THE EU COMPETITION POLICY – A BRIEF HISTORY IN BETWEEN NEO-FUNCTIONALISM, INTERGOVERNAMENTALISM AND MULTI-LEVEL GOVERNANCE

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Abstract: *The competition policy represents one of the most important pillars of cooperation between EU Member States, it influenced the design of the European Single Market and it facilitates integration. Even though it shapes the distribution of capital and the investments all over the EU space, the policy is not well-known and even less understood, as it has been built through a complex process, the aim of this paper being to analyse its sinusoidal evolution. In order to better follow its goals, the present article is trying to frame each step of the evolution in one of the following theories of economic integration: neo-functionalism, intergovernmentalism or multi-level governance.*

Keywords: *European Union; Competition Policy; Integration Theories; Neo-functionalism; Intergovernmentalism; Multi-Level Governance; Single Market.*

JEL Classification: *B27; B55; F13; J58; L44.*

1. About competition policy

Competition policy has become a prominent issue in the last decades. The concept of a competition policy is the starting point of the entire European Union. It lies of efforts to create a common market and it is the result of strong cooperation between stakeholders (McGowan L., Wilks S., 1995). Competition policy is also one of the least understood of all the European policies. It requires a multidisciplinary perspective to understand how this complicated European-level policy works. (Cini M., McGowan L., 1998).

In 1957, in the building process of the European Economic Community, the competition policy turned out to be one of the most important pillars of ”a system ensuring that competition in the common market is not distorted” (The Treaty of Rome, 1957).

Nowadays, the policy is designed to assure monitoring businesses’ agreements by the authorities, misuse of market dominant position, mergers, procurements and state aids. Besides this, the Commission is entitled to monitor cooperation between Member States in order to ensure unified implementation of European law regarding competition.

We can have a better understanding of competition policy by correlating its every stage with the European integration theories. The integrationist phenomenon has a dynamic nature and it gets economic forms (free trade area, custom union, common market, economic and monetary union) as well as social and political forms

(governmental structures, authorities, transfer of competences, sovereignty). In order to have a better representation, we will approach theories as intergovernmentalism, neo-functionalism and multi-level governance.

2. European integration theories

2.1. Neo-functionalism

Ernst B. Haas (American political scientist, professor at Columbia University) has created in 1958 the concept named neo-functionalism, which explains how integration from a small sector can turn into an impulse to a deeper integration, inevitable in other sectors through the spillover effect. Once started, the integration process becomes a single-way road, despite all the barriers that occur.
The author analyses and resumes the principles used by Jean Monnet regarding European integration, proving the strategic feature of the theory, as a *modus operandi* for EU.
Haas uses the European experience a case study for extracting working assumptions. Building on the Treaty of Paris (1951) to the Treaty of Rome (1957) he demonstrates how the establishment of European Coal and Steel Community (ECSC) and its institutions generated a close cooperation in those economic sectors and changed the trust, loyalty and expectations from national level to a supranational one. There is a positive feedback regarding the solutions generated by the supranational entity, meant to allocate more resources and change policies. This lead to two new Communities, following the idea that the initial integrative goals can be fully achieved only if the supranational decision-making capacity extends to new areas: The European Economic Community which initiates the custom union and European Atomic Energy Community (Euratom).
As Alec Stone Sweet (2012) highlights, even the dream of the founding parents (Jean Monnet, Robert Schumab, Altiero Spinelli) was to create a structure like the United States of Europe, in 1957 the member states decided to establish an international organization with a well-defined purpose and authority and six members.

2.2. Intergovernmentalism

The main feature of intergovernmentalism is that it assigns to the states, more specific to national governments and policy-makers the main role in the integration process. The theoretician of this model, Stanley Hoffman (1966), pointed out that even though the European states were interested in cooperating more in the"low politics" fields (such as agriculture and commerce), they still act like independent entities (sovereign national states) with individual interests. The intergovernmentalist model, then the liberal intergovernmentalist, as Andrew Moravcsik (1993, 2005) developed it, states that at the beginning, the main goal of the European Community was to avoid, by all means, another war. It combines three elements: liberal theory of forming national preferences, interstates negotiations and states rational behaviour hypothesis.
The General Charles de Gaulle claimed as a priority the realization of a political European union, which can offer the context of a bigger economic integration (not

expansion). Convinced by the fact that structural institutional approach in the economic field should not influence the political cooperation, in September 1960 he proposed, as the president of France, a intergovernmentalist plan of reorganizing Europe and its internal and external economic policies. Based on this, the Fouchet plan has been later built.
In 1966, the European Community was about to come at its third phase of development, when the qualified majority vote was about to become the decision-making method in the Council of Ministers. Charles de Gaulle decides in July 1965 to boycott these meetings and to create the "empty chair" crisis, which peaked with the "Luxemburg compromise".
According to Teasdale (2015), the Gaullist intergovernmental concerns came back on the European agenda in the mid '80s, when the neo-functional communitarian method proves to be inefficient in sensitive fields such as External Politics and Common Security (Common Foreign and Security Policy/CFSP) or Justice and Internal Affairs. Back then, the intergovernmental solutions through the Maastricht Treaty (1992) have been established.
Once the Single European Act and the Maastricht Treaty have been released, Andrew Moravcsik refines the theoretic frame, adapting to the context of the '90s Thus, the liberal intergovernmentalism concept appeared and it emphasizes domestic interest (rather than national). The most powerful interest groups determine the decisions on national policies established by the government; the government participates on the European intergovernmental meetings where they are further representing the interests and negotiates for convenient European policies. In order to assure the enforcement of the new policies, the governments transfer part of the prerogatives to supranational institutions.

2.3. Multi-level Governance

Gary Marks, Liesbet Hooghe and Kermit Blank (1996, 2001a, 2001b) notice that the Maastricht Treaty is the expression of a new phenomenon. National states disperse their authority at other higher decision-making levels (European Commission, European Parliament, European Court of Justice), inferior (regional/local authorities) or laterally (public or private networks).
This new framework acknowledges the important role played by national governments, but suggests the evolution to a decision-making process which is not necessary attributed to a specific level (national or European). The real integration is achieved at intergovernamental level in the European Council or Council of Ministers by unanimity or by qualified majority voting.
In addition, the national governments have a reduced influence on European institutions. As Trinski (2004) notices, the loss of the governments control is generated by the increasing number of member states, widening supranational competence and creating new working groups.

3. The reform process

Since its launch, the competition policy has seen various stages of reform that have succeeded or, on the contrary, resulted in failures, with the key evolutionary moments being presented in the following.
As Warlouzet (2010) proves, the status-quo from the inter-war era meant economic barriers in trade with coal, concentration of coal/steel-producing undertakings, cartels and price differences between Germany and France.
The willing to change this context, to make the economy more efficient and also to avoid another war generated a common competition policy and the European Coal and Steel Community (ECSC).
With the Treaty of Rome (1957), the competition policy took a neo-functionalist turn. Until this point it had limits and it was not one of the priorities for the EU agenda (as common market, agriculture, etc.) mostly because its poor implementation.
In 1962, the Council adopted, on a proposal from the Commission, Regulation No. 17/1962, a paper with 24 articles which elaborates, on the German legislative model, the first sectoral policy which is authentically supranational (Drăgan, 2005).
This step has reduced the role of the national states as the Commission manages the application of the policy. Warlouzet (2010) believes that the Directorate General for Competition (DG IV) made a mistake by centralizing information through notifications (even though they were a few). However, the regulation regarding the notifications was ambiguous.
Under pressure from the French Government, it has been adopted another neo-functionalist document. The Regulation No. 153/1962 simplified the procedure but it did not solve the problem: the system has been crowded with notifications and the DG IV stopped working.
The first stage of evolution ended in 1968, with custom union and the common custom tariff in the relation with third countries. As Gabriela Drăgan (2005) mentions, the period was defined by actions meant to inhibit agreements between businesses and cartels. The policy did not give adequate priority to monopoly and the regulation of state aid. The aid has been seen as a way of economic adjustment, combating unemployment and supporting declining sectors, while it could be also misused into unfair competition.
Two key moments are in 1971, when the German company of copyright management (GEMA) is blamed of power dominant abuse for refusing the admission of nationals from other member states and also when in the Deutsche Grammophon case the Court of Justice confirms the importance of parallel imports and sets up the principle of rights exhaustion.
This context created a favourable perspective over DG IV priorities, as it started the fight against dominant position abuse for eradicating the competition. In '70s it has been approached another subject: the control system for the fusions using as a base the Article 86 of the Treaty of Rome, regarding the establishment of the European Economic Community (EEC). Also, it has been clarified the fact that the dominant position is not illegal by its simple presence, but when it is overly used. It is an abuse of dominant position when the competitor consolidates this position as other are able

to still exist on the market only in reliance with the first. The specific regulation has been approved in 1989.
Between 1974-1989, the neo-functionalists' results are being preserved but because of the preferences for intergovernmentalism, the policies are not developed and the there is no use of instruments at the disposal of the Commission, according to its intentions. Even though the oil crisis in 1973 seemed to sustain the evolution of the policies regarding competition, the member states could not find a common perspective and the European Council was preoccupied with the compatibility of the fusions' regulation with the other EU policies (especially with the industrial policy - regarding the protection of the European companies and assuring the external competitiveness).
The Single European Act from 1986 did not change or add nothing new to the existing rules regarding competition, but it clearly states the institutional reforming and the temporal dimension for the realization of the Single Market, with strong associate objectives connected to competition, which enhanced the policy as a priority instrument in increasing the integration. The Commission shifted its interest to economic fusions, and as an element of novelty, over state aides and liberalisation of the economic sectors of state supported activities (Drăgan, 2005).
After long debates, the Community made a new neo-functionalist step, through adopting the Council Regulation no. 4064 / 21 December 1989, regarding the control of economic concentrations between companies (fusions and acquisitions), meaning fusions of companies or takeover the control exclusively over a company (including a brand new formed one).
Through Commission Regulation no. 477 / 1 March 1998, more rigid norms come out in regard to the notification transmission, their form, deadlines, the possibility to interfere or make observations to states members and third parties, and also the confidentiality of the information.
After three Commission's decisions forbidding concentrations have been cancelled by the Court, the evolution of the policies was interrupted in 2002. Thus, in order to improve the quality and objectivity of the decisions taken by the Commission, there has been established a team of in-depth economic analyze (put together by economists) coordinated by a chief economist (new formed function).
The 1989 Regulation will know a significant modification through the European Council no. 139/ 20 January 2004 regarding the control over economic concentrations between associations and Commission Regulation no. 802/ 21 April 2004 of applying the European Council no. 139/ 20 January 2004 regarding the control over economic concentrations between enterprises, documents which open the road to multi-level governance. National authorities in the competition field are allowed to apply the European interdictions and exceptions, right reserved up until then to the Commission, which relieved from a great volume of cases, will concentrate only over the communitarian ones who are the closest ones to the legal frame. Community legislation in the field of competitiveness prevails the national one. Before taking a decision, the national authorities must consult the Commission.
In the case of vertical accords which can restrain the competition, after the Council Regulation no. 19 / 1965, presented before through the Commission Regulation no. 330 / 20 April 2010 (known as the category exception Regulation) shows the term of

"vertical restrictions" (competition restrictions over the buyer or seller) and offers the possibility of exception from applying the article 101 (1) from the Treaty regarding the functioning of the European Union for vertical accord, which satisfies certain requirements. In the case of unapplied Regulation 330 / 2010, the Commission applies general norms of evaluation the vertical restrictions, analysing through comparison the real situation or a possible one in the future, in case of an existing restriction with the situation in which the restriction would not have been existed.
After the Council Regulation no. 2821 / 1971, the situation of horizontal cooperation accords comes back into Commission's attention in 2004. Commission's Regulation no. 772 / 7 April 2004 states the exception from applying article 81 (1) for those technology transfer accords settled between two organisations, which authorise forging the contractual products, until the intellectual property right over the technology license does not expire, does not become lapsed and/or declared null, and in the case of know-how, while this remains a secret(excepting when the know-how is made public after an action over the licensed, exception is made during the accord).
The European Parliament and Council through their directive no. 104 / 26 November 2014 adopted norms that allow companies who are victims of the antitrust cartel behaviour to ask for integral compensation as a result of some damage or earnings unrealised, which can generate an increase in efficiency over the clemency program and rising the requests from the cartels, based on this.
After the tariffs setbacks in the way of realizing a single market have been removed (1 July 1968), the compatibility of state aids with common market attract in somehow the attention of the Commission. The goals of the policy were mainly focused on removing any distortions of the competition, but they also approached European competitiveness and social cohesion. National views and misunderstandings between states regarding this topic have powered the intergovernamentalism, the Council not being receptive to Commission proposals.
Chronological speaking, before establishing more clear rules regarding the state aids, the Council proved first to be interested of the exceptions from applying the art. 92 (2) from the Treaty of Rome, the clarification of the content of article 92 regarding the situation when some state aids are considered compatible with the common market. Article 92 (2) established clearly the compatibility of state aides with social features designed to individual consumer (just the ones who do not discriminate by the origin of the products) and the ones necessary after of natural calamity or remarkable events
The Commission has been practically invited through their own regulations to except from the obligation of notifying (in certain limits regarding the purpose, the recipient) and declare compatible with the market the giving state aids:

- aids destined to train employees;
- aids towards SME's;
- aids for environmental protection;
- aids designed to promote the workforce;
- aids for research development;
- regional aids.

Additional to aids given in the framework of a scheme and ad-hoc can also exist the minimis aids disposed to SME's. Those are viewed as an aid for functioning and developing the market, being exception from notification those aids received by an organisation cumulatively, over a determined period, which do not exceed the minimum quantum.
The Council Regulation no. 169 from 1999 is exclusively neo-functionalist and it states the important role of the Commission, any project of granting a state aid must be notified by the member states to the Commission (including the existing aid schemes), and it would have to declare their response in maximum two months regarding the application, through a decision.
In the case in which a state offered an illegal aid or the state aid is overly accessed, the initial competition context must be re-established and the state can become the subject of a decision in offering information, suspension or recovery.
As there have been allocated important resources to financial aids in order to streamline these expenses, but also to create a better connexion between the Cohesion policy and the Competition one, the Commission launched an initiative of modernising the state aids system (State Aid Modernisation – SAM). The new general principles in regard to the state aids became: obtaining the growing under the conditions of some constraints over the public budget, concentration on the cases with the largest potential of altering the competition and simplifying the procedures and rules for accomplishing a more efficient control.

4. Conclusions

The Competition Policy has undergone a sinusoidal evolution, the present article trying to frame the stage progress in one of the following theories of economic integration: neo-functionalism, intergovernmentalism or multi-level governance.
European Union can respond to the global environment challenges, variance of the states and reference parameters of different markets, with a policy in the field of competition designed to made possible an environment in which the competition between economic agents is loyal, resources are allocated as efficient as possible, investments are stimulated and thus the economic growth is sustained and the interventions of the legislator are planned given this purpose.

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