

# **The Coherence of the European Union's External Relations in its Competition Policy<sup>1</sup>**

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## 1. Introduction:

Competition has played a crucial role in commerce throughout history via stimulated innovation and encouraged efficiency.<sup>∇</sup> In the 18th century, the French economists formulated the principle of *Laissez-Faire*<sup>‡</sup> to preserve competition by adhering to the general principle of freedom of competition. At the beginning of the 19th century, many countries started to enact legal restrictions to competition.<sup>°</sup>

The foundation of competition policy in Europe returns to 1957 when the Treaty of Rome was ratified. Competition policy was embodied in the EC Treaty provisions with the goal of achieving and promoting the European economic integration<sup>∧</sup> and regulating firms' behaviours in the market. Competition policy was also considered as an underpin of the internal market aspects.<sup>∇</sup> The main areas of the EU competition policy are cartels, abuse of dominant position, the merger of firms and state aid.<sup>^</sup>

The paper examines the coherence of the EU external relations in its competition policy. Therefore, the paper illustrates the different classifications of the coherence in the EU competition policy.

In the field of competition policy, coherence of the EU can be assessed at various levels. Vertical coherence of the competition policy at the EU level with the Member States national policies. Horizontal coherence, coherence of the EU competition policy within the EU's institutions at both Community and Union level. Internal coherence is concerned with the coherency between the EU competition policy and other EU policies -trade policy is assessed in this paper-. External

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<sup>∇</sup> D. Hildebrand, *The Role of Economic Analysis in the EC Competition Rules*, Kluwer Law International, the Netherlands, 2009, (3rd edn.), 102.

<sup>‡</sup> B. Rodger & A. MacCulloch, *Competition Law and Policy in the EC and UK*, Routledge- Cavendish, the United Kingdom, 2009, (2th edn.), p, 384.

<sup>°</sup> R. De Very, *Towards a European Unfair Competition Law: A Clash between Legal Families*, Brill Academic Publishers, Leiden, the Netherlands, 2006, 1, 2.

<sup>∧</sup> A. Wigger, "The External Dimension of EU Competition Policy: Exporting Europe's Core Business?", in J. Orbie (ed.), *Europe's Global Role: External Policies of the European Union*, Ashgate, England, 2008, 181.

<sup>∇</sup> A. Jones & B. Sufrin, *EU Competition Law: Text, Cases and Materials*, Oxford University Press, United Kingdom, 2010, (2th edn.), 42.

<sup>^</sup> S. Wilks, "Competition Policy: Towards an Economic Constitution?", in H. Wallace, M. Pollack & A. Young (eds.), *Policy-Making in the European Union*, Oxford University Press, New York, 2010, (1th edn.), 137, 138.

coherence is related to the coherence of the EU competition policy with those international actors.<sup>9</sup>

#### 1. Vertical Coherence:

The Member States introduced competition law into the EC Treaty to complement the internal market rules by preventing any partitioning of the internal market, and to encourage competition across borders to all Member States.<sup>10</sup> Accordingly, European competition policy seeks to promote a single common market and to ensure that competition is opened and free, prevents artificial barriers trade between the Member States<sup>11</sup> and protect the European consumer welfare.<sup>12</sup> Thus, the coherency between the Member States and the Union is sharp. The Member States have transposed the EU competition policy in their national legislations, and they operate parallel with the EU competition policy.<sup>13</sup> The Commission has competence to regulate the EU competition policy to maintain the convergence of national regulation.<sup>14</sup>

#### 2. Horizontal Coherence:

The coherence within the EU institutions in competition policy was improved in order to create a common competition policy of the EU. The Commission's authority over competition policy increased since the Council of Ministers and the European Parliament gave the Commission a considerable discretion to implement the competition rules in the Community. Moreover, the ECJ supported the Commission in applying the competition rules to anti-competitive behaviors.

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<sup>9</sup> C. Gebhard, "Coherence", in C. Hill & Michael Smith (eds.), *International Relations and European Union*, Oxford University Press, United Kingdom, 2011, (2nd edn.), 107, 108.

<sup>10</sup> D. Chalmers, G. Davies & G. Monti, *European Union Law: Cases and Materials*, Cambridge University Press, Cambridge, 2010, (2nd edn.) 909.

<sup>11</sup> M. Mendelsohn & S. Rose, *Guide to the EC Block Exemption for Vertical Agreements*, Kluwer Law International the Hague, the Netherlands, 2002, 3.

<sup>12</sup> L. Miles, "The External Dimension of EU Competition Policy", in L. Davison, E. Fitzpatrick & D. Johnson, *The European Competitive Environment: Text and Cases*, Butterworth-Heinemann, Oxford, 1990, 109.

<sup>13</sup> K. Cseres, "The Interface between EC Competition Law and the Competition Laws of the New Member States: Implementation or Innovation?", in D. Obradovic & N. Lavranos (eds.), *Interface between EU Law and National Law*, Europa Law Publishing, Groningen, 2007, 211.

<sup>14</sup> C. Damro, "Institutions, Ideas and a Leadership Gap: The EU's Role in Multilateral Competition Policy", in O. Elgstrom & M. Smith (eds.), *The European Union's Roles in International Politics*, Routledge, London, 2006, 212.

Therefore, within the EU institutional structure, the Commission exercises supranational powers over competition rules.<sup>10</sup>

Recently, the Commission in its Communication on Global Europe<sup>11</sup> underlined the need for stronger rules in the area of competition, and stressed the point that, "an effective policy to foster competitiveness must link internal and external policies".<sup>12</sup> Therefore, the coherency in the EU policies might lead to a strong influence to compete internationally. To extend that, the European Parliament called for a greater consistency between the EU rules and practices and those of its main trading partners,<sup>13</sup> and it emphasized that the multilateral rules of competition policy leads to achieve efficiency.<sup>14</sup>

### 3. Internal Coherence:

Competition and trade policies serve to achieve the EU objectives. The EU commercial policy which seeks the abolition of all tariff and non-tariff obstacles between Member States,<sup>15</sup> and promote the development of world trade by stimulating the free circulation of goods leads eventually to increase competition. Therefore, the competition is likely to achieve competitive practices in the market and to reduce the anti-competitive practices such as, cartel.<sup>16</sup>

Moreover, the competition is used to regulate the firm's activity in foreign markets such as liberalized market and increased investments which is a part of European trade policy to improve market access for companies.<sup>17</sup> In addition, the EU competition policy has been extended to third countries in term of trade association agreements, the EU stipulates a degree of approximation of

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<sup>10</sup> Ibid., p. 211, 212.

<sup>11</sup> Commission of European Community, Global Europe: Competing In the World: A Contribution to The EU's Growth And Jobs Strategy, COM (2006) 067 Final, Brussels, 2 October 2006. Available online at [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130370.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf), accessed on November 2, 2011.

<sup>12</sup> Ibid., p. 3.

<sup>13</sup> European Parliament resolution on Global Europe — external aspects of competitiveness, Official Journal of the European Union, C 102 E/128, 24.04.2008, 103.

<sup>14</sup> Ibid., p. 132.

<sup>15</sup> Wigger, *op. cit.*, p. 142.

<sup>16</sup> D. Foray, P. Rutsaert & L. Soete, "The Coherence Of EU Trade, Competition, And Industry Policies In The High Tech Sector: The Case Of The Telecommunications Services Sector", Working Paper, 1994, 2, 7.

<sup>17</sup> Miles, *op. cit.*, p. 112.

competition rules.<sup>٧٢</sup> Moreover, the EU emphasizes the linkage between competition and trade in its external relation with international actors.<sup>٧٤</sup>

#### ٤. The External Coherence:

The external impact of the EU competition policy towards other international actors remained an important to regulate and unify competition rules. *Monti*<sup>٧٥</sup> said "efficient competition policy is not possible without cooperation between competition authorities".<sup>٧٦</sup> Therefore, in the light of globalization and liberalization the cooperation between countries is an important to achieve greater convergence,<sup>٧٧</sup> which leads to better protection of competition and to the benefit of consumer.<sup>٧٨</sup> The EU competition acquired an international dimension through engaging into bilateral and multilateral cooperation.

#### - The Multilateral Cooperation:

The EU engaged in multilateral cooperation with many international actors such as, WTO, OECD and UNCTAD to adopt unified competition law internationally. The Commission, along with the Member States competition authorities participated in the work of OECD and played an important role over the internationalisation and harmonization of competition rules.<sup>٧٩</sup> Moreover, UNCTAD has set multilateral equitable principles and rules to harmonize a global competition policy.<sup>٨٠</sup> In the WTO framework the EU has been active in promoting the multilateral competition policy. The EU in ١٩٩٢ stressed the need for having minimum standards for

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<sup>٧٢</sup> Ibid., p. ١١٧.

<sup>٧٤</sup> C. Damro, "Discretionary Cooperation and the Regulation of Internationalizing Business Activity", Paper prepared for the Third ECPR General Conference, Hungary, ٢٠٠٥, ١٩,٢٠.

<sup>٧٥</sup> Mario Monti, former EU Commissioner for Competition Policy.

<sup>٧٦</sup> M. Monti, Second Annual Lecture: "The External Aspects of EU Competition Policy", *European Foreign Affairs Review*, vol. ٧, no. ٣, ٢٠٠٢, ٢٣٥.

<sup>٧٧</sup> K. Holzinger & C. Knill, "Causes and Conditions of Cross-national Policy Convergence", *Journal of European Public Policy*, vol. ١٢, no. ٥, ٢٠٠٥, ٧٨٢.

<sup>٧٨</sup> Monti, *op. cit.* p. ٢٣٥.

<sup>٧٩</sup> R. Anderson & A. Heimler, "What has Competition Done for Europe? An Inter-Disciplinary Answer", *Aussenwirtschaft*, ٢٠٠٧, Issue ٤, ٢٧.

<sup>٨٠</sup> United Nations Conference on Trade And Development, United Nations Conference On Trade And Development, Geneva, ٢٠٠٠. Available online at <http://www.unctad.org/en/docs/tdrbpconf١٠r٢.en.pdf>, accessed on November ١, ٢٠١١.

competition rules on vertical and horizontal agreements.<sup>71</sup> Moreover, the Commission succeeded in including competition policy in the Doha Agenda as one of the Singapore issues.<sup>72</sup> However, the developing countries refused to discuss the competition policy and this led to exclude competition policy.<sup>73</sup>

#### - The Bilateral Cooperation:

Following the failure of the EU to make progress on a global competition policy in the multilateral cooperation, the Commission started to cooperate bilaterally with other parties, especially with the United States to promote the internationalization of competition policy.<sup>74</sup> Both the EU and the USA have different approaches on international cooperation in the field of competition policy,<sup>75</sup> according to Damro the Commission's approach has been based on "binding multilateralism" which led to Commission's supranational authority in the field of competition policy by transforming traditional notions of national sovereignty.<sup>76</sup> On the contrary, the USA's approach in multilateralization of competition policy is established on the idea of "non-binding bilateralism" which is based on traditional notions of national sovereignty.<sup>77</sup> Despite the different approaches of the EU and the USA in multilateralisation of competition policy, they concluded a bilateral agreement in 1991<sup>78</sup> which focused on mutual cooperation regarding the competition policy,<sup>79</sup> and to prevent any conflict in international competition policy.<sup>80</sup>

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<sup>71</sup> M. Cini & L. McGowan, "The Internationalization of European Competition Policy Aspects", in M. Cini & L. McGowan (eds.), *Competition Policy in the European Union*, Macmillan, Basingstoke, 1998, p. 199.

<sup>72</sup> A. Singh, "Multilateral Competition Policy And Economic Development: A Developing Country Perspective on the European Community Proposals", UNCTAD paper, 2004, 1.

<sup>73</sup> Damro, *op. cit.*, p. 209.

<sup>74</sup> U. Aydin, "Promoting Competition: European Union and the Global Competition Order", Prepared for Presentation at the Biennial Conference of the EUSA, 2009, 3.

<sup>75</sup> M. Dewatripont & P. Legros, "EU Competition Policy in a Global World", in M. Telo, *The European Union and Global Governance*, Routledge, London, 2009, 91.

<sup>76</sup> Damro, *op. cit.*, p. 213.

<sup>77</sup> *ibid.*, p. 214.

<sup>78</sup> C. Damro, "The EU and Transatlantic Convergence: Setting a Joint Agenda in Competition Policy", *Scottish Jean Monnet Centre Working Paper Series*, vol. 1, no. 2, 2009, 9.

<sup>79</sup> W. Kovacic, "Competition Policy in the European Union and the United States: Convergence or Divergence?", in X. Vives (ed.), *Competition Policy in the EU*, Oxford University Press, New York, 2009, 322.

<sup>80</sup> J. Galloway, "Moving Towards a Template for Bilateral Antitrust Agreements", *World Competition*, vol. 24, no. 4, 2005, 589.

## o. Conclusion

The internationalization of the competition policy is the main concern for the EU to achieve comprehensive international regulation of competition. The EU is eager to adopt a coherent competition framework in its bilateral and multilateral cooperation. The Commission believes the EU competition policy cannot be isolated from global development.<sup>41</sup> Therefore, the EU's institutions gave the Commission important power to act as a leader in the competition filed.

Although "the terms coherence and consistency are often used interchangeably"<sup>42</sup> and both are still ambiguous for many decades, the EU is still concerned by the coherence in its competition policy in order to avoid any contradiction with other policies which could lead to undermine the EU credibility. Therefore, the EU is keen to consider the coherency in its policies as a desirable general policy objective.<sup>43</sup>

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<sup>41</sup> Cini & McGowan, *op. cit.*, p. 212.

<sup>42</sup> Gebhard, *op. cit.*, p. 100.

<sup>43</sup> A. Acheampong, "Coherence Between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa", ECDPM Working Paper no. 02, Maastricht, 1997, 2.

## BIBLIOGRAPHY

- Acheampong Anthony, "Coherence Between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa", ECDPM Working Paper no. 02, Maastricht, 1997, pp.1-26.
- Anderson Robert & Heimler Alberto, "What has Competition Done for Europe? An Inter-Disciplinary Answer", *Aussenwirtschaft*, 2007, Issue 5, pp.1-28.
- Chalmers Damian, Davies Gareth Davies & Monti Giorgio, *European Union Law: Cases and Materials* Cambridge University Press, Cambridge, 2010 (2nd edn).
- Cini Michelle & McGowan Lee, "The Internationalization of European Competition Policy Aspects", in Cini Michelle & McGowan Lee (eds.), *Competition Policy in the European Union*, Macmillan, Basingstoke, 1998, pp. 194-213.
- Commission of European Community, Global Europe: Competing In The World: A Contribution To The EU's Growth And Jobs Strategy, COM(2006) 067 Final, Brussels, 4 October 2006. Available online at [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130370.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf), assessed on November 0, 2011.
- Cseres Katalin, "The Interface between EC Competition Law and the Competition Laws of the New Member States: Implementation or Innovation?", in Obradovic Daniela & Lavranos Nikolaos (eds.), *Interface between EU Law and National Law*, Europa Law Publishing, Groningen, 2007, pp. 200-231.
- Damro Chad, "Discretionary Cooperation and the Regulation of Internationalizing Business Activity", Paper prepared for the Third ECPR General Conference, Hungary, 2000, pp. 1-20.
- Damro Chad, "Institutions, Ideas and a Leadership Gap: The EU's Role in Multilateral Competition Policy", in Elgstrom Ole & Smith Michael (eds.), *The European Union's Roles in International Politics*, Routledge, London, 2006, pp.208-224.
- Damro Chad, "The EU and Transatlantic Convergence: Setting a Joint Agenda in Competition Policy", *Scottish Jean Monnet Centre Working Paper Series*, vol. 1, no. 2, 2009, pp. 1-24.
- De Very Rogier, *Towards a European Unfair Competition Law: A Clash between Legal Families*, Brill Academic Publishers, Leiden, the Netherlands, 2006.
- Dewatripont Mathias & Legros Patrick, "EU Competition Policy in a Global World", in Telo Mario, *The European Union and Global Governance*, Routledge, London, 2009, pp. 87-103.
- European Parliament resolution on Global Europe — external aspects of competitiveness, Official Journal of the European Union, C 102 E/128, 24.04.2008.
- Foray Dominique, Rutsaert Pauline & Soete Luc, "The Coherence Of EU Trade, Competition, And Industry Policies In The High Tech Sector: The Case Of The Telecommunications Services Sector", Working Paper, 1994, pp. 1-43.



- Galloway Jonathan, "Moving Towards a Template for Bilateral Antitrust Agreements", *World Competition*, vol. 28, no. 4, 2005, pp. 689-714.
- Gebhard Carmen, "Coherence", in Hill Christopher & Smith Michael (eds.), *International Relations and European Union*, Oxford University Press, United Kingdom, 2001, (2nd edn.), pp. 101-127.
- Hildebrand Doris, *The Role of Economic Analysis in the EC Competition Rules*, Kluwer Law International, the Netherlands, 2009, (3rd edn.).
- Holzinger Katharina & Knill Christoph, "Causes and Conditions of Cross-national Policy Convergence", *Journal of European Public Policy*, vol. 12, no. 5, 2005, pp. 770-796.
- Jones Alison & Sufrin Brenda, *EU Competition Law: Text, Cases and Materials*, Oxford University Press, United Kingdom, 2010, (4th edn.).
- Kovacic William, "Competition Policy in the European Union and the United States: Convergence or Divergence?", in Vives Xavier (ed.), *Competition Policy in the EU*, Oxford University Press, New York, 2009, pp. 314-343.
- Mendelsohn Martin & Rose Stephen, *Guide to the EC Block Exemption for Vertical Agreements*, Kluwer Law International the Hague, the Netherlands, 2002.
- Miles Lee, "The External Dimension of EU Competition Policy", in Davison Leigh, Fitzpatrick Edmund & Johnson Debra, *The European Competitive Environment: Text and Cases*, Butterworth-Heinemann, Oxford, 1990, pp. 109-122.
- Monti Mario, Second Annual Lecture: "The External Aspects of EU Competition Policy", *European Foreign Affairs Review*, vol. 7, no. 3, 2002, pp. 230-240.
- Rodger Barry & MacCulloch Anagus, *Competition Law and Policy in the EC and UK*, Routledge-Cavendish, the United Kingdom, 2009, (4th edn.).
- Singh Ajit, Multilateral Competition Policy And Economic Development: A Developing Country Perspective on the European Community Proposals, UNICTAD paper, 2004, p. 1, pp. 1-24.
- Umut Aydin, "Promoting Competition: European Union and the Global Competition Order", Prepared for Presentation at the Biennial Conference of the EUSA, 2009, pp. 1-29.
- United Nations Conference On Trade And Development, United Nations Conference On Trade And Development, Geneva, 2000. Available online at <http://www.unctad.org/en/docs/tdrbpconf10r1.en.pdf>, accessed on November 1, 2011.
- Wigger Andela, "The External Dimension of EU Competition Policy: Exporting Europe's Core Business?", in Orbie Jan (ed.), *Europe's Global Role: External Policies of the European Union*, Ashgate, England, 2008, pp. 181-201.

- Wilks Stephen, "Competition Policy: Towards an Economic Constitution?", in Wallace Helen, Pollack Mark & Yound Alasdair, *Policy-Making in the European Union*, Oxford University Press, New York, 2011, (1th edn.), pp. 133-155.