even more problematic given the vast literature and greatly diverging interpretations of the US experience. This paper thus picks up one or two starting points before turning to one interpretation offered by Angela Wigger.

The enhancement of economics implies that economic analysis and reasoning, and therefore economic efficiency, will be increasingly privileged in the mix of objectives to be pursued by European policy. Among the alternative objectives of European policy have been the overwhelming imperative of market integration, a sympathetic attitude to the position of SMEs (Motta, 2004, p.17), and a quasi-regulatory attitude to positions of dominance which places a legal obligation on dominant firms to compete responsibly and to restrain the deployment of their economic power (Fox, 2003, p.157; Niels and Kate, 2004, p.12). This legacy of emphasis on the competitive process and keeping markets open has caused US critics to assert that 'we protect competition, you protect competitors' (Fox, 2003) but the turn to economics suggests that European doctrine will move closer to the American stress on competition as a process. Once the emphasis has shifted to economics the question arises of what sort of economics? Again this is an intensely complex area and it is hard to pick out an emergent European economic doctrine. Niels and Kate (2004, p.16) speculate that Europe has leapfrogged Chicago thinking to adopt the 'post-Chicago' synthesis. What is probably common ground, however, is the focus among economic practitioners on welfare economics and on consumer welfare as the proper goal of economic analysis. In Motta's (2004, p.30) definition, competition policy 'is the set of policies and laws which ensure that competition in the market is not restricted in such a way as to reduce economic welfare'.

The next stage, having proceeded from economics, to economic welfare, is to ask how these welfare standards will be operationalised. In the United States it is widely felt that 'the 1980s victory of the Chicago School was more a victory of economic libertarianism and political conservatism than of maximisation of a microeconomic welfare function. "Consumer welfare" was the label given for the *raison d'etre* of the new regime, but it obscured the fact that the first real principle was non-intervention' (Fox, 2003, 152-53). This would appear to counsel caution for European analysts reading across from American experience but it also provokes the question of whether there are submerged political preferences underlying the application of European competition policy. Does an emphasis on consumer welfare lead to a model of policy application that favours a neo-liberal or Anglo-Saxon economic model? Can consumer welfare analyses put undue emphasis on short-term price improvements, on efficiency gains from the scale operations of large companies

and on allowing any activity that does not restrict output? In other words can consumer welfare allow too permissive an operation of competition policy?

In response to such questions, Wigger and Nolke have produced an important and controversial thesis which argues that DG Comp has, since the early 1990s, had a strong neoliberal bias which has displaced the German 'ordoliberal' legacy (Wigger and Nolke, 2007). Wigger argues that Modernisation accentuated the 'trend towards the use of ever more sophisticated neoclassical economic principles and econometric evidence in the assessment of anticompetitive conduct' and she goes on to argue that:

> Apart from the numerical transformation of competition officers with a background in economics, a range of indicators lay bare that the kind of competition economics that made its entry is grounded in microeconomics, analytically premised on methodological individualism, and home-based in the neoliberal free market ideology. The new creed (sic) of economists maintains strong transatlantic links indicating that the substance of economic theories that has become prevailing in EU enforcement practice is likely to be streamlined with that dominant in the US (Wigger, 2007, pp.106,107-108).

She offers a radical theory of the coalition of forces that support this turn to microeconomics which include major corporations in 'corporate Europe', the epistemic community of lawyers and professional service companies, and also, intriguingly, shareholders interested in gaining additional control over their companies through Anglo-Saxon style corporate governance (Wigger, 2007, 116-117). Wigger is advancing a bold argument about micro-economics and neo-liberalism but is also arguing, even more controversially, that this is an Americanised neo-liberalism that draws on US antitrust doctrine to effect a more permissive stance towards large companies based on a rationale of efficiency. In contrast Vallindos (2006, pp.642-43) for instance, argues that the Commission is, of anything, dominated by a Harvard structuralist approach which he sees as inimical to the Lisbon agenda.

This raises one of the many paradoxes in this complex debate since the reconceptualisation of competition policy as an economic policy instrument owes much to the Harvard School work of Michael Porter and his research on the national economic origins of competitive advantage. He has, of course, argued influentially that it is companies, not nations, that compete and that competitive success is related to the intensity of competition in the home market. The British Treasury has been very influenced by this argument (Wilks, 2006, OFT, 2007) and it is also having an

impact on the European debate. This link has been made explicit in a range of Commission papers. To take one example, a 2004 policy statement asserts that 'effective competition between firms in the enlarged internal market must be seen as one of the key elements of a successful strategy to build up a competitive Europe and reinvigorate the Lisbon Strategy' (CEC, 2002, p.5). This refrain has been taken up at the political level with the strong support of Neelie Kroes as the Competition Commissioner. In a recent speech she articulated the economist's reconceptualisation of competition policy arguing that 'I have no qualms in saying that competition policy forms – or should form – a central plank in any industrial policy'. She also articulated the crucial transmission mechanism between competition and competitiveness arguing that 'there is considerable empirical evidence of a clear and strong link between competition and productivity growth – and hence of an important link between competition and competitiveness' (Kroes, 2006).

This suggestion that competition policy is the new industrial policy has profound implications for the industrial organisation of national capitalist systems and also for the day-to-day implementation of policy. If competition rules were to be applied with an eye to the competitiveness of European industry in the global market would officials need to consider productivity as part of their case assessment? This would constitute a fundamental shift in competition assessment and opens up fascinating but remarkably complex questions about the criteria to be used to settle case decisions. This bears on the increased use of economics in making decisions and underlines the dangers of reconceptualising competition policy as industrial policy, namely that it then ceases to control large businesses corporations. In his attack on the allegedly anti-competitive implications of current European competition doctrine Vallindas, for instance, calls for a Chicago-School type efficiency defence in European cases and argues that the Union 'will have to choose between a neutral competition policy on the one hand, which acknowledges respect for legal rules as its only parameters, and a strategic competition policy on the other, the implementation of which would take the protection of EU interests into consideration' (Vallindas, 2006, pp.665,660). Wigger would argue that the Vallindas is pushing on an open door.

The second area of transatlantic convergence is the efforts by the Commission to encourage private actions to recover damages for breach of competition law, either as a follow up to an infringement decision or as a stand alone action. This innovation

goes to the heart of the differences between US and European antitrust. US antitrust is centred on private actions so that over 90% of US antitrust cases are pursued by private parties and the enforcement actions of the competition regulators take the form of prosecutions in the courts. The familiar incentives for private litigation include, of course, triple damages, class actions and 'no win no fee' legal representation. In Europe competition law has always had 'direct effect' on national courts, in fact 'Articles 81 and 82 provide a perfect example of Treaty provisions that are horizontally directly effective' (Shaw, 2000, p.436) but there have historically been very few cases opened in national courts. Following Modernisation the Commission has identified private action as the next frontier of competition law enforcement and one under-emphasised aspect of the ECN and the Modernisation reforms has been to encourage private actions to enforce the competition rules and to seek damages where they are transgressed. The abolition of the notification system means that private businesses have now to decide for themselves if their agreements and competitive practices conform to EU law. Barry Hawk likened this fundamental shift to 'The Protestant Reformation'. Whereas in the past the Catholic Church of the Commission had identified sinners or granted absolution through the notification process, after Modernisation undertakings have to look to their consciences and to their personal relationship with the legal gospels to decide whether they were sinning. Final determinations, without the involvement of competition agencies, can only be decided by court cases and this opens up the possibility for challenge from private parties, whether they are competitors, consumers, suppliers and so on.

In order to encourage private actions DG Comp issued a Green Paper (on the 'EC antitrust rules'- sic) in December 2005 (CEC, 2005) and a White Paper is expected in December 2007. Neelie Kroes has made this reform one of the key elements of her platform and it has featured large in many of her speeches (Kroes, 2007). It is rather early to assess how effective this encouragement is likely to be but early indications of cases being opened in national courts point to a growth in private actions and an escalation in this mode of enforcement is quite possible. This radical Americanisation has generated considerable angst and lends itself to melodramatic fears of a US antitrust invasion which will reproduce the excesses of the US litigation culture in Europe (Martin, 2007). Others, such as Walsh (2007) argue that 'the Commission by actively encouraging and facilitating private party actions is obviating its responsibilities as primary enforcer of E.C. competition law and policy'. This

argument is extended by Wigger to explore the possibility is that the resort to private action is further reinforcing the bias towards an Anglo-Saxon model of competition policy. In a perceptive analysis of the effects of growing private enforcement Wigger (2007, p.109) points out that 'whereas before a public authority could balance the decision making in antitrust matters according to broader political macroeconomic goals, individual private claimants by definition are more likely to be driven by self-interest'. The effect, she argues, is to take 'a major step of convergence towards the Anglo-Saxon antitrust model' (Wigger, 2007a), p.104). The prospect, in other words, is the reproduction of a US regime which is dominated by private antitrust actions.

In rounding off this section it can be suggested that hypothesis iii) identifying transatlantic convergence looks plausible. This would in turn provoke some major propositions about the future trajectory of European competition policy but we can turn now to the fourth hypothesis dealing with the relationship between competition policy and models of economic governance.

Implications of competition policy convergence for Models of Capitalism

Hypothesis iv) effective policy will clash with the Rhenish or 'Coordinated Market Economies and will challenge German-style corporate governance

Time and space do not allow an extended discussion of this hypothesis but the issue area can at least be outlined. A diagnosis of increased convergence and centralisation of European competition policy needs to be set against an evaluation of the national economies which it is seeking to structure and to regulate. This is a comparison of huge importance for the development of economic governance within Europe and it is extraordinary that the interplay between varieties of capitalism, and whether a particular capitalist model has been embedded in European competition policy has been so little researched. The more influential competition policy becomes so the more important is this comparative question. One implication of the various areas discussed above is that the effective operation of the ECN, the resources and energy being devoted to competition enforcement, and the inspiration derived from the American regime are all working together to strengthen European policy. In 2005 I speculated that modernization 'might lead to a European future where competition law became a dominant mode of regulating the greater European economy …… there

may be dangers in a policy that is too successful' (Wilks, 2005a, p.447). The more recent evolution of the ECN within the wider development of European competition policy would appear to reinforce that diagnosis. Curiously a not dissimilar but more general note of warning has been offered by Williams (2005, p.96) in his discussion of agency 'monomania'. He observes that 'the problem of some independent agencies, those that serve the single market and the ECB above all, is that they are all too effective. Faithfully fulfilling a specified set of responsibilities, unchecked by institutions able to take a wider view'. The question therefore, is whether a strengthened policy incorporating a bias towards a neo-liberal interpretation of competition, will pose a threat to some of the existing European models of economic governance?

There are several effective studies of the different models of capitalism prevailing within Europe which originate with Albert's distinction between Rhenish and Anglo-Saxon capitalism in a dichotomy that is more thoroughly presented by Hall and Soskice (2001) as a contrast between the German-style Coordinated Market Economy and the UK-style Liberal Market Economy. Schmidt (2002, 107) offers a more elaborate categorisation of three 'market, managed and state' capitalist variants and, although a number of other typologies exist, all of them locate capitalist models in relation to specific nation-states and none of them propose a single European capitalist model (Crouch, 2005). The proposition, therefore, that DG Comp will be enforcing competition policy by reference to an Anglo-Saxon concept of competitive behaviour within the European economy, poses the possibility that it will seek to challenge the managed economy and the state economy models which predominate in continental Europe. Competition policy already attacks state aid, will it also militate against German cross shareholding and bank shareholding, against the dislike of hostile takeovers, against policies to support the *Mittelstand*, and against relational contracting? This paints a more sinister picture of the common enforcement policy exerted through the ECN and raises again the prospects of conflict and disagreement within the Network. It is not perhaps surprising that the main objections to the ECN came from the Germans and Wigger and Nolke have developed this argument in their important recent article. They maintain that 'current changes in EU antitrust regulation can be understood as a substantial shift from the Rhenish to the Anglo-Saxon variety of capitalism' (Wigger and Nolke, 2007, p.505).

How to anticipate the prospects for conflict and system confrontation? Oscar Wilde once described the difference between optimism and pessimism by reference to a doughnut. The optimist sees the doughnut, the pessimist sees the hole! (with apologies to Neelie Kroes, 2007). The weakness in the debate about the future of a strengthened European competition policy is the almost complete absence of any serious consideration of the hole. The hole in question is the false assumption that there is a uniform model of capitalism across Europe that can be regulated and stimulated by a uniform model of competition policy. In order to analyse the shape of potential conflicts it is necessary to specify in more detail the characteristics of German-style Rhineland or 'Coordinated' capitalism together with the corporate governance arrangements which are intrinsic to that model. But that is the task for a future paper ……. For the meantime hypothesis iv) must be regarded as unresolved.

Conclusions

The results of the four hypotheses are therefore:

i) *that the ECN is operating successfully under the control of DG Comp*
- provisionally confirmed

ii) *that Network dynamics may lead to the emergence of a group of leading, activist and agenda-setting NCAs*
- not confirmed

iii) *that European convergence is energised by, and is facilitating, trans-Atlantic convergence*
- confirmed

iv) *that effective policy will clash with the Rhenish or 'Coordinated Market Economies and will challenge German-style corporate governance*
- unresolved

To offer a more discursive conclusion, we can note that a provisional assessment of the ECN indicates that it is operating coherently and effectively to enforce competition rules across the EU. This assessment is subject to two caveats. First, that the ECN is only three years old and may be enjoying a honeymoon period which has suppressed tensions. Second, that the Network relates to a rather specific activity, the

enforcement of Articles 81 and 82 (TEU), and does not therefore link all agency activity. Control of mergers in particular is not covered although there is some spillover effect into other aspects of the competition regime.

There is an interesting question as to whether the ECN experience can be generalised to other policy areas. The initial assessment would be that the ECN is atypical and probably does not offer an easily generaliseable model for other regulatory networks. Specifically, it is concerned with the enforcement of clear legal provisions contained in the Treaty. It is managed by the Commission and has been able to reproduce the exceptional supranational authority previously enjoyed by DG Comp. Indeed, this paper argues that it offers an exceptionally powerful model of policy enforcement which reflects the politics of competition policy and the normative coherence of the policy community. Thus the ECN is characterised by a level of political and normative solidarity that could be regarded as excessively strong. That strength could become problematic if, as suggested by some scholars, DG Comp has developed a particular policy stance in the form of a neoliberal interpretation of competition policy which, whilst shared by competition agencies, is resisted by 'old fashioned' industrial policy protagonists and by defenders of the Coordinated Market Economies within Europe.

At present, it is argued, DG Comp and EU competition policy is in a period of transition. Partly because its policy stance is still emerging, and partly because the application of the competition rules are still poorly understood outside the specialist competition community, there is limited resistance to the emergent neoliberal and 'Americanised' policy stance. But the shape and intensity of potential resistance is flagged by the French rejection of the European Constitution. This was widely interpreted as a rejection of the neoliberal biases felt to be embodied in the Treaty provisions and aims. The neoliberal dimension was widely debated in the run up to the referendum. Part III of the Constitution 'was constructed by the No campaign as the handmaiden of an ultraliberal Europe, which was more in line with an 'Anglo-Saxon model' (Hainsworth, 2006, p.104). The French rejection also partially inspired Jabko's study of the Commission's exploitation of market ideas in the pursuit of deeper unity and he concludes, rather soberly, with the question 'was it a mistake to pursue an integrationist strategy that relied on the market's compelling appeal? …. Once the promoters of Europe jumped on the bandwagon of market reforms they were caught in a process that went beyond the control of any single actor' (Jabko, 2006,

p.185). He warns of a possible backlash against the market discourse and reverses the title of his book to ponder whether we have been seeing 'Playing Unity: A Political Strategy for the Marketisation of Europe' (Jabko, 2006, p.186). This takes us a long way from the more mundane administrative features of the ECN but it does underline one crucial feature of depoliticised regulatory agencies which applies doubly to a transnational regulatory network, that is the problem of accountability.

The debate on accountability has accompanied the whole debate about European regulation and the position of the regulatory agencies. DG Comp has always been seen as lacking in political accountability and with a deficit in process accountability which was compensated for only by the stringency of legal control and appeal to the European courts. If the Modernisation package and the operation of the ECN has allowed the Commission to extend the influence of competition policy across Europe, and has to some extent neutered national laws and harnessed national agencies, then arguably this accountability deficit has been accentuated. The seriousness of an accountability deficit depends on the analysis of the competition model that the Commission is adopting, and the analysis of in whose interests that model operates. If Wigger is right, and that model is not only neoliberal, but is embedding an Anglo-Saxon model of capitalism across Europe, then it will become necessary to assess the competition rules as part not of a neutral European economic constitution, but as a source of structural bias which should be far more critically examined before Europe accepts a quasi-constitutional settlement that embodies a particular model of economic governance.

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Table 1: The Global Elite of Competition Agencies

		Cartel fines E mn.	Staff	GCR Enforce Rank
EU	DG Comp	683	382	4.5
US	Department of Justice	513	566	4.5
US	Federal Trade Commission	0	281	4.5
UK	Competition Commission	0	82	4.5
UK	Office of Fair Trading	1	242	4
Australia	Competition and Consumer Comm.	18	273	4
France	Competition Council	663	53	4
Germany	Cartel Office	164	154	4

Notes:

information relates to 2005

GCR ranking based on assessment of competence in enforcement and in particular on results; development; cooperation; independence and resources. Rankings are annual.

GCR user ranking on a substantial survey of agency employees and competition practitioners. It measures 'how they felt about the agencies they had regular dealings with'.

Ranks are based on a star rating of 1 to 5; 5 being outstanding.

Source: *Global Competition Review* 9(7) July 2006

Table 2 European Competition Agencies

Member State		Enforce rank 2005	User rank 2005	Staff	budget	cartel fines E mn
EU	DG Comp	4.5	3.75	382	90	683
UK	Comp Comm.	4.5	4	82	30	0
UK	Office of Fair Trading	4	3.75	242	50	1
France	Comp Council	4	3.25	53	9	663
France	DGCCRF	3.5	3.25	400	26	
Germany	BKA	4	4	154	17	164
Denmark	Danish Comp. Authority	3.75	3.25	63	6	
Finland	Finnish Comp. Authority	3.75	2.75	50	5	
Ireland	The Comp. Authority	3.75	4	46	5	
Italy	AGCM	3.75	3.25	102	27	12
Netherlands	Comp. Authority	3.75	3.25	174	10	141
Spain	Comp. Service	3.5	3	52	3	10
Spain	Comp Tribunal	2.75	3	44	5	
Sweden	Swedish Comp. Authority	3.5	2.75	85	9	12
Portugal	Portuguese Comp. Authority	3.25	3.25	59	7	29
Austria	Federal Comp. Authority	3	3	18	1	
Belgium	Comp. Council	2.75	2.5	19		0
Belgium	Comp. Service	1.25	2.5	37		
Poland	Office of Comp. & Cons Protect.	2.75	2	134	7	1
Greece	Hellenic Comp. Commission	2.5	1.75	52	12	20
Not ranked by GCR						
Cyprus	Comm. For Protection of Competition					
Czech Republic	Office for the Protection of Comp.			112		
Estonia	Estonian Competition Board			39		
Hungary	Hungarian Competition Authority			119		
Latvia	Competition Council			53		
Lithuania	Competition Council			61		
Luxembourg,	Comp Council & Comp Inspection			3		
Malta	Commission for Fair Trading			1		
Romania	Romanian Competition Council			283		
Slovak Republic,	Antimonopoly Office			70		
Slovenia	Competition Protection Office			20		
Bulgaria	Comm. Protection of Comp			99		

Notes:

all information relates to 2005

DG Comp includes regulation of state aid - 108 staff

several agencies also deal with consumer protection

rankings attributed by GCR and GCR user survey (see Table 1)

Sources:

'Rating Enforcement', *Global Competition Review*, 9(7), July 2006

The 2006 Handbook of Competition Enforcement Agencies, *Global Competition Review*, Special Report, December 2006

Table 3 European Competition Agencies: ECN Activity

Member State			No. cases opened	No. cases % total	No. cases decided
EU	DG Comp		133	20	
UK	Comp Comm.	(not an ECN member)			
UK	Office of Fair Trading		40	6	8
France	Comp Council				
France	DGCCRF		102	16	32
Germany	BKA		70	11	12
Denmark	Danish Comp. Authority		36	6	16
Finland	Finnish Comp. Authority		10	2	5
Ireland	The Comp. Authority		8	1	0
Italy	AGCM		21	3	12
Netherlands	Comp. Authority		45	7	25
Spain	Comp. Service		23	4	8
Spain	Comp Tribunal	(not an ECN member)			
Sweden	Swedish Comp. Authority		20	3	10
Portugal	Portuguese Comp. Authority		16	2	5
Austria	Federal Comp. Authority		14	2	2
Belgium	Comp. Council				
Belgium	Comp. Service		23	4	2
Poland	Office of Comp. & Cons Protect.		12	2	4
Greece	Hellenic Comp. Commission		8	1	7
Not ranked by GCR					
Cyprus	Comm. For Protection of Competition		0	0	
Czech Republic	Office for the Protection of Comp.		8	1	5
Estonia	Estonian Competition Board		5	1	1
Hungary	Hungarian Competition Authority		42	6	7
Latvia	Competition Council		4	1	1
Lithuania	Competition Council		2	0	2
Luxembourg, Comp Council & Comp Inspection			1	0	0
Malta	Commission for Fair Trading		1	0	0
Romania	Romanian Competition Council		n/a		
Slovak Republic, Antimonopoly Office			4	1	3
Slovenia	Competition Protection Office		2	0	1
Bulgaria	Comm. Protection of Comp.		n/a		
			650	100	

Notes:

data covers 2004, 2005 and the period Jan to Nov 2006

cases relate to possible infringements of Arts 81, 82 or both

Sources:

DG Comp website, accessed 18/4/07