

The European Union as a global market-shaping power. The historical evolution of the EU's market-oriented reforms and competition policy

Introduction

The European Union has long been regarded as a global market-shaper. While sometimes characterised as a political dwarf (Zielonka, 2006), the EU remains an economic giant, as the second largest economy in the world, with a gross domestic product in 2019 of EUR 16.4 trillion, population of 450 million, and trade with the rest of the world accounting for about 15.6% of global imports and exports (data from: Europa.eu; CIA World Factbook). While after the UK's departure following the Brexit vote, the EU's market size has diminished by around 15%, the EU is still one of the three largest global players in international trade, together with the United States and China. Being granted with what the treaties call "exclusive competences" in many fields traditionally regarded as a domain of state economic activity, ranging from trade relations, through customs union, to monetary policies for the eurozone countries, the EU has at its disposal powerful instruments to build, shape and govern the markets.

Looking at this history of the EU as a market-shaper, a number of authors have observed that the EU has managed to implement market-oriented reforms and foster regulatory convergence on its single market, which ultimately leads to *more* competition and *less* concentration in Europe than in the United States (Jabko, 2006; Philippon, 2019). Viewed from the early 2020s, it may be hard to believe that the United States – increasingly challenged by growing levels of market concentration and dwindling competition in key industries (Stiglitz, 2019; Khan, 2017) – was once home to the major antitrust movement, pioneered the first antitrust regulations and led the way in curbing market power and encouraging free competition (McCraw, 1984; Eisner, 1991). This "great reversal" is puzzling, since much of the academic literature as well as popular economic narrative have long juxtaposed the bloated and inefficient European superstate against its more competitive US counterpart (Judt, 2005).

Recently the debate about the EU's global role and soft power has been framed in terms of the Brussels Effect¹ (Bradford, 2020). At the centre of it is the EU's ability

¹ The term itself was inspired by David Vogel's pioneering work on the dynamics of regulatory change in times of rapid economic globalisation and regulatory competition between different jurisdictions, which may give rise either to a "race to the top", resulting in an upward regulatory convergence or to a "race to the bottom", which brings along a downward regulatory convergence. In his analyses of consumer and environmental regulations and, in particular, the impact of rapidly growing free trade agreements (like GATT or NAFTA) on the stringency of environmental policies in different countries, Vogel observed substantial evidence for what he dubbed the "California effect" (Vogel, 1997).

to promulgate the most stringent standards in key areas of economic regulation which then influence the behaviour of multinational companies, as well as the regulatory framework in other jurisdictions. The Brussels Effect ultimately leads to a Europeanisation of crucial policy areas, like data protection or consumer health, as private companies and third countries voluntarily adopt high EU standards (*ibid.*; see also: Fichtner, 2021). The EU's growing regulatory outreach applies both to the issues of product regulation, like personal data available online, or the hazardous materials included in electronics, as well as to process regulation, like data storage or greenhouse gases emitted during production. The specific political and economic conditions that allow for the Brussels Effect to work include market size, regulatory capacity and preference for stringent regulations (Bradford, 2012).

The popular view has is that the rising market power of corporate giants is a natural by-product of the economic forces unleashed by globalisation. Just as rising economic inequalities are supposed to be a result of a skill-biased technological change and market-driven demand for highly skilled workers, increasing market concentration is often seen as a necessary concomitant of a closely integrated global economy. A comparative look at the EU and United States is then useful to challenge this view. The economic forces unleashed by globalisation, by their very nature, are global in nature, and affect European economies in much the same way as they affect the United States. However, the EU has followed quite a different path in recent years, and largely avoided the trend of increasing concentration and declining competition.

Competition policy offers one of the most prominent examples of the EU's global economic power and regulatory outreach. Traditionally, the EU has been at the forefront of stringent competition rules. Although rarely told in this way, European integration actually started as a common economic effort against excessive market dominance in the two key industries of that time. As Thomas Philippon (2019, p. 128) has put it, "the fight against market dominance has been part of the DNA of the European project from the very beginning". In the early 1950s, post-war governments, fearful of the regulatory races to the bottom hindering the economic revival after the Second World War, decided to create a common market in civilian goods, followed by supranational institutions to govern the first common policies (Milward, 2000). In the 1980s, in order to give new impetus to the stagnating economies after the "eurosclerosis" of the 1970s, European governments turned one more time to the "market", as a platform for uniting liberal progressives, conservative right and social-democratic left to advance the common cause of a "single market" (Jabko, 2006). And lately, in response to the Covid-19 pandemic, the EU not only opted for a joint vaccine purchase, a multi-billion pandemic recovery fund, and partial debt mutualization (*Die brauchen...*, 2021), but also relaxed its stringent enforcement of the anti-competitive rules and allowed member states to protect their weakened companies from hostile foreign takeovers.

This chapter looks into the historical evolution of European competition policy, in order to analyse what sets apart the EU's market-oriented reforms from the large-scale economic liberalisation undertaken elsewhere. It sets the European experience in a comparative perspective, by juxtaposing it with the homeland of economic liberalisation, that is the United States. The field of competition policy offers an excellent case study for thinking seriously about the distinctive nature of the EU as an economic actor and market shaper. Through this tool the EU can exert regulatory influence beyond its

borders and shape global business practices. As part of its Merger Review process, the European Commission has the power to block a merger between two multinational companies worldwide, as long as these companies – parties to the merger – offer goods or services to European consumers. Most recently, new challenges, like digitalisation of the economy, geo-politicisation of competition regulations, Brexit and Covid-19 pandemic have weakened the long-standing consensus and shifted EU competition policy in a new direction (Meunier, Mickus 2020).

This contribution advances an interpretation from political economy, which sees government as a crucial actor shaping the market; that is why the success of the EU in fostering free competition, constraining market power, and wielding regulatory influence beyond its borders is seen as the result of a deliberate political effort to tie large-scale liberalisation with market-shaping regulations. The main goal of this chapter, however, is descriptive rather than explanatory.

The rest of this chapter is organised as follows. Section 1 looks into the short history of Europe's market-oriented reforms, from the establishment of the European Coal and Steel Community (ECSC) up to the present, focussing on the implementation of market reforms, in order to analyse the distinctively European way of shaping markets as a way of forging closer economic and political integration. Section 2 describes the normative foundations, political-economy conditions, as well as the main instruments of competition policy in the EU, juxtaposing it with US competition law. Section 3 looks forward to the future of the single market and competition policy, asking whether the long-standing consensus on the strict enforcement of EU competition rules is being gradually weakened by geopolitical challenges, accelerated by the Covid-19 pandemic.

1. How Europe has shaped the market?

Although rarely told in this way, European integration in fact started as a push against excessive market dominance in the coal industry. The first attempts at economic integration, the ECSC and European Economic Community (EEC), were motivated by a deeply political goal of eliminating economic nationalism by preventing regulatory races to the bottom among member states. The founding idea of European integration was that in order to hinder regulatory races to the bottom it was necessary to create a common market in civilian goods, followed by supranational institutions to govern first common policies (Milward 2000). The founding treaty of the EEC, the Treaty of Rome, recognised the responsibility of the Community in the area of free competition among market participants. According to Article 3(f) of the Treaty of Rome, the activities of the Community shall include “the institution of a system ensuring that competition in the common market is not distorted” (*The Treaty of Rome*, 25 March 1957). Article 81(1) of the 1957 Treaty prohibited agreements affecting trade between member states “which have as their object or effect” the “prevention, restriction, or distortion of competition within the common market”, bearing a similarity to Section 1 of the Sherman Act (Abbott, 2005). However, one of the crucial issues in the field of competition policy, merger control, was not included in the Treaty of Rome.

The need for a major extension of regulatory capacities in antitrust was made evident by the large-scale liberalisation enabled by the establishment of the single market.

The entire post-war consensus on the welfare state in Europe assumed high levels of taxation and centralised government control of an economy, dominated by partly nationalised industry and a large public sector (Kershaw, 2018). Up till the 1980s, many key industries in Europe were dominated by a handful of state-owned companies, which benefitted heavily from the protection of the state (Judt, 2006). A case in point is the airline industry. In the early 1980s, US and Canadian airlines flying to Ireland were required to make a stopover in tiny Shannon, on the west coast of Ireland, before landing in Dublin, in order to protect Irish flag carrier Aer Lingus, while Netherlands's flag airline KLM was paid by the Irish government not to fly to Ireland at all (Appelbaum, 2019). In those days, the overwhelming majority (85%) of routes within member states was operated by only two carriers (Philippon 2019). For instance, the highly profitable London–Paris route was controlled by a duopoly of Air France and British Airways, which charged one of the highest fares on record (*ibid.*). France, Italy and West Germany were among the fiercest supporters of their flag airlines, protecting them from price cutting and international competition (Greenhouse, 1989).

In order to instil more competition into the airline business, the Aviation Liberalisation Package was adopted in 1987, which laid the ground for the deregulation of the airline industry. The package introduced a modest deregulatory measure, which permitted an airline flying between two European nations to set a lower rate, only if the governments of both nations approved. National governments, however, were determined to protect their flag airlines and often blocked lower fares. Determined to speed up airline deregulation, the European Commission proposed a new regime of “double disapproval”. Under the new regime, a fare set by an airline for a route between member states should be permitted unless both states objected to it. In other words, it was enough to receive a green light only from one of the two countries. This new law enabled one of the first European budget airlines, the Irish Ryanair, founded in 1984, to benefit from the ongoing deregulation of European airspace. Two years later this new, low-cost carrier offered a new, international, intra-EEC route between Dublin and Luton, thanks to the approval of Margaret Thatcher's deregulation-friendly government. Soon afterwards, Ryanair extended its low-cost model to the UK and also to mainland Europe (Barrett, 2006).

The deregulation of the airline industry is symbolic of the larger EU-wide liberalisation, which in many industries started more than a decade later than in the US. From the late 1970s onwards, the US economy experienced an unprecedented wave of deregulation in key industries, including the air business, road, rail, transport industries, electric power, natural gas, banking, and telecommunications (Philippon, 2019). The United States was widely heralded as the world leader in regulatory reform which was responsive to the concerns of the business community and international markets (OECD, 1999). Many European political leaders looked at the United States as an example of successful economic management and large-scale deregulation, arguing that Europe also should move forward with market-friendly reforms (McNamara, 1998). “Trust-the-market” ideas of liberalisation and deregulation, which originated and were first put into practice in the US, from the 1970s onwards made “Atlantic crossings”,² leading to the establishment of the single market.

² Here I borrow the term introduced by Daniel T. Rodgers (see: Rodgers, 1998).

Single market was nothing short of a revolution. Rather than just mirroring the US regulatory reforms, it was a distinctively European project, in which liberalisation went hand in hand with regulation. Far from being espoused only by the left, regulation in European policy debates of the 1980s and 1990s was seen as a platform to find a common ground between parties from opposite sides of the ideological axis. That is why the EU's single market was in principle supported by everyone from Margaret Thatcher to the Greens, albeit for rather different reasons (Judt, 2006). The European Commission developed a carefully thought-out political strategy to rally an exceptionally heterogeneous coalition, composed of, as Nicolas Jabko (2006) aptly put it, "strange bedfellows", that included both ardent free marketeers and liberal progressives, the political left as well as the right, bureaucrats together with the business community, to advance the common cause of a "single market".

With the possible exception of the UK and Ireland, the European political establishment by and large shared the belief that the market, left to its own devices, will not produce optimal results. The continental consensus in the field of political economy assumes that markets are indeed the best possible mechanisms for large-scale production and allocation of limited goods to individual consumers. However, they also produce negative externalities that are detrimental to society and the environment. Therefore, while Single European Act (SEA) set in motion an unprecedented wave of liberalisation in sectors ranging from finance and telecommunications to collective services and public transportation, the shift toward market went hand in hand with regulation and new competencies of public institutions (Jabko, 2006). "Market reform" was a convenient label, which concealed the fact, that market-oriented reforms were accompanied by market-mitigating concentration of powers at EU level. That is why the support for the Single Market revolution advocated by the EC came not only from the business community and neoliberal parties, but also from trade unions and social democrats.

Although conceived as a British liberal idea, the Single Market has gradually received a social-democratic tint, and as such it sparked major controversies in the United Kingdom. In the run-up to 1992, Jacques Delors wanted the UK conservative government led by Prime Minister Margaret Thatcher to get fully on board with the Single Market programme. He presented the Single European Act as a pro-market turn, which would satisfy Britain's traditional market-friendly orientation. However, the social dimension of the SEA did not go unnoticed by many blue-collar workers in the UK. The level of legal protection, good working conditions, and generous welfare provisions existing in other EU countries, were appealing to the Labour party's affiliated trade unions, which back in the 1970s largely opposed the UK's membership of the EC (Gowland, 2017). Delors' speech at the Trade Union Congress in Bournemouth in September 1988 was met with applause and a standing ovation, accompanied by the serenading of *Frère Jacques* bestowed upon Delors (ibid.). The Conservative government led by PM Thatcher, on the other hand, was flabbergasted by the vision of a social Europe and refused to sign the EC charter of social rights adopted in 1989, the only EC government to do so (Fella, 2020).

The introduction of a merger regime was among the most important components of the Single Market Programme in the field of antitrust regulation. For a long time, there was a distinct possibility that the Single Market would be completed without a merg-

er regime in place, as the discrepancies between member states on the principle and scope of the new law were abundant. Germany feared that the more lenient European merger regime could undermine its own national framework, France saw the European Commission's proposal as too supranational and too market-friendly, and the UK also had general reservations on the principle of merger regulation (Warlouzet, 2016). However, the French government was determined to reach an agreement on merger regulation before the end of December 1989 in order to end the French Presidency of the Council with a symbolic victory. During the Strasbourg summit in December 1989, the Germans gave the green light to the establishment of a merger regime and vesting the EC with merger control authority. In the same year the Council of European Communities introduced a regulation "on the control of concentrations between undertakings" (Council Regulation No 4064/89). This regulation included the precise definition of a merger and introduced a notification obligation to the Commission with regard to all concentrations with a "Community dimension", that is above a certain revenue threshold.³ Quite surprisingly for the French, the first merger banned by the EC thanks to its newly gained powers targeted the Franco-Italian company ATR which wanted to merge with the Canadian De Havilland (Warlouzet, 2016). The regulation on Mergers and Acquisitions (M&As) was revised in 2004 (Council Regulation (EC) No 139/2004).

Among the actors calling for the dismantling of trade barriers within the single market were European multinational corporations. For instance, pharmaceutical giants wanted to register medicines only in one European agency, instead of applying for separate approvals of new drugs in each of the national medicine regulatory bodies. Pressure from the pharmaceutical industry led to the establishment of the European Medicines Agency (EMA) in 1995, which was vested with the power to grant authorisation of medical products. Since its establishment, the EMA has struggled to cope with conflicting expectations and often contradictory demands from a wide range of stakeholders, including pharmaceutical companies and member states; nonetheless, the creation of the agency was widely seen as a milestone on the path towards a truly functional internal market for medicines (Borrás et al., 2007).

A further impetus to the ongoing liberalisation of business activity within the single market was given by the landmark rulings of the European Court of Justice, which then generated a political response from the European Commission. In particular, the legal principles of primacy of EU law and direct effects, together with the system of judicial review, introduced at EU level "the habit of obedience and the respect for the rule of law", which had been traditionally associated more with national obligations (Rittberger, Schimmelfennig, 2006). In its groundbreaking judgement in *Cassis de Dijon*, the ECJ introduced the principle of mutual recognition of national regulations (Case 120/78). As a consequence of this ruling, member states are obliged to allow any good lawfully produced and sold in one EU country to be sold in another. They also must recognise each other's regulations, if these regulations equally protect the

³ For the purposes of this Regulation, a concentration has a Community dimension where (a) the aggregate worldwide turnover of all the undertakings concerned is more than ECU 5 000 million, and (b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state.

public interest, such as health and safety protection. The *Cassis de Dijon* ruling acted as a catalyst, which emboldened the Commission to capitalise on this decision in order to foster a new approach to harmonisation (Alter, Meunier-Aitsahalia, 1994). The abilities of the Commission to build on ECJ judgements or interest group pressure, in order to push forward with the pro-integration agenda, further shaped its image as a “political entrepreneur” (ibid.) and a “purposeful opportunist” (Cram, 1993), which grasped every opportunity to prepare the ground for regulatory action and “push outward the frontiers” of integration.

The effort to advance the single market, while securing greater rights and fairer competition for both EU citizens and companies, driven by the political entrepreneurship of the EC and judicial activism of the ECJ, was part of a much broader “permissive consensus” which for a long time guided European integration. Major advancements in the creation of common institutions were driven by the consent of major political leaders who decided to push further with European integration, overriding the indifference of the general public, which did not have time to bother with the intricacies and nuances of the EU (Hooghe, Marks, 2009). This elite consensus on Europe, or what a close Mitterrand adviser Hubert Védrine (1996) once called an “enlightened despotism”⁴ began to break down in the 1990s, most vividly with the French referendum on the Maastricht treaty in 1992, which unveiled a striking geographical divide among the people of France. However, in the EU, like in so many other bureaucratised organisations, subjected to different “lock-in” mechanisms and path-dependencies, things tend to change slowly. The EC and the ECJ continued to advance integration in spite of the growing signs of discontent among the public in many member states. The question which thus arises is whether it is possible for the EU’s global regulatory outreach to continue in spite of the growing Euroscepticism and increasing popularity of anti-EU political forces, in many European countries.

2. From Peer-learning to Parting Ways: Competition policy in the European Union and in the United States

EU antitrust law has a much shorter history than the US one. While the very first antitrust legislation in the US – the Sherman Antitrust Act of 1890 was enacted by the US Congress at the dawn of the Progressive Era (Sherman Antitrust Act, Britannica), Europeans had to wait till the mid-twentieth century for the first set of laws to prevent excessive market power and economic concentration. Immediately after the Second World War, the US authorities wanted to export their strong antitrust stance to the European countries which were rebuilding their economies from the ashes of war and creating legal frameworks to govern the markets. This effort was particularly visible in Germany, where allied forces had the greatest impact on the economic regulations.

⁴ Hubert Védrine (1996) wrote that “all the major decisions were made by small groups of leaders and even men and women of influence. The Europe of the 1980s is the pure product of a modern form of enlightened despotism” (Fr.: *Mais toutes les décisions majeures ont été prises par de petits groupes de dirigeants, voire d’hommes et de femmes d’influence. L’Europe des années 1980 est le pur produit d’une forme moderne de despotisme éclairé*).

Recognising the role of monopolies in the Nazi Party's rise to power, in 1951 they split German chemical and pharmaceutical giant, IG Farben into six constituent companies, including: BASF, Bayer and Hoechst. However, the US's bigger economic goal – to create a political federation among European nations through the Organization for European Economic Co-operation (OEEC), which was supposed to serve as an incubator for a United States of Europe (Schmelzer, 2016) – largely failed, as European countries were not ready to pool sovereignty immediately after the war. But even in the absence of US guardianship, European leaders recognised the need to establish fair competition among market participants on the common market, as they were increasingly aware of the political dangers resulting from the concentrated power of private monopolies.

EU competition law is applied to address situations in which firms are able to acquire or exercise power over the market, which could distort the ability of markets to coordinate supply and demand (Odudu, 2015). It constitutes a crucial pillar of the EU's single market. As a result of the large-scale privatisation in key industries in the 1980s, the biggest market shares were captured by the former state-owned companies, not thanks to their cutting-edge products or superior service, but because of their former role as state-sponsored national champions. The EU needed the tools provided by its competition policy to dismember these monopolies and enable more competition.

The prevailing propensity to conceive of competition law as an instrument forging deeper economic integration is what sets the EU competition regime apart from other nations' legal frameworks (Bradford, 2020). It also sparks tensions in EU-US relations, as this overriding goal of promoting 'ever closer union' is often seen by US officials as being in tension with what the US authorities see as a primary aim of competition policy, namely consumer welfare (Ohlhausen, 2016).

The need to instil a sense of openness, fairness and trust in the markets and in society at large is among the crucial underpinnings of the EU competition policy and enforcement (Laitenberger, 2017). The EU tends to look at dominant companies with suspicion and subscribes to the view that more competitors mean more competition, which is why it leverages its competition policy to ensure a level playing field for small and medium-sized companies. On the normative level, this approach makes the EU a certain kind of carrier of the values espoused by the first antitrust movement in the US in the progressive era, personified, among others, by Justice Louis Brandeis, who wanted to constrain market power and protect small businesses (McCraw, 1984).

At the centre of the EU's concerns are the detrimental results of a lack of regulatory intervention, that is "under-enforcement" (Pike, Carovano, 2019), and "false negatives", that is anticompetitive practices that the EU might fail to detect and regulate properly (Bradford, 2020). This concern is grounded in the political philosophy of the EU, and competition authorities' suspicion of the free markets' ability to produce optimal results. Director-General of the Directorate-General for Competition (DG COMP) in 2015–2019, Johannes Laitenberger, expressed these concerns directly, arguing that "avoiding 'false negatives' in competition control requires as much rigor, analysis and – yes – humility as avoiding 'false positives'" (2017). This scepticism regarding the markets ability to deliver optimal results is rooted in the economic history of the old continent, which has been long shaped by state-owned enterprises, often at the expense of consumer welfare.

Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are the main instruments for controlling excessive market power in the EU. Article 101 can be used to “address problems of market power when those problems are caused by an undertaking occupying a dominant position within the internal market or a substantial part of it” (Odudu, 2015, p. 620). Article 101 prohibits all agreements affecting trade between member states which may result in the prevention, restriction or distortion of competition within the internal market (Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C326/47). Anticompetitive agreements, decisions or concerted practices include, among others, price fixing, production limiting or market sharing. Article 102 applies specifically to a situation “when an undertaking lacking the ability to obtain or exercise market power unilaterally coordinates its conduct with one or more other undertakings so as to enable market power to be obtained or exercised” (ibid., p. 628). In the words of the high official in the US Federal Trade Commission, Maureen K. Ohlhausen (2016, p. 9) “a perhaps-unspoken goal of Article 102 enforcement is to rid markets of unfair conduct by powerful undertakings”.

Table 1. Most important categories in the EU and US competition laws

	EU	US
Anticompetitive agreements	✓	✓
Monopolisation	✓	✓
Control of Mergers	✓	✓
Illegal state aid	✓	X

Source: Author’s own work.

The issue of harmonisation between the competition laws of Europe and America is often considered to be at the heart of global antitrust policies (ibid.). While there are important similarities between EU and US legal frameworks with regard to their main goals and crucial categories, many differences persist and shape distinct enforcement practices. As Maureen K. Ohlhausen from the US Federal Trade Commission argued, the US and EU agree on what the approach should be regarding the most obvious violations of antitrust rules, like naked, horizontal cartels, or monopolies, but they often “part company in answering difficult questions at the margin”, still debating the very goal of antitrust policies (ibid.).

While the EU is primarily concerned with the detrimental results of a lack of regulatory intervention (“under-enforcement” and false negatives), the US is more fearful of the harmful effects of excessive and inefficient regulatory intervention (“over-enforcement” and “false positives”, that is perfectly competitive practices that competition authorities might falsely restrict). Both the US and EU recognise most common forms of anticompetitive behaviour as endangering the level playing field between market participants and structure their laws accordingly, although the EU goes a step further and regulates also an “illegal state aid”. The regulation of state aid is the most important difference between the antitrust doctrines in the EU and the US. The very concept of “state aid” is unique to the EU legal framework and has no equivalent in US regulations (Ohlhausen, 2016). Rooted in the uniquely European experience of

many years of aggressive state interventions in key sectors, in particular coal and steel, EU competition law has as one of its core purposes the reduction of illegal state aid (Philippon, 2019).

The enforcement of the rules concerning illegal state aid is very strict. The regulations on illegal state aid used to be applied to a state's financial subsidies of traditional manufacturing companies, like the state aid provided by the government of Poland to two shipyards, Gdynia and Szczecin, which were at the heart of the Solidarity movement and the revolt against communism in the 1980s (EC Press Release IP/08/1642). More recently, the interpretation of what constitutes illegal state aid has been broadened. The highly relevant clash between the EC and Apple over alleged unpaid taxes to the Irish government revolves around the issue of illegal state aid. In 2016 the EC ordered Apple to pay EUR 13bn to the Irish government for underpayment of tax on profits in the EU between 2003 and 2014 (Carroll, 2020). While both Apple and the Irish government rejected the EC's accusations, arguing that no state aid had been paid, the EC claims that the generous tax subsidies provided to the US tech giant by the government of Ireland do in fact constitute a form of "illegal state aid".

The ECJ ruled that the Commission was wrong to declare that Apple (that is Apple Sales International and Apple Operations Europe) had been granted a selective economic advantage and, by extension, state aid; and that it did not have to pay EUR 13 billion (GBP 11.9 billion) in alleged taxes back to the Irish government. The EC is appealing against the court ruling. The case between Apple and the EC is highly contentious, since the EU has no say in matters of member states' tax policies. In this case, however, the EC interpreted the tax advantage granted to Apple as a violation of the EU's state aid rules. Limiting arbitrary state aid is of primary importance for the EU, which concluded long ago that particular regions cannot provide generous subsidies in order to attract foreign investors, creating incentives for these companies to search for the highest bidders and set one member state into direct competition against another.

The EU also exhibits a much tougher stance towards vertical mergers than the US. Historically, both in the US and Europe, antitrust law and enforcement focussed on horizontal mergers, which took place within the same industry. Vertical mergers, like one between an internet company and online video platform, were not perceived as threats to market competition. This has started to change recently. The EC took the stance that vertical mergers may have "horizontal effect", thereby also reducing competition, and actively sought to prevent vertical mergers in the energy sector, including those between electricity generation and transmission companies, as well as unbundling the transmission grid from other stages of the electricity supply chain. With Directive 2009/72/EC, the EC wanted to foster competition between different companies in the upstream stage of electricity generation (Gugler et al., 2017).

In general, there is much more uniformity in the rules governing economic exchange in the EU than in the US. In the US, there is no uniform federal standard for many goods, therefore states often adopt them from international standard setting bodies, creating a varying patchwork (Matthijs et al., 2019). There is also no American counterpart to the European principle of "mutual recognition", that would oblige a certain state to accept a good which was tailored for a different US jurisdiction (*ibid.*).

A good example of the much stricter unification of regulations in the EU than in the US is the postal service. Considering postal services vitally important to the "econom-

ic prosperity, social well-being and cohesion of the EU”, the EC obliged member states to open up their markets for postal services to competitors from other states and reduce to nearly zero any reserved domains (The Postal Directives 97/67/EC; Hoffmann, 2011). The United States Postal Service, on the other hand, continuously preserves important monopoly powers, upheld by the US Supreme Court. In 2004 case *Postal Service v. Flamingo Industries (USA) Ltd.*, the US Supreme Court ruled that “[t]he Postal Service is not subject to antitrust liability. In both form and function, it is not a separate antitrust person from the United States but is part of the Government, and so is not controlled by the antitrust laws” (*Postal Service v. Flamingo Industries*). As one of the privileges of its monopoly status, the USPS has exclusive access to letter boxes marked “U.S. Mail” and personal letterboxes. Its main competitors, FedEx and United Parcel Service (UPS) compete with the USPS in the field of package delivery services but are not allowed to access letter boxes bearing the mark “U.S. Mail”.

A similar difference applies to the exchange of services. While the EU in general allows for a temporary provision of service and requires recognition of qualifications earned in different member states, in the US, many service providers must possess a state-specific license and pass extensive exams. For instance, the state of Ohio allows Pennsylvanian hairdressers to offer their services in Ohio only if they take the full course of Ohio training, which is not very different to the Pennsylvanian one (Hoffmann, 2011). As Leif Hoffmann observed, “the EU appears to have created a single market that in many significant and economically important areas is more complete, and more liberal than in the US” (*ibid.*, p. 6).

This relatively high degree of regulatory convergence between EU member states is the primary reason for the success of EU competition policy in recent years. Despite much talk about the need for differentiated integration, in the EU, the room for autonomous regulation and economic discretion of member states is conditioned upon it not impeding competition and trade within the single market. If a new regulation in a member state has the potential to limit the free movement of people, goods, services or capital, it is then prohibited. As a result, the actual policy space for unilateral legislative action in the domain of a single market is quite narrow. In fact, EU member states have often less national autonomy in economic policy than American states. The second factor which might explain the EU’s effective protection of market competition has to do with the EU institutions being more independent in their conduct than their American counterparts (Philippon, 2019). This has long been evident in the key areas of economic policy, in particular monetary policy. The European Central Bank is arguably the most politically independent central bank in the world, while the Federal Reserve is subject to strong oversight from Congress, as well as political pressure both from Republicans and Democrats (Binder, Spindel, 2019; Grauwe, 2016). Much the same is true also in other fields, in particular competition policy. DG Comp⁵ has more independence than its American counterpart, the Federal Trade Commission. What is more, the European Commission does not have to bring a case to court in order to ban a merger or impose remedies. This makes it more independent than the US Department of Justice which needs to pursue litigation before a federal court.

⁵ The three areas which define DG Comp’s scope of interest are: antitrust policies (anticompetitive agreements and monopolisation), mergers and illegal state aid.

EU enforcement practice, which is based on public authority instead of private litigants, makes EU competition law attractive to many developing countries, which tend to model their domestic legal frameworks and enforcement rules on the EU one. Far from being unique to the US or EU legal regimes, competition law constitutes one of the most popular forms of economic regulation in the world, with around 130 jurisdictions adopting a domestic competition law (Bradford et al., 2019), a great majority of which closely resembles EU regulations in this sphere (Bradford et al., 2019a).

The single most important point of contention between the EU and the US regards the high-profile issue of market dominance in the new economy, in particular international taxation of US tech giants. Many discussions regarding the single market concentrate around the need for a major reform of corporate taxation at the EU level. Estimates show that close to 40% of multinational profits are shifted to tax havens globally, with the European Union countries being the biggest losers in this large-scale tax optimisation (Tørsløv et al., 2018). According to one reform scenario, in which all countries adopt the same effective corporate tax rate, keeping global profits and investment constant, corporate profits, and hence the taxes from them, would increase most in high-tax EU countries, by about 15% (*ibid.*). In the largest European high-tax countries, like France and Germany, corporate tax revenues would be 21 and 28% greater, respectively (*ibid.*).

Among the biggest companies using tax havens, as well as other tax avoidance strategies, are high-tech and internet giants like Google, Apple and Facebook (*ibid.*). For many of these companies, the EU market is more important than the US one. For example, Facebook has more daily active users in the EU (294 million) than in the US and Canada combined (190 million).⁶ In most EU member countries, Google controls more than 90% of the total search market. In countries like Belgium, Germany, and Finland, Google's control is practically unrivalled, claiming more than 97% of all search engine use (Meyer, 2015). In contrast, Google's market share in its home country, the United States, is estimated to be between 67 and 75% of the search market. Recognising the importance of the European market for many US high-tech companies, French President Macron argued for change in the rules regarding taxation of internet giants.

As long as countries recognise any corporation registered anywhere for the sole purpose of engaging in tax arbitrage, even if it has no employees and no operation there, choosing favourable corporate laws is key for tax-sheltering schemes to work (Pistor, 2019). Many debates in the EU currently revolve around how to address this problem and collect taxes from multinational companies based on the value they create in the countries in which they operate, using different measures of value creation, such as productive capital, employment, and sales. This new formula would replace the current system in which multinational companies pay most of their taxes in countries where a company's various legal entities are notionally resident, benefitting from these countries' low corporate taxes. The President of the ECB Christine Lagarde, in her former role as a managing director of the International Monetary Fund, expressed some support for this EU effort, admitting that a "fundamental rethink on international

⁶ Data for Q4 2019, Facebook Q4 2019 Results, investor.fb.com.

taxation” is needed, of which one of the prime causes is “the rise of highly profitable technology-driven, digital-heavy business models” (Lagarde, 2019).

New threats to fair competition and the level playing field are on the rise. Anticompetitive behaviour, rather than being limited to the traditional forms, like price fixing or dividing territories, more and more often takes a much more innovative form, like predatory pricing or perfect price discrimination, made possible by technological advances, online surveillance, Big Data and Artificial Intelligence. In the tech industry, dominant players, rather than overcoming competition by offering a better product or service, are acquiring young start-ups which they see as a potential threat to their core business. The examples are ubiquitous: Amazon bought online shoe and clothing retailer, Zappos; Facebook bought messaging app, WhatsApp; Google bought video-sharing platform, YouTube. While new challenges arise, the more traditional ones have not ebbed. In 2015, The Wall Street Journal informed that “a growing number of industries in the U.S. are dominated by a shrinking number of companies” (Francis, Knutson. 2015).

Influential though they are, the dominant US ways of thinking about antitrust policies, that is the economic school of law and consumer welfare framework, have a limited influence on global antitrust laws, and seem ill-equipped to address the new challenges of increasing market power and limited competition. Among the new tech giants, Amazon provides the best example of a company which has built its dominant position by aggressive growth strategies at the expense of short-term profits and vertical integration of many related lines of business. Surprisingly, Amazon is still not considered as posing a threat to free competition, since consumer welfare frameworks in antitrust policies fail to recognise these new risks, such as predatory pricing and vertical mergers (Khan, 2017). It seems that the EU, with its stringent competition regime is better suited to target the new challenges than the US, with its adherence to the consumer welfare framework.

Among the most influential leaders of the antitrust movement was American lawyer and associate justice of the US Supreme Court, Louis Brandeis. He criticised the growing concentration in the US at the turn of nineteenth and twentieth century and called for the greater protection of small business. Addressing the US Congress in 1911, Brandeis stressed the political aspects of antitrust law: “I think we are in a position, after the experience of the last 20 years, to state two things: In the first place, that a corporation may well be too large to be the most efficient instrument of production and of distribution, and, in the second place, whether it has exceeded the point of greatest economic efficiency or not, it may be too large to be tolerated among the people who desire to be free” (*Statement of Brandeis, Hearings Before the Senate Committee...*). After more than a century, it seems like Brandeis’s warning has found a more receptive audience on the old continent, than in its homeland.

3. Future of the EU single market and competition regime

The most important economic argument for the creation of the single market was born in times when free trade was the be-all and end-all of economic policy. Not so long ago, most economists had agreed that free movement of goods and services is

beneficial to all parties involved (Banerjee, Duflo, 2019). As the English stockbroker and one of the founding fathers of economics David Ricardo famously explained with an example of England's cloth and Portugal's wine, since trade allows two countries to specialize in what they are relatively best in doing, the mutual exchange of goods makes both of them better off. Putting this theory into practice, EU's single market was supposed to enable better allocation of resources, letting them to move from places where there was an overabundance of them, to areas where they were scarce, and so could be valued higher. As one study predicted, the completion of the single market by the introduction of the euro – that is 'one market with one money', as the EC put it – could even triple the trade among member states (Rose, 2000). This view of free trade was widely thought to be substantiated by the relatively minor distributional effects of free trade agreements in the post-war period.

What was overlooked, however, was that this benign view of trade was ostensibly proved true in the period when countries engaged in trade were fairly similar to each other. As the first GATT agreement took effect in 1948, the volume of world trade increased substantially, but the dominant trade pattern was similar to the one before Second World War, with goods and foreign investments flowing mainly between the most affluent countries in Western Europe and North America, and Japan (Levinson, 2020). The GATT provision, that members can reach more favourable trade agreements with one another only if such an agreement covered 'substantially all' of the trade or if two-thirds of GATT members approved of it, opened the way to the closer economic integration in the EU and the single market (*ibid.*). However, also in the European Community trade was initially dominated by the most affluent countries. Even the accession of poorer member states from Europe's South, like Greece, Spain and Portugal, did not raise concerns that the free competition enabled by the single market might undermine the welfare systems and socio-economic stability. Discussions which took place before the EU eastern enlargement actually featured the opposite worry, mainly that the poorer catch-up economies from CEE risk more by joining the common market, because the incoming capital and inflow of FDIs may not be able to offset the brain-drain and outward migration, facilitated by the opening of borders (Adamski, 2018).

The above-described rosy picture of trade, without the necessary distinctions and caveats, is now long dead (Rodrik, 2018). Liberalization, deregulation and "integration through law", contributed to the weakening of socio-economic pillar of member states' welfare systems, in particular in the most affluent continental and Scandinavian social market economies, being a grist for the mill of those claiming that the EU has become 'too neoliberal' (Scharpf, 2009). The EU's recent turn towards more protectionist stance should be seen also as a response towards the growing concern on the part of the general public and much of the electorate about the neglected social pillar of the union. Covid-19 pandemic has only strengthened the trend towards greater state's involvement in the economy, leading to the greatest expansion of the welfare state in living memory (*The future of the welfare...*, 2021). It not only made many people more supportive of welfare policies, like unemployment benefits, furlough schemes or even universal basic income, but also amplified voices calling for a new social contract for the post-covid era (see: Shafik, 2021).

This 'return of the state' in the EU predated the outbreak of the pandemic. For instance, French President Emmanuel Macron's idea of "a Europe that protects" (Une

Europe qui protège) comprises liberal labour market reforms in France and social democratic rules at the EU level, like “equal pay for equal work” in the case of posted workers (*Le programme d’Emmanuel Macron pour l’Europe*, 2019; Drozdziak, 2020). Macron’s campaign for tighter rules on posted workers was supported by, among others, the President of the European Commission, Jean-Claude Juncker (2015), who in his 2015 State of the Union speech stated that the key principle behind labour mobility should be that “we ensure the same pay for the same job at the same place”. Eventually, the EU tightened rules on posted workers, by imposing a 12-month limit (with a possible extension to 18 months) for migrant working on a lower salary, without abiding by all local labour laws.

Building more protectionist EU and fostering social pillar of the union is seen by many poorer member states as violating the interests of “catching-up” economies from Central and Eastern Europe. Macron’s efforts are to some extent the continuation of an established French tradition to push for European solutions in order to solve France’s domestic problems (Mody, 2018) and not by an accident dovetail with French determination to protect their workforce from the competition of ‘Polish plumbers’. The new law on posted workers was passed in spite of the opposition of Poland and Hungary, which criticised it as an attack on the principles of the single market (Khan 2017). Still, Macron’s rhetoric is emblematic of a wider belief espoused by many European leaders, which posits that further ‘pure’ liberalisation in such a heterogeneous environment as that of the EU is very likely to generate chaos, instead of greater economic freedom.

In his 2017 State of the Union Address Jean-Claude Juncker stressed one more time the commitment of the EU to always provide a regulatory framework for the workings of market forces, by saying that “we are not naïve free traders”. He then proposed a new EU framework for investment screening which would provide an additional firewall to defend the EU’s strategic interests, in cases where a foreign, state-owned, company might want to acquire a European harbour, a part of European energy infrastructure or a defence technology firm.⁷ At the same time, many countries introduced similar investment screening procedures at the national level with regard to incoming investments by the non-EU companies in sensitive industries. After the controversial Chinese takeover of Bavarian robotics firm Kuka in 2016, the German government tightened the rules to protect domestic firms in key sectors, like artificial intelligence, robotics, semi-conductors, biotechnology and quantum technology, from unwanted takeovers. Under the law, the government can screen and block any purchases of 10% or more of a German business.

The exit of the United Kingdom, arguably the most liberal market economy in the whole Union, and a long-standing supporter of market liberalisation, has dealt a further blow to the EU’s pro-market pillar. The UK was the single most important founding father of the EU single market. The most consequential deepening of the European integration since the 1950s happened on Margaret Thatcher’s watch, and upon

⁷ Juncker’s words were widely seen as a reaction to the expansionary investment strategy of China and recent Chinese investment in Europe. Chinese state-owned shipping company COSCO bought a majority 51% stake in the port of Piraeus in Greece, with the intention of making it the biggest commercial harbour in Europe, and a hub to facilitate the growing trade between Asia and Europe.

her approval. Thatcher and her government were also strongly in favour of qualified majority voting in most policy areas, in order to create a more competitive and freer market across Europe (O'Rourke, 2018). After the establishment of the single market and euro area, the British continued to support other liberalising measures, like lower taxes in the art market, or Capital Markets Union (Barnard, 2017; Lever, 2017). Even a year before the Brexit vote, Conservative Party in its 2015 manifesto presented itself as saying 'no' to the euro, 'ever closer union', 'constant flow of power to Brussels', and 'unnecessary interference', but still saying 'yes' to single market and 'turbocharging free trade' (Conservative Party, 2015). With the UK out of the EU, this liberal and pro-market stance of British will no longer counterbalance the regulation-friendly, statist approach of France and the southern countries (Sinn, 2017).

French and German politicians have already called on to fundamentally rethink EU antitrust doctrines to better meet the new geopolitical challenges, accelerated by the Covid-19 pandemic. Both France and Germany strongly supported the planned merger between Siemens and Alstom. Macron in particular championed the proposal, arguing that Europe needed to create more industrial titans, like the French aerospace company Airbus, to compete with Chinese and American companies (Drozdiak, 2020). When EU competition enforcers vetoed the merger, on the grounds that it would stifle competition within Europe's rail industry, French finance minister Bruno Le Maire responded by arguing that applying "obsolete" competition rules would give Chinese rivals the upper-hand and disadvantage European companies on global markets (Barker, Keohane, 2019). After the Siemens/Alstom ruling, German economy minister Peter Altmaier said Berlin and Paris were working on a proposal to change European competition rules to facilitate large cross-border mergers (Chee, Revill, 2019). Bruno Le Maire made sure that both countries would continue their industrial cooperation, including the joint investment in the production of electric batteries, or the new digital infrastructure project GAIA-X (*Europa ist haarscharf...*, 2020; *GAIA-X*, 2020).

In February 2020, the economy ministers of France, Germany, Italy and Poland sent a letter to the new Commissioner for Competition Margrethe Vestager, calling on the EC to adapt the 'ever-changing field of competition policy' to meet new challenges of the Digital Age⁸. They asked the EC to revise its guidelines of merger control and propose new guidelines on the creation of European joint ventures, to strengthen their clout on foreign markets. Many business leaders also argued that the EU has to reform its industrial policy to help its companies compete with leading nations like China or the United States. Germany's employers' federation, Bundesverband der Deutschen Industrie (BDI), in its policy paper, called on the EU to design an ambitious industrial policy for Europe, to let European companies compete successfully with China on a level playing field in the future (Mair et al., 2019).

The European Commission, which traditionally has advocated greater freedom in the single market and often sided with smaller member states which opposed protectionist measures advocated by the biggest countries, now has to respond to the above-described yearning for more economic protection. Ursula von der Leyen

⁸ Letter from the ministers of France, Germany, Poland and Italy to the competition commissioner Margrethe Vestager regarding the competition policy. Available at: <https://www.politico.eu/wp-content/uploads/2020/02/Letter-to-Vestager.pdf>.

has famously pledged to lead a ‘geopolitical Commission’, trying to reinforce the EU’s role as a relevant international actor, responsive to the challenges of digital age and great-power competition. The EC’s support for tightening the rules regarding posted workers from poorer countries was a harbinger of the new role of the EC, which, especially as a result of Brexit, seems more inclined towards the protection of the economic interests of the member states. In 2021, the EC gave a green light to France to use its new investment screening powers to guard French retail giant Carrefour from takeover by a Canadian operator, Alimentation Couche-Tard (Leali, 2021); a move symbolic of a new kind of competition policy, designed to meet the realities of the accelerating technological race and increasing geopolitical competition. In 2021 the EC published its ‘2030 Digital Compass’, in order to address the vulnerabilities of European digital space, exposed by the pandemic, and establish a sustainable digital infrastructure regarding connectivity, microelectronics and the ability to process vast data (Communication from the Commission to the European Parliament..., 2021).

To use van Middelaar’s influential metaphor (2019), the European Commission, well-versed in the traditional EU ‘politics of rules’, has been taking a crash course on how to operate in the new ‘politics of events’, which forces it to be more flexible in accommodating the demands of the member states. Quite unexpectedly, the outbreak of the Covid-19 pandemic has largely silenced the calls of the ‘Frugal Four’ – a fiscally conservative coalition of Austria, Denmark, Sweden and the Netherlands – to reduce the EU budget and accelerated the push to establish Green Deal, which before the outbreak of the pandemic was still a rather vague idea. The decision about the debt mutualization forced EC to become a de facto EU bank and learn how to manage the joint debt take-up. The issue of National Recovery and Resilience Plans, prepared by member states to stimulate and rebuild the economy after the pandemic, has ignited another power battle between the European Council, which following the Netherlands’ proposal will vote on the member states’ recovery plans, and the European Parliament which successfully demanded the participation of the local governments and SMEs, allowing them to voice their opinions on the plans.

As the historian Tony Judt pointed out, even in the EU’s single market – the jewel in the crown of European integration – the clock sometimes runs backwards. In 2004, after nearly 20 years of Brussels-driven efforts to get rid of state aid for home-grown giants and create a level playing field in intra-European economic competition, France and Germany took everyone by surprise with the reintroduction of protectionist policies to protect their local companies, to the outrage of the EU’s single market commissioner from Denmark, Frits Bolkestein (Judt, 2006). Much more recently, a quite similar set of concerns among the EU officials was sparked by the recurring calls to fundamentally rethink EU antitrust doctrine to better meet the new geopolitical challenges in the digital age. At the same time EU competition authorities have been under growing pressure to make competition policy ‘greener’ in order to contribute to the goal of environmental sustainability (Monti, 2020). If EU’s single market and competition law change in order to respond to these pressures, the EU’s economic clout might also take a different form, as member states would care more about promoting European champions and less about consumer welfare and free competition.

Bibliography

- Abbott Alden F. (2005), *A Brief Comparison of European and American Antitrust Law*, The University of Oxford Centre for Competition Law and Policy, The Competition Law & Policy Guest Lecture Programme – Paper (L) 02/05, https://www.law.ox.ac.uk/sites/files/oxlaw/ccplp_1_02-05.pdf.
- Adamski D. (2018), *Redefining European Economic Integration*, Cambridge University Press, Cambridge.
- Alter K. J., Meunier-Aitsahalia S. (1994), *Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision*, “Comparative Political Studies”, 26(4), pp. 535–561, <https://doi.org/10.1177/0010414094026004007>.
- Andor L. (2011), *EU Commissioner responsible for Employment, Social Affairs and Inclusion, Building a social market economy in the European Union*, Manchester Business School, Manchester, 20 October, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_11_695.
- Appelbaum A. (2019), *The Economists' Hour. False prophets, free markets, and the fracture of society*, Little, Brown and Company, New York.
- Banerjee A., Duflo E. (2019), *Good Economics for Hard Times*, Public Affairs, New York.
- Barker A., Keohane D. (2019), *EU steps up Siemens-Alstom scrutiny amid split over China threat*, “Financial Times”, January 11.
- Barnard C. (2017), *Brexit and the EU Internal Market*, in: F. Fabbrini ed., *The Law & Politics of Brexit*, Oxford University Press, Oxford.
- Barrett S. (2006), *Commercialising a national airline – the Aer Lingus case study*, “Journal of Air Transport Management” 12, pp. 159–167, 10.1016/j.jairtraman.2005.11.001.
- Binder S. A., Spindel M. (2017), *The Myth of Independence. How Congress Governs the Federal Reserve*, Princeton University Press, New Jersey.
- Borrás S., Koutalakis Ch., Wendler F. (2007), *European Agencies and Input Legitimacy: EFSA, EMEA and EPO in the Post-Delegation Phase*, “Journal of European Integration”, 29:5, pp. 583–600, DOI: 10.1080/07036330701694899.
- Bradford A., Chilton A., Linos K., Weaver A. (2019a), *The Global Dominance of European Competition Law Over American Antitrust Law (December)*, “Journal of Empirical Legal Studies”, vol. 16, issue 4, pp. 731–766, Available at SSRN: <https://ssrn.com/abstract=3607375> or <http://dx.doi.org/10.1111/jels.12239>.
- Bradford A., Chilton A., Megaw C., Sokol N. (2019), *Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets (June 2019)*, “Journal of Empirical Legal Studies”, vol. 16, issue 2, pp. 411–443, Available at SSRN: <https://ssrn.com/abstract=3388931> or <http://dx.doi.org/10.1111/jels.12215>.
- Bradford A. (2012), *The Brussels Effect*, “Northwestern University Law Review”, vol. 107, p. 1, Columbia Law & Economics Working Paper, no. 533.
- Carroll R. (2020), *European commission to appeal against €13bn Apple tax ruling*, “The Guardian”, 25 September, <https://www.theguardian.com/technology/2020/sep/25/european-commission-appeal-against-apple-tax-ruling-ireland>.
- Case 120/78, Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein, Judgment of the Court of 20 February 1979, European Court Reports 00649.
- Chee Foo Yun, Revill J. (2019), *EU antitrust policy under fire after Siemens-Alstom deal blocked*, Reuters, 6 February, <https://fr.reuters.com/article/uk-alstom-m-a-siemens-eu-idUKKCN1PV12N>.

- CIA Word Factbook, European Union, <https://www.cia.gov/the-world-factbook/countries/european-union/#economy>.
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2030 Digital Compass: the European way for the Digital Decade, Brussels, 9.3.2021 COM(2021) 118 final, https://ec.europa.eu/info/sites/default/files/communication-digital-compass-2030_en.pdf.
- Conservative Party Manifesto, 2015.
- Conservative Party (2015), *The Conservative Party Manifesto 2015*, <https://www.theresavilliers.co.uk/sites/www.theresavilliers.co.uk/files/conservativemanifesto2015.pdf>.
- Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C326/47
- Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance).
- Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.
- Cram L. (1993), *Calling the Tune Without Paying the Piper? Social policy regulation: the role of the Commission in European Community social policy*, "Policy & Politics", vol. 21, no. 2, April, pp. 135–146.
- Deutsche Welle (2016), *Germany blocks Aixtron sale to China's FGC*, 24 October.
- Die brauchen den zweiten Schuss, Gespräch mit EU-Binnenmarktkommissar Thierry Breton*, "Der Spiegel", 10.04.2021, p. 27.
- Drozdiak W. (2020), *The Last President of Europe. Emmanuel Macron's race to revive France and save the world*, Public Affairs, New York.
- EC Press Release IP/08/1642, *State aid: Commission agrees on terms for recovery of aid granted to Polish shipyards in Gdynia and Szczecin and conditions for viable future activities*, Brussels, 6 November 2008.
- Eisner M. A. (1991), *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change*, University of North Carolina Press, Chapel Hill.
- Europa ist haarscharf an einer Katastrophe vorbeigeschrammt, Spiegel-Gespräch mit Bruno Le Maire* (2020), "Der Spiegel" 25, 13.06., pp. 90–92.
- Europe.eu, *European Union, Economy*, https://europa.eu/european-union/about-eu/figures/economy_en.
- Fella S. (2020), *New Labour and the European Union: Political Strategy, Policy Transition and the Amsterdam Treaty Negotiation*, Routledge Revivals.
- Fichtner U., *Die Beste aller Weltmächte*, "Der Spiegel" 4, January 22.
- From Brexit to Brangst: German business leaders fear Brexit could lead to a less competitive Europe*, "The Economist", July 4, 2016.
- GAIA-X: The European project kicks off the next phase* (2020), Federal Ministry for Economic Affairs and Energy (BMWi) Public Relations 11019 Berlin, June.
- Gowland D. (2017), *Britain and the European Union*, Routledge, London.
- Grauwe P. D. (2016), *Economics of Monetary Union*, Oxford University Press, New York.
- Greenhouse S. (1989), *One Europe, but Many Airlines*, "The New York Times", 30 October, <https://www.nytimes.com/1989/10/30/business/one-europe-but-many-airlines.html>.
- Gugler K., Liebensteiner M., Schmitt S. (2017), *Vertical disintegration in the European electricity sector: Empirical evidence on lost synergies*, "International Journal of Industrial Organization", vol. 52, pp. 450–478, <https://doi.org/10.1016/j.jindorg.2017.04.002>.

- Hoffmann L. (2011), *Land of the Free, Home of the (Un)regulated: A Look at Market-building and Liberalization in the EU and the US*, A dissertation presented to the Department of Political Science and the Graduate School of the University of Oregon in partial fulfillment of the requirements for the degree of Doctor of Philosophy, September.
- Hooghe L., Marks G. (2009), *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*, "British Journal of Political Science", 39(1), pp. 1–23, DOI:10.1017/S0007123408000409.
- Jabko N. (2006), *Playing the Market: A Political Strategy for Uniting Europe, 1985–2005*, Cornell University Press, Ithaca.
- Judt T. (2005), *Europe vs. America*, "The New York Review of Books", February 10, <https://www.nybooks.com/articles/2005/02/10/europe-vs-america/>.
- Judt T. (2006), *Postwar: A History of Europe since 1945*, Penguin Group, New York.
- Juncker J-C. (2015), *State of the Union 2015: Time for Honesty, Unity and Solidarity*, 9 September, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_15_5614.
- Kershaw I. (2018), *Roller-Coaster: Europe, 1950–2017*, Allen Lane, London.
- Khan L. (2017), *Amazon's Antitrust Paradox (January 31)*, "Yale Law Journal", vol. 126, <https://ssrn.com/abstract=2911742>.
- Khan M. (2017), *EU ministers agree to tighten rules on migrant workers*, "Financial Times", October 24.
- Lagarde Ch. (2019), *An overhaul of the international tax system can wait no longer*, "Financial Times", March 10.
- Laitenberger J. (2017), *Director-General for Competition, European Commission, Enforcing EU competition law: Principles, strategy and objectives*, Fordham University, 44th Annual Conference on International Antitrust Law and Policy, New York City, 15 September, https://ec.europa.eu/competition/speeches/text/sp2017_11_en.pdf.
- Le programme d'Emmanuel Macron pour l'Europe* (2019), <https://en-marche.fr/emmanuel-macron/le-programme/europe>.
- Leali G. (2021), *France shields Carrefour from takeover in food security battle*, Politico.eu, January 15, <https://www.politico.eu/article/france-carrefour-takeover-food-security-battle/>.
- Letter from the ministers of France, Germany, Poland and Italy to the competition commissioner Margrethe Vestager regarding the competition policy*, February 2020, <https://www.politico.eu/wp-content/uploads/2020/02/Letter-to-Vestager.pdf>.
- Lever P. (2017), *Berlin Rules: Europe and the German Way*, I.B. Tauris, London.
- Levinson M. (2020), *Outside the Box. How Globalization Changed from Moving Stuff to Spreading Ideas*, Princeton University Press.
- Mair S., Strack F., Schaff F. (eds.) (2019), *Partner and Systemic Competitor – How Do We Deal with China's State-Controlled Economy?*, Federation of German Industries (BDI), 10 January.
- Matthijs M., Parsons C., Toenshoff C. (2019), *Ever Tighter Union? Brexit, Grexit, and Frustrated Differentiation in the Single Market and Eurozone*, „Comparative European Politics” 17 (2), pp. 209–230.
- McCraw T. K. (1984), *Prophets of Regulation: Charles Francis Adams; Louis D. Brandeis; James M. Landis; Alfred E. Kahn*, Belknap Press, An Imprint of Harvard University Press.
- McNamara K. (1998), *The Currency of Ideas: Monetary Politics in the European Union*, Cornell University Press, Ithaca, NY.

- Meunier S., Mickus J. (2020), *Sizing up the competition: explaining reform of European Union competition policy in the Covid-19 era*, "Journal of European Integration", 42:8, 1077–1094, DOI: 10.1080/07036337.2020.1852232.
- Milward A. (2000), *The European Rescue of the Nation-State*, Routledge, London.
- Mody A. (2018), *Eurotragedy. A Drama in Nine Acts*, Oxford University Press, New York.
- Monti G. (2020), *Four Options for a Greener Competition Law*, "Journal of European Competition Law & Practice", vol. 11, issue 3–4, March–April, pp 124–132, <https://doi.org/10.1093/jeclap/lpaa007>.
- Odudu Okeoghene (2015), *Competition and Merger Law and Policy*, in: *The Oxford Handbook of European Union Law*, eds. D. Chalmers, A. Arnall, OUP, New York.
- OECD (1999), *Regulatory Reform in the United States. Enhancing Market Openness through Regulatory Reform*, Paris, p. 37.
- Ohlhausen Maureen K. (2016), *U.S.–E.U. Convergence: Can We Bridge the Atlantic?*, Remarks at the 2016 Georgetown Global Antitrust Symposium Dinner The Metropolitan Club 1700 H Street, NW, Washington, D.C., September 19.
- Philippon T. (2019), *The Great Reversal: How America Gave Up on Free Markets*, Belknap Press of Harvard University Press of Harvard University Press, Cambridge, massachusetts–London, England.
- Pike Ch., Carovano G. (2019), *Competition Law Under Fire: Responding to Competing Demands for Change in the Case of Price Parity Clauses and Loyalty Rebates*, September 1, CPI Antitrust Chronicle, <https://ssrn.com/abstract=3484905>.
- Pistor K. (2019), *The Code of Capital. How the Law Creates Wealth and Inequality*, Princeton University Press, New Jersey.
- Postal Service v. Flamingo Industries (USA) Ltd., 540 U.S. 736 (2004).
- President Jean-Claude Juncker State of the Union Address (2017), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165.
- Reuters (2020), *Germany tightens rules on foreign takeovers*, April 8.
- Rittberger B., Schimmelfennig F. (2006), *Explaining the constitutionalization of the European Union*, "Journal of European Public Policy", 13:8, pp. 1148–1167, DOI: 10.1080/13501760600999474.
- Robinson M. (2015), *Europeans Use Google Way, Way More Than Americans Do*, The Atlantic, April 15, <https://www.theatlantic.com/technology/archive/2015/04/europeans-use-google-way-way-more-than-americans-do/390612/>.
- Rodgers D. T. (1998), *Atlantic Crossings: Social Politics in a Progressive Age*, Belknap Press of Harvard University Press, Cambridge, MA.
- Rodrik D. (2018), *Straight Talk on Trade*, Princeton University Press, New Jersey.
- Rose A. (2000), *One Money, One Market: The Effect of Common Currencies on Trade*, "Economic Policy" 15, no. 30, pp. 7–45.
- Rourke K. O'. (2018), *A Short History of Brexit*, London, Penguin Group, London.
- Scharpf F. W. (2009), *The Double Asymmetry of European Integration – Or: Why the EU Cannot Be a Social Market Economy* MPIfG Working Paper 09/12 Max-Planck-Institut für Gesellschaftsforschung, Köln Max Planck Institute for the Study of Societies, Cologne November.
- Schmelzer M. (2016), *The hegemony of growth: the OECD and the making of the economic growth paradigm*, Cambridge University Press, Cambridge.
- Shafik M. (2021), *What We Owe Each Other: A New Social Contract*, Princeton University Press, New Jersey.

- Sherman Antitrust Act, *Britannica*, <https://www.britannica.com/event/Sherman-Antitrust-Act>.
- Sinn H.-W. (2017), *Für Deutschland ist der Brexit verheerend*, “Frankfurter Allgemeine Zeitung”, March 16.
- Statement of Brandeis, Hearings Before the Senate Committee on Interstate Commerce Pursuant to S. Res. 98, 62d Cong., 2d Sess., vol. I, at 1174 (1911)*, Quoted from: Mr. Justice Brandeis, *Competition and Smallness: a Dilemma Re-Examined*, 66 “Yale Law Journal” (1956), <https://digitalcommons.law.yale.edu/ylj/vol66/iss1/3>.
- Stiglitz J. E. (2019), *People, Power, and Profits. Progressive Capitalisms for an Age of Discontent*, W. W. Norton & Company, New York.
- The Future of the Welfare State. Shelter from the storm*, “The Economist”, March 6, 2021, pp. 16–18.
- The Postal Directives 97/67/EC, 2002/39/EC and 2008/6/EC.
- The Treaty of Rome*, 25 March 1957, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0023>.
- Tørslov T., Wier L., Gabriel Zucman (2018), *The Missing Profits of Nations*, NBER Working Paper 24701, National Bureau of Economic Research, Cambridge, MA, August.
- Van Middelaar L. (2019), *Alarums and Excursions Improvising Politics on the European Stage*, Agenda Publishing, Newcastle upon Tyne.
- Védrine H. (1996), *Les mondes de François Mitterrand: À l'Élysée, 1981–1995*, Fayard, Paris.
- Vogel D. (1997), *Trading up and governing across: transnational governance and environmental protection*, “Journal of European Public Policy” 4.4, pp. 556–571.
- Warloutzet L. (2016), *The Centralization of EU Competition Policy: Historical Institutional Dynamics from Cartel Monitoring to Merger Control (1956–91)*, JCMS: “Journal of Common Market Studies”, 54, pp. 725–741, DOI: 10.1111/jcms.12318.
- Zielonka J. (2006), *Europe as an Empire. The Nature of the Enlarged European Union*, Oxford: Oxford University Press.