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Theorising European Integration: revisiting neo-functionalism and testing its suitability for explaining the development of EC competition policy?

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Date of publication in the **EIoP**: 25 May 2007

Keywords: governance, integration theory, neo-functionalism, supranationalism, competition policy, European Commission, political science

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Abstract

When Ernst B. Haas presented neofunctionalism (NF) as the first theory of European integration in the late 1950s in his analysis of the European Coal and Steel Community his approach seemed both highly innovative and plausible. However, doubts were cast on its suitability following the apparent slow-down in integration in the 1960s and 1970s. Although neofunctionalism enjoyed a renaissance in the wake of the single market in the 1980s it is generally regarded in retrospect, that Haas's approach, although intriguing, was overambitious. Critics maintained that not only could neofunctionalism not fully account for member state preferences, but was in essence a theory of elite integration. Are these correct assumptions? Although no serious commentator on EU affairs endorses the 1950's definition of NF in its entirety it should not be dismissed so casually. Something was happening and radical and revolutionary advances were being in terms of supranational governance in specific policy fields as later generation of researchers advocated in the late 1990s. This article explores the evolution of competition policy against the backdrop of the neofunctionalist literature. Its purpose is twofold. It seeks to advance a stronger awareness of competition policy among regional integration theorists and secondly, to encourage more competition policy researchers to delve deeper into theories of European integration.

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Theorising European integration: Revisiting neofunctionalism and testing its suitability for explaining the development of EC competition policy? (*)

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European Integration online Papers (EIoP) Vol. 11 (2007) N° 3;
<http://eiop.or.at/eiop/texte/2007-003a.htm>

Date of Publication in **European Integration online Papers**: 25.5.2007

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1. Introduction [↑]

Academic research on European integration which is understood here as a process whereby policies are increasingly shaped and set at the European level and impact on national governments and wider civil society, has never been richer. Yet, criticism abounds (Haas, 2004) that much of this work (and particularly from British authors) is largely too empirical and adds little to the existing theoretical literature. Such seemingly dismissive assertions underestimate the amount and quality of the literature on European governance, the workings of the European Union (EU) institutions and the decision making processes, but nevertheless it is hard to dispute the claim. This article sets out specifically to theorise EU competition policy with reference to EU integration theory

So where and how do we begin to theorise EU policy making given the wide range of different aspects, levels and pillars of EU activity that require greater study, evaluation and explanation? There has certainly not been a shortage of suggested explanations and these come under a variety of headings and interpretations such as multi-level governance, international regime analysis, constitutionalization, the fusion thesis and policy network approaches. The usefulness of what might be deemed *en vogue* approaches is not explored here owing to space constraints but also because it is assumed that the starting point for any theoretical debate about the dynamics of EU integration should commence with recognition of the ‘two families of integration theory’ literature (Schimmelfenning and Rittberger, 2006), namely intergovernmentalism and supranationalism. Each of these families can be further sub-divided into two further strands that have seen intergovernmentalism spawn realist (Hoffmann, 1966) and liberal (Moravcsik, 1993) perspectives, while supranationalism has given rise to a rationalist and constructivist (Risse, 2004) interpretations. This article focuses on the second such family and assumes the readers’ familiarity with theoretical approaches before considering the appropriateness of neofunctionalism as a theory of regional integration.

It should be noted that it is very easy to get trapped in the old neofunctionalist versus intergovernmentalist dichotomy. It is not the intention of this article to be ensnared in this fashion and instead it opts to focus specifically on the attributes of neofunctionalism that remain ‘most insightful and helpful in understanding its (European integrations’) underlying dynamics’ (Schmitter, 2005; 265). This assertion holds much value and credibility and aptly fits a study of the evolution of EC competition policy. Three theoretical insights underscore the emergence and workings of this policy domain; the emergence of a puissant European regulator, the inescapable logic of European rules that came in time to impact on the shape and values of the national

competition regimes and the emergence of a supranational policy community. All are considered below.

In re-examining neofunctionalism this article rises to the challenge presented by Rosamund (Rosamund, 2005; 238) that scholars of the EU should routinely revisit the EU regional integration literature to understand the emergence of supranational governance with specific reference to neofunctionalism. He argues that although neofunctionalist thinking is all too often treated as a historical (and often identified as a faulty) foundation at explaining EU integration it still retains substantial resonance for EU scholars today. Schmitter (Schmitter, 2004:45) maintains that 'real-life neofunctionalists may be an endangered species, but neofunctionalist thinking turned out to be very much alive, even if it was usually being re-branded as a different animal'.

This article explicitly re-explores the writings of Ernst B. Haas. Haas' seminal work on 'The Uniting of Europe' (Haas, 1958) is the obvious starting point and is in essence a historical institutionalist theory of organisational evolution and change that developed from Mitrany's earlier works (Mitrany, 1943) on functionalism. Neofunctionalism is very much a reflexive theory that has been developed and refined over time. The strength of a more modern neofunctionalist inspired interpretation (see Sandholtz and Stone-Sweet, 1998; Stone-Sweet and Fligstein, 2001) that centred its attention on greater transactional exchanges lay in its simplicity and testability. Neofunctionalism itself espouses a transformative ontology in that it is assumed that both the actors and the games that they play will change significantly during the integration process itself.

Explaining and forecasting the pace and scope of regional integration proved much more complex than its initial proponents actually imagined. Of course, member state interests and preferences were not always going to coincide or fit easily alongside each other given the distinct regional, cultural and political settings. However, a closer examination of specific policy areas sheds much light on discussions about theorising the EU's evolution, the reflexive nature of the theory and its ontology. For many observers fewer areas of European public policy may seem as initially unexciting as competition policy, but few policies hold as much promise and tell us more about the processes and depths of European integration. Competition policy represents one of the best examples of supranational governance where exclusive competence has been delegated by the member state governments to the supranational actors and as such is an area where neofunctionalist predictions are most likely to be confirmed. Paradoxically competition policy remains one of the least explored policy areas in the political science literature. It represents a central feature of the entire project and is one of the EC's oldest policy competences; its operations and rationale lie at the very heart of the idea of a genuine single market; it also represents one of the largest areas of EC law and offers the best example of supranational regulation in action in so far as the principal decision maker is the European Commission. Studies of this policy have been dominated overwhelmingly by the disciplines of economics and law, but it is impossible not to deny an emerging literature on competition policy from political scientists. This has covered the evolution and policy activities of the EU regime and specific aspects such as cartels and state aids (see amongst others, Bulmer, 1994; Cini and McGowan, 2008; Featherstone and Papadimitriou, 2006; McGowan, 2005 and Wilks, 2005).

All provide very rich accounts of this more complex policy domain. The one area, however, that had been generally less developed by competition policy enthusiasts (see Büthe and Swank, 2005) has been the theoretical dimension. It should be emphasised from the outset that this article is not aiming to explore the economic theories behind the benefits of ensuing competition (see instead Motta, 2004), but rather an investigation of competition policy against the backdrop of EU integration theory. The article considers policy development from the EEC Treaty onwards but the author's primary interest and the empirical data focus on the period after 1990. A theory should be capable of asking meaningful questions about a given object (Rosamund, 2005; 238) such as in this case why competition rules were delegated to the EU level; why did they become more powerful than the domestic rules; how do we account for the policy's expansion, the added pressure for adaptation and change in existing member states and potential member states.

This article maintains that by bringing specific policies under the spotlight it should be easier to re-consider and recalibrate theoretical considerations. Much more is happening at the sectoral level that has and continues to facilitate further integration. Such policy arena analyses reinforce the potential power of spill-over and illustrate the shifting loyalties and expectations that have reinforced supranational regulation. By focusing on competition policy this article has a dual purpose. Firstly, it seeks to encourage researchers of EC competition policy to come

up with more theoretical insights that will facilitate the understanding of why sectoral integration occurs most dramatically in the area of regulatory policy making and secondly, to reinforce the centrality of competition policy as a major area of EU activity to those researching regional integration theory. At its core this article demarcates territories of validity of the neofunctionalist approach at a meso level of analysis. As such it advocates a recalibration of theory and argues that Haas' interpretation still holds analytical purchase as a mid range theory that is applicable to the dynamics and development of individual policy sectors. The article is now divided into three main sections. The first introduces readers to the key elements of supranational competition governance; the second isolates the key elements of neofunctionalist/supranationalist theory while the third considers the usefulness of this theoretical perspective and its application to competition policy.

2. The construction of supranational competition governance[↑]

From a European perspective the emergence of substantive competition policy frameworks is a post 1945 development that first took shape in both the United Kingdom (from 1948) and West Germany (from 1957) and gradually developed over the next three decades in other European states.⁽¹⁾ From the outset the adoption of competition policies reflected new thoughts on industrial structures and competitiveness and were influenced both directly and indirectly by the pre-eminent US competition model (initiated under the Sherman Act in 1890) that had been designed to ensure that economic power (largely in the shape of banks, oil, and railroad companies) was not concentrated in the hands of a few powerful trusts. At its core competition policy seeks to balance the perceived benefits of economic collaboration against the potential economic and political problems that could ensue from ineffective or non-existent competition.

The emerging domestic competition regimes in Europe may have differed slightly in terms of structure, institutional design and decision-making processes but they all shared the same objective of promoting competitive market structures and breaking up anti-competitive behaviour such as market-rigging, price-fixing cartels and abusive monopolies. All had been an endemic feature of the European business environment for the first half of the twentieth century. Such anti-competitive activity was deemed to thwart innovation, prevented the production of better quality goods and ultimately, cheaper prices for consumers. The effectiveness of the reach of these domestic competition regimes was an issue from the outset because many of the more dangerous anti-competitive acts were operating on a cross-border scale and effectively left the national authorities ill equipped to tackle them. Consequently this reality propelled both greater inter-regime co-operation and new modes of international competition governance. Competition policy assumed central importance in the European regional integration process early on and found reflection in both the objectives of the European Coal and Steel Community of 1951 and the European Economic Community Treaty of 1957 (Cini and McGowan, 2008). Article 3(g) EEC explicitly declares that competition should not be distorted in the common market while the substantive objectives are spelt out in Articles 81-90.⁽²⁾

Set within the context and ambitions of a custom's union it would have been simply counter-productive to dismantle trade barriers between the Member States if private industry had been allowed to remain free to engage in cartel-like restrictions on competition. The realisation of a truly integrated market and flourishing intra-EU trade could only be ensured if the market place were actually policed. It rapidly became clear that some form of institutionalised control at the supranational level was vital to secure competition discipline. The Commission was selected by the Member States as the principal competition agent and was equipped (under Regulation 17 of 1962) with exclusive powers of investigation (including the infamous 'dawn raids') into suspected violations of the EU competition rules. It was empowered to codify, exempt and impose ever higher fines on offending firms. In effect, the Commission operates as an autonomous and quasi-judicial competition policy making institution and has the simultaneous roles of investigator, judge, jury and executioner. Only the European Courts possess the power to overturn formal Commission decisions but such overrules are rare though when they do occur dramatic. This nascent European regime laid the basis for the development of a competition policy that was constructed on increasingly shared norms and values and gradually helped to disseminate a competition culture among competition authority officials and the legal community throughout the Community and beyond.

The EU rules themselves extend over five substantial areas: These target firstly the endemic existence of cartels and restrictive practices (such as price-fixing and market-sharing agreements) under Article 81; mergers and

concentrations (see Navarro et al., 2006); abusive monopolies (see the ongoing case against Microsoft) under Article 82 and efforts to inject greater competition into the public utility sectors such as telecommunications and energy (under Article 86) respectively. All four areas bring the Commission into direct dealings with the business world, but uniquely (in competition enforcement terms) the fifth area which centres on the granting of state subsidies (under Articles 88–90) involves direct contact with member state governments. This area has arguably proven the most contentious aspect of the EU competition brief for some member states as its pursuit is often deemed to challenge national industrial policy considerations.

This short overview of EC competition policy has sought to identify the construction of supranational competition governance. A puissant and prestigious supranational competition regime now exists and exerts its influence and power on companies and member state governments. In retrospect over the course of the last twenty years from the mid 1980s the actual policy regime has changed out of all recognition. The transformation owes as much to a changed economic thinking and the accumulation of an ever expanding case law which generated a self-reinforcing dynamic as it did to the growing maturity of DG Competition and its ability to attract very high calibre recruits. These developments were further facilitated by a succession of very capable competition commissioners (Peter Sutherland, Leon Brittan, Karel van Miert, Mario Monti and the current incumbent, Neelie Kroes). The EC competition policy regime is locked in a process of ongoing evolutionary expansion that can be explained through transactional exchanges and pressures on member state governments.

That said, the EU competition regime has always had its detractors who have pointed to the faults within this system such as delays in dealing with cases, a lack of transparency, little legitimacy, too much politicisation and at times being too dogmatic. The Commission noted such concerns and overhauled the competition machinery in the most comprehensive reforms to the handling of both cartels (McGowan, 2005) and mergers from May 2004. In short, these changes were designed to modernise and decentralise the EU competition regime whilst developing much closer contacts with the national authorities through the creation of the European Competition Network.⁽³⁾ In practice these reforms have reinforced the realities of supranational governance and effectively created what amounts to a federal regime where the Commission is located very much as the hub of activities where as far as intra-EU state competition issues are concerned. This article argues that existing neofunctionalist theory provides insights and aids our understanding of such policy development?

3. Distilling neofunctionalism [↑]

Neofunctionalism was devised as an attempt to account for the political regional integration process that emerged in its unique form in Western Europe in the 1950s and simultaneously to challenge the dominant international relations (IR) and realist accounts of inter-state co-operation. Regional integration in Western Europe was identified as a process where states ceased to be wholly sovereign, and where they entered voluntarily into arrangements with their neighbours to establish new forms of engagement and new techniques for resolving conflict between one another. For neofunctionalists the available evidence as manifest in the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the EURATOM treaties seemed to suggest that the nation state was becoming redundant as an authoritative source of governance. In this European laboratory powers and sovereignty were being transferred from the nation states to a set of supranational institutions. Supranationality appeared to offer a new and definitive answer to resolving conflict and the beginnings of a new Europe. Yet, was it a template for other advanced countries and what were the dynamics pushing the process onward?

The success of any theory depends of course to a great degree on the degree of predictability and Haas's general account of the ECSC's development seemed a very convincing explanation to account for developments in the 1950s, but with hindsight seemed unsuitable for explaining the very changed atmosphere and slowing down of the European integration project in the 1960s and the 1970s (Nye, 1971; Hoffmann, 1966). It should be recalled that Haas's work was designed as a comparative exercise in regional integration theory and the absence of any form of direct comparison to test the theoretical positions put into question from the very outset its use as a general theory. Even Haas (Haas, 1975) came to question his own hypothesis and declared it on several occasions in the 1970s as obsolescent.

Should neofunctionalism be regarded as a dated although a highly intriguing starting point for those researching and teaching EU studies or does it have more to offer? To answer this question it is necessary to return to Haas's neofunctionalism itself? The groundwork for Haas's work has been well traversed since by a number of leading authors and highly influential texts (see for example the articles by Moravcsik, Rosamund and Schmitter in a special edition of the *Journal of European Public Policy*). For these reasons this article neither attempts to rehearse nor to provide a resume of the history and developments in the thinking and fortunes of neofunctionalism but rather aims to highlight some of the more salient features of this general theory of regional integration which will then be applied to the EC competition policy regime.

Haas and his adherents posited a social scientific mindset into their studies of European integration. Put simply they agreed intellectual precepts that provoked a rigorous approach to the construction of theory. They sought to seek to understand what and why things were happening, rather than just seeking to provide descriptive accounts. Neofunctionalism rests on two inter-related claims. The first maintains that integration occurs when organised economic interests pressure governments to manage economic interdependence by centralising policies and creating common institutions. To this end neofunctionalists identified economic transactions and welfare needs as the real source pushing positive inter-state co-operation (O'Neill, 1996) and common endeavours. The second core argument stresses that any initial decisions to integrate in the above fashion produces, and unintentionally, both economic and political spill-overs that push regional integration forward. Whereas the first is generally accepted and raised immediate questions about exactly who was pushing whose and which interests the second assumption has proved much more controversial (Moravcsik, 2005; 352).

In short, neo-functionalism brought notions of social pluralism centre stage and advanced spill-over as a leading dynamic in furthering the integrative process. These two issues are critically important to understanding the explanatory logic of this theory. Neofunctionalism shifted investigative attention away from national executives and towards the significance of organised groups and their dynamics. It placed its emphasis on the principal agents of change which were identified primarily as technocratic elites, politicians, supranational interest groups and other lobbies. It was assumed that these actors pursued their own interests and in doing so provided the dynamics for further integration. According to Haas 'political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result is a new political community, superimposed over the existing ones' (Haas, 1958: 16).

The existence of such supranational activity was understood to unleash a self-reinforcing dynamic that culminated in further and deeper integration. This dynamic process was labelled as spill-over and is without doubt the most widely recognised aspect of neofunctionalism. It was devised to explain the transformative changes that were occurring in Western Europe. Haas clearly attributed an expansive logic to the process of European integration (Haas, 1968; 283-317) but did his analysis hold? Moreover, Haas and Lindberg both assumed that the spill-over process was not only expansive but also irreversible as member state governments found themselves increasingly under pressure to delegate more power and responsibility to the regional institutions. Were these claims accurate?

Developments in the 1960s and the 1970s suggested that this attempt at a general theory of integration was unsuitable and in the EU context misguided. It seemingly could not account for the De Gaulle years, the primacy of national preferences and the Commission's seeming retreat in the face of growing member state resistance. Works on neofunctionalism at the time responded to such criticism by developing the spill-over concept further and sought to provide greater clarity by identifying different types of spill-over (Schmitter, 1969; Transholm-Mikelsen, 1991) and provided new concepts such as spill-back.

Technical/Functional spill-over predicted that co-operation between countries on certain sectors of the economy can trigger sequential co-operation (both intended and unintended) in other related areas. Some of the best illustrations centre on the aftermath of plans to complete the single market project enshrined in the Single European Act in the late 1980s and sparked renewed interest in neofunctionalism. It should be noted that spill-over was not promoting a European solution for idealistic reasons, but rather a desire by the actors to enable and ensure harmonious policy development across the EU. The pivotal idea being put forward by Haas and his initial successors (see Lindberg, 1963) centred on the suggestion that spill-over became an automatic response.(4)

Political spill-over was deemed to take place when such co-operation empowered supranational officials to act as informal political entrepreneurs in other areas (Moravcsik, 2005; 352) and led member state governments to delegate further powers to these actors. Political spill-over was also deemed to affect the loyalties of key political actors at the member state level. In other words it was possible to see a reaction to integration from essentially interests groups and bureaucrats and other domestic actors who began to direct their expectations and operations to the supranational EU level of decision making. This concept was initially deployed by Haas to explain the process whereby the expectations of societal actors changed to the degree that they opted for more and deeper integration. It was generally held that specific elite actors would pursue more supranational integration and to serve their own interests. Put simply, 'as the process of integration proceeds, it is assumed that values will undergo change, that interests will be redefined in terms of regional rather than purely national orientation as that the erstwhile set of separate national group values will gradually be superseded by a new and geographically larger set of beliefs' (Haas, 1958:13). It is plausible but why would such aims and aspirations target the European level? What today can be considered soft rational choice, that is open to changing ideas and values, is an intriguing one. It should be emphasised, however, that this notion had not been explicitly outlined in the 1950s, but in his last works Haas considered neofunctionalism as an approach to community building and moved closer to constructivist thought which allowed for greater use of such vocabulary to account for changing values and the evolution of expectations.

Cultivated spill-over placed its emphasis on the institutional interchanges between the EU actors and their ability to influence and actually advance the process of European Integration. Stone-Sweet, Sandholtz and Fligstein (SSF) have produced some of the most recent influential works here and their theory of supranationalism emerged as a refined and very welcome form of neofunctionalism in the late 1990s. Unlike the early proponents of neofunctionalism these authors were less convinced and more highly critical of the automaticity of integration, though they accepted that once it has commenced it was irreversible and also the uni-directionality of the early neofunctionalist literature. SSF adopted a rationalist approach that did not dispute the reality that governments are the key actors in the integration process. This was largely self evident. However, they argued correctly that member state governments are only part of the EU equation and in order to understand the origins and development of the EU it was necessary to consider and explore the activities, agendas and motives of both the EU's supranational institutions and their interplay with a series of non-governmental (private, public and consumer) groups. This approach placed a clear distinguishing feature between the proponents of supranationalism and the assertions of intergovernmentalists. In this regard it is important to appreciate the transactionalist roots of this supranational governance model (and not just its intellectual pedigree) and its focus on demand led integration. This particular argument was illustrated with the development of their continuum of governance in the European Union that measured movement between the two extremes of intergovernmental and supranational politics. The exact placing and movement on this continuum was calculated through consideration of three interrelated dimensions namely existing EC rules, EC organisations and governmental structures and the degree of transnational (read NGO) exchanges.

A final aspect of spill-over necessitates consideration of a geographical dimension that centres on the degree to which the EU has impacted on non-member states and how such states have altered their domestic systems to comply either voluntarily (e.g Norway) or been coerced (accession states) to adopt EU rules and norms. It should be noted however that neofunctionalism in its original format had nothing to say about enlargement.

In retrospect no other theory of regional integration according to Schmitter (Schmitter, 2004; 45) 'has been as misunderstood, caricatured, pilloried, proven wrong, and rejected as often as neofunctionalism'. What is it and what are its characteristics? Supranationalist approaches all share a transformative ontology in so far as they maintain that the international system is not in any way as anarchical as intergovernmentalists maintain. Rather stability and order are secured and transformed through processes of institutionalization and identity changes (Schimmelfennig and Rittberger, 2006; 84). Leaving aside any overall assessment of its use as a general theory at this stage it is important to stress that it left its mark on EU integration theory and its focus on the role of actors certainly broke the state centric analyses from IR experts. Neofunctionalism maintained its explanatory power and discussions of spill-over became more 'refined (Rosamund, 2005:250) to the extent that it became associated with explanation of how actors engineer greater mutual interdependencies'.

The neofunctionalist approach was always particularly seductive because it seemed both dynamic (in seeking to account for political transformation over time) and predictive (to explain further advances in integration as an endogenous consequence of initial integration) in its scope. However ‘visionary’ neofunctionalism has been open to criticism from the outset and doubt has continually been cast on the usefulness and fallacies of grand theorising and the applicability of neofunctionalism as a theory of integration. In particular, Moravscik has repeatedly argued that neofunctionalism is not a theory but essentially a framework of unrelated claims. It was too ambitious and its plausibility was severely undermined empirically when events in the 1960s and 1970s did not follow the projected path. However, the greatest criticism of neofunctionalism has questioned the theoretical underpinnings of this approach. Moravscik has described this framework as ‘over-ambitious, one-sided and essentially unfalsifiable’ (Moravscik, 2005; 352). He argues that it had ‘sought to explain long-term dynamic change without micro-foundational theories of static preferences, bargaining and institutional delegation – an effort that proved empirically and theoretically futile...it (neofunctionalism) is simply meaningless’ (Moravscik, 2005; 350). He went further and argued that neofunctionalism has been too geared towards analysing endogenous causes instead of providing a consistent account of exogenous factors. In his view neofunctionalism no longer provides a suitable framework to address the study of European integration as ‘beyond incremental changes in policy, it is difficult to imagine functional pressures, institutional pressures, or normative concerns upsetting the stability of the basic constitutional equilibrium in Europe today’ (Moravscik, 2005; 351), but is his approach correct or is he simply being just too dismissive?

Was the EU becoming a supranational state? On the one hand the nation states remain very much an integral and established aspect of contemporary Europe and show little sign of allowing themselves to be unwillingly absorbed into any supranational order and indeed, their member state governments have accorded themselves greater leverage in the integration process through the European Council. On the other hand the European Union has undergone a process of ongoing evolution and expansion in terms of both members and competences though in nothing like the trajectory that early neofunctionalism suggested. However, observers of the regional integration process should pay careful attention because although a supranational government does not exist there are clear and successful examples of supranational governance at work and their operation has impacted upon institutions, mindsets and other connected policy developments.

The EU puzzle becomes one of identifying and explaining when, where and why national governments are prepared to delegate powers to the supranational level and thus, facilitate the ensuing spill-over? The puzzle, however, can be unlocked policy area by policy area and competition policy is no exception (Cini and McGowan, 2008). How far did EU institutions and non-governmental organisations play a leading role in developments? Did delegation to the EU level only occur in areas of ‘low politics’ and did the wider public care? The only genuine way of testing NF’s theoretical assertions is to explore a sectoral area and then to see how this policy area developed and came to impact on other policy areas. This article has identified four core questions that surround and measure the suitability of neofunctionalism as a coherent theoretical explanation for the process of ongoing regional integration in Europe. Can we define and identify a superimposed community? How far and where do notions of loyalty transfers occur? Did the tenets of NF ‘fail’ in the 1960s and 1970s to predict integration as is so often portrayed and does the concept of spill-over have any use? These three issues are developed with specific to European competition policy.

4. Can neofunctionalism account for supranational competition governance? [↑]

The creation of the EEC in 1958 shifted the focus of regional integration to a wider agenda than just coal and steel towards the eradication of all internal tariffs, the realisation of a common subsidised agricultural sector, the search for a transport policy and the construction of competition rules. Haas openly admits (Haas, 2004; xiii) that ‘social scientists were less interested in the substantive activities and achievements of these organisations than in the theories seeking to explain the success of regional integration’. Did such an emphasis prevent actual recognition of some real and significant steps in economic and political integration? It seems so. The EEC Treaty clearly recognised competition policy as much a means to promote European integration, as it was to secure economic growth and protect consumer welfare. The competition provisions proved largely uncontroversial given that most

member states had limited direct experience of any similar domestic legislation, but proved to be particularly revolutionary in both design and method.

4.1. The emergence of a superimposed community [↑]

For many commentators EC competition policy may represent a highly technical and complex aspect of ‘low politics’ but it offers one of the best and most advanced illustrations of the European integration process and the emergence of a distinct European model of governance that came to shape norms and values across EU space and beyond. The key to the policy’s success and its resonance for theoretical interpretations rests on how well or badly and who handles and implements policy decisions. By delegating responsibility for competition issues to the Commission and the Court of Justice the founding six member states had created (through Regulation 17/62) a fledgling supranational system that over time came to impact on the activities of both business and the member states themselves (in relation to state aids). Some might argue given this context that neofunctionalism differs little from realist intergovernmentalism, but any such interpretation misses the realities underpinning not merely the day to day functioning and decision making capabilities of the supranational actors but also the potential of spill-over on the evolution of competition policy. In effect, the Member states had established a superimposed community of bureaucrats and lawyers whose decisions came to influence and determine policy approaches at both national and supranational levels.

Indeed, once created the supranational competition regime started to develop its own dynamics and trajectory as Cini and McGowan illustrate with the history of DG COMP’s development (Cini and McGowan, 2008). It may have spent its first two decades as an administrative backwater of Commission activities but this should not be in any way surprising. The European competition regime needed time to bed in, understand and appreciate both its powers and capabilities and realise its potential for development. Most significantly of all, however, it had to learn and watch how its views and judgements were interpreted by the Court of Justice (and after 1989 the Court of First Instance) and it took time for a substantial case-law to emerge. Incremental steps towards ever closer regional integration were certainly expected but could not be rushed. All the DGs needed time to develop. This temporal issue in relation to public policy development is all too readily overlooked in academic writings and particularly in neofunctionalist accounts. The narrative of the EU’s development in the 1960s most often suggests a slowdown (i.e. European integration actually spilling back rather than spilling over) and has helped some authors to write off the explanatory ramifications of neofunctionalism. Does and can this view apply to the EU as a whole or do we need to be more unambiguous in our analysis and differentiate between the emergence of new treaties, decision making processes and specific policy areas?

The evidence should be examined a little more closely for on the ground developments were occurring simultaneously to de Gaulle’s strive to secure and protect member state sovereignty. New treaties (in 1970 and 1975) assigned budgetary powers, for example, to the EU, new policy areas were transferred to the European arena (for example, fisheries and the environment) and new states joined the European Union. In the field of competition a new Directorate General for competition was developing and throughout the 1960s and 1970s was slowly accumulating experience and a growing case law while also developing norms and values that were being disseminated within the Commission and the wider competition policy community. The development and dynamics of EC competition (or for American readers, anti-trust) policy is all too often ignored in the narrative let alone the theoretical literature on the EU. Moravscik’s excellent discussion of neofunctionalism just mentions the term twice!

4.2. Transferring Loyalties [↑]

Haas had very much developed his spill-over thesis on changes in the attitudes and behaviour of governments, political parties and the NGO world, especially trade unions and business organisations. He advocated that ‘group pressure will spill over into the federal sphere and thereby add to the integrative impulse’ (Haas, 1958: p.xiii). Competition policy responded in exactly this manner. It was being driven primarily by the Commission’s staff within DG COMP and came of age in the 1980s on the back of a neo-liberal agenda to secure greater European competitiveness, as a corollary (though not an actual named part) of the single market programme and the zeal of a succession of very able Competition Commissioners and Director Generals. In short, individual personalities,

the role of the courts and economic thinking of the time all facilitated DG Competition's rapid emergence (by the end of the 1980s) as one of the three leading DGs within the Commission. DG COMP's actual 'metamorphosis' (Wilks, 1992) strengthened its determination to push the notion of competition into the more sensitive areas such as public utility liberalisation and state aids and to intensify its drive to pursue abusive monopolies. The author has attempted (using the earlier and revised templates assessing EU competences devised by Schmitter and modified by both Pollack and Hix (Schmitter, 1996; Pollack, 2000 and Hix, 2005)) to illustrate the incremental development of DG COMP's policy brief from primarily an initial focus on cartels to a much wider coverage over time that today includes the other four core aspects of monopolies, mergers, liberalisation and state aids. Space limitations prohibit discussion of each of these regimes (and readers are encouraged to see Goyder, 2004; Cini and McGowan, 2008).

For these reasons this article casts doubt on existing intergovernmental interpretations of EU integration (Hoffmann, 1966; Millward 1993) that supranational institutions will always remain weak because they lack sufficient resources and popular support to expand their powerbase. The exact opposite can be the case. The EU competition policy regime certainly was deficient in both, but nevertheless over the course of a few decades DG Competition made the best use of its limited staff (which totalled some 411 in the early 1990s and 650 in 2005) and was constantly seeking innovations and devising a number of measures (such as the imposition of ever higher financial levies for infringing the competition rules or instigating leniency programmes to encourage whistle blowers to inform the Commission of cartel activity) to facilitate faster case investigations and to focus the day to day workload of its staff on the more pressing cases. Notions of political spill-over are particularly applicable in this instance as the supranational officials became informal political entrepreneurs and made the case for the member state governments to delegate further powers

The 2004 reform packages that came into effect with reference to both DG COMP's handling of cartels and mergers need to be recognised as part of a long process of deliberation between the Commission and the Member States. The reforms simply anchor the supranational character of competition governance. Developments have reflected neofunctionalist theories in so far as the ethos of the EU competition regime had gradually begun to impact on member states and the EU brand or model came to replace existing domestic laws. The convergence process was recognised by the recent changes and national authorities are now in a position to investigate cases using only the European rules and have created a genuine multi-level system. Any assessment of EC competition policy unmask a reality where the European Commission emerged as a highly credible, autonomous and quasi-judicial and policy making institution that wields substantial power on both private businesses and member state governments. Its activities, operations and decisions have often proven contentious and the Commission has responded to such criticisms with regular internal restructuring and revised procedural initiatives. Part of DG COMP's success owes much to the recognition, acceptance and demands placed on it by principally the business community for a European response and anchor. The Commission has also sought to disseminate greater information to the public on why it pursues competitive conditions and how such outcomes benefit the consumer. Few EU citizens may access, for example, the very impressive DG Competition website, but a brief exploration will reveal how, why and where the competition authorities have conducted their activities. Few can be unimpressed by the vast number of household names in a range of sectors (from Cadbury Schweppes to Carlsberg, from Sony to Nintendo, from British Airways to Air France and from Boeing to Airbus) that have fallen foul of the competition rules.

Alongside Commission officials an epistemic community (van Waarden and Drahos, 2002) of competition lawyers, economists and practitioners are constantly engaged in discussion and agreeing norms and values. They pursue their own distinct interests and expect that further supranational integration is to their benefit. In other words the Commission (and the Courts) provide political opportunity structures for other actors and ones that, if neofunctionalist logic holds, favour integration. Such links represent an integral part of EC competition governance. The interchanges occur on both the formal and informal fronts, are regularly debated at conferences (for example, the Competition Day conference that is now held under each EU Presidency), specialised competition policy/law conferences (as organised, for example by the American Chamber of Commerce in Brussels) and very much fit the mould of elite integration. This is exactly the engagement that would be expected given the technicalities of competition law and the economics behind competitive markets. It is argued here that an epistemic policy community of competition experts and professionals has entailed a real transfer of loyalty. It

is the EU competition arena and both norms and values that have come to shape decisions and influence mindsets across the European Union. Together these produce more efficient decisions but this reality poses further questions about the legitimacy not of the policy output itself but the legitimacy of the regulators to make and take such decisions. This issue extends beyond the remit of this particular paper. Instead it wonders whether an alliance of Commission and business interests within this epistemic community could impose their will on the member states and this, push integration forward as theory suggests?

4.3. Rethinking Advances in Integration [↑]

The deliberations over merger policy ultimately provide an irrefutable illustration of exactly how sufficient pressure could be exerted on the member states for further delegation of powers to the EU level. Responsibility for handling cross border mergers had been a notable omission from the EEC Treaty. In retrospect, this reality did not appear too puzzling at first as this particular weapon had also been excluded from the extent UK and West German laws until 1973 (McGowan and Cini, 1999; Wilks and McGowan, 1995). The Commission made its first proposal to the Council in this same year for the adoption of a European merger control regime, but without success. A further three proposals were likewise rebuffed by the member states, before agreement was reached in 1989. The substance of the fifth proposal was not in any way so radical from its predecessor and in any case the Council limited the Commission's powers to deal with only the largest mergers in the EU by opting for higher turnover thresholds.⁽⁵⁾ How then do we explain the merger control regulation? The answer lies in an alliance between the Commission and the business community. The latter had become increasingly concerned about the rules or the lack of them in some member states and the varying interpretations and approaches to mergers across Western Europe. Confusion abounded and it cannot be any co-incidence that the Court's ruling on Phillip Morris from 1987 (see Bulmer, 1994) heaped further bewilderment upon business circles about what was acceptable and unacceptable.⁽⁶⁾

Table 1

Business sought a level playing field and a one stop shop for proposed mergers and these concerns effectively compelled the more recalcitrant EU member states to buckle. This episode provides ample illustration of Haas's argument that regional integration was expected to take place when societal actors in 'calculating their interests, decided to rely on the supranational institutions rather than their on governments to realise their demands' (Haas, 2004: xiv). It was also assumed that this acceptance or need for supranational responsibility would strengthen the Commission's claim for legitimacy.

Indeed, if spill-over is conceived in terms of 'an expansive logic of sector integration' which implies a ramification (in Mitrany's sense) not only within a sector but more centrally between sectors, competition policy makes for a fascinating study.

Although the EEC Treaty had earmarked a range of anti-competitive activities from the very outset the Commission had placed most of its energies in its first few decades on restrictive practices. In contrast, progress was more limited in the case of abusive monopolies and DG COMP showed considerably more caution with the sensitive political area of state aids. It was not empowered to tackle concentrations and steered well away from the public utilities. However, the situation changed over time and by the mid 1980s competition regulation had come of age and DG COMP felt not only less reticent about dealing with state aids, but demanded and acquired responsibility for merger control. The new belief in competitive markets culminated in DG COMP pushing for greater demands for further steps at integration in other fields of economic activity, namely the state owned public utilities. DG COMP grounded its arguments on the much overshadowed Art 86 (ex 90 EEC) that referred to the need to inject competition into the public utilities as a means of making these member state bound companies open to competition and allowing them to innovate and expand on a European stage. Significant advances, as illustrated in [Figure 1](#) underscore the functional spill-over, into the once protected public utilities such as airline liberalisation and telecommunications and real progress has occurred in the provision and structure of the electricity and gas markets.

Figure 1

It would be both foolish and naive, however, to suggest that such developments were just the product of endogenous factors. It has to be recognised that there were other potential causal mechanisms and exogenous variables also at play. It was not at least the desire on the part of member state governments to maintain competitiveness with American and Japanese corporations who were investing in, and at the cutting edge of advances in bio-technology, communications and information technology in the 1980s and particularly, a widespread desire to overtake any possibilities of future dependence on non-EU companies. Competition policy became a vehicle towards this goal. The search for European and global players remains as strong as ever given the growing challenges from both China and India. The pressures on agricultural reform that culminated in the MacSharry and Fischler Reforms of the 1990s and the Luxembourg Agreement of 2003 more clearly illustrates the influence of the United States on policy development, but also the necessity from within some member states and parts of the Commission for a more market orientated approach. The crucial point, however, in both cases is the role and ability of the European regulators to push agendas forward and to argue the functional logic of such initiatives in the face of at least dogged resistance from several member states. It makes integration easier.

The growing conviction in the dynamics of the competitive process and (read here the logic of European governance) has also ushered in more recently sweeping changes to other utility sectors such as postal services and the banking and insurance industry. Yet, the controversial aspects of such horizontal developments cannot be hidden and specific initiatives have encountered significant opposition and resistance in some EU member states. The most publicised example found resonance in the dispute on the so-called Bolkestein directive in 2005/06 on the opening up of services to greater competition.

Finally, competition regulation also feeds directly into notions of geographical spill-over which occurs on two fronts. Firstly, the pull and potency of the EU rules resulted in voluntary policy convergence throughout mostly the 1990s among the EU15, but they also impacted on those states which either border the EU (e.g. Norway) or aspired to join the EU as membership became conditional on adopting the EC competition rules such as the newly acceded states of Central and East ern Europe. This coercive force certainly made its impact felt in Bulgaria and Romania (Musetescu, 2006) as it will in Croatia and Turkey. Growing cooperation extends to other competition authorities outside Europe and although it is still too soon to speak of policy convergence at the global level – as there are major differences – it seems a longer term possibility as norms and values are being shared and exported beyond Europe's borders.

5. Conclusions [↑]

Towards the very end of his life Haas posed the question of whether neofunctionalism was still relevant (Haas, 2004: xiii). Much depends of course on its purpose and predictability, but the overall balance sheet remains positive. Neofunctionalism was designed as an attempt to explain the European integration process of what amounts to a complicated political artifice. It would be asking the impossible for one theory to explain the origins and subsequent developments of this entire political system. Neofunctionalism endeavours to understand the variables that lead to regional integration while the emergence of an augmenting and abundant literature on Europeanisation (for example, Featherstone and Radaelli, 2003; Olsen, 2002) have sought to explain how this system has impacted among the Member States.

Originally neofunctionalism had assumed that integration would proceed almost quasi-automatically as demands for additional services intensified. Later Haas (Haas, 1975) identified this proposition as one of the theory's shortcomings and argued that in reality automaticity could not be assured and queried the value and existence of spill-over. Was the original theory so obsolescent? In retrospect such conclusions were too harsh and Haas himself came to re-evaluate his seeming misdiagnosis of the 1970s as integration surged further forward in the later 1980s. By this stage other authors had begun adapting Haas' original points. In particular, Stone-Sweet and Sandholtz (Stone-Sweet and Sandholtz, 1998) refocused consideration of an emerging European space that was bound by the institutionalization of legal rules and practices. These authors paid close attention to the supranational policy realms and the interplay between EU institutions and domestic interest groups. They adeptly illustrated how neofunctionalism (as originally conceived as being confined to economic sectors) had encroached into the sphere of 'high politics'. Haas duly acknowledged (Haas, 2004:xx) this reality.

When writing in the 1950s and the 1960s Haas and his early adherents had cast their large meshed nets too widely in an attempt to capture an entire process of regional integration and in the process had missed the policy areas that had much to reveal about the factors both causing, facilitating and pushing integration. Regional integration was certainly occurring but at a slower pace and not on the scale that Haas had imagined. Integration was an uneven process that simply varied from policy sector to policy sector. Spill-over was much more localised but it could be identified. The process of regional integration in Europe has always been about ongoing incremental growth and in this vein is reminiscent of Monnet's idea of creating Europe by stealth and 'little by little the work of the Community will be felt' (Monnet, 1978: 431). So is neofunctionalism still relevant?

This article suggests a recalibration of theory. If neofunctionalist accounts are no longer deemed to possess any adherence in terms of a macro theory of European integration, Haas' interpretation still holds analytical purchase as a mid range theory that is applicable to the dynamics and development of individual sectors (and mostly this applies to the policy areas outlined in the treaties and central to the realisation of the internal market). Significant steps in European integration cannot only be identified but have given rise to European governance whether the EU level holds exclusive competence (e.g the single currency, trade policy, fisheries policy) or shared competence with the Member States (e.g. environment, agriculture). To this end the supranational governance model developed by Sandholtz and Stone Sweet which identifies a continuum of European governance represents a logical development of neofunctionalism and is one in which all individual policy areas can be located.

If cultivated spill-over placed its emphasis on the institutional interchanges between the EU actors and their ability to influence and actually advance the process of European Integration then competition policy makes for a truly apt and fascinating study and one that should neither be ignored nor underestimated. The EC competition regime may have taken time to develop, but DG COMP's ascendancy from the mid 1980s onwards propelled an agenda that came to strongly influence and shape both thinking and approaches to competition within all branches of the Commission. In addition it not only successfully exported its ethos to both the EP and the European Courts, but also its practices, norms and values to the national competition authorities. Such developments in the EC competition arena tie very neatly into the concept of political spill-over. DG COMP and Commission staff have genuinely emerged as formal political entrepreneurs who have been able to advance the spirit of competition into the more state sensitive issues of state aids and public utilities. Ultimately, the EC competition regime's growing credibility among interest groups, consumer associations and other domestic actors ensured that expectations and operations were increasingly to the supranational EU level of decision making.

Efforts at explaining the evolution of EC competition policy find greater resonance among neofunctionalist (both old and new) accounts than other competing theories. This policy has life in terms of day to day decision making beyond the control of the member states. It is an area where the Commission, the European Courts and business associations are the key actors in determining policy direction. Of course, intergovernmentalists would argue that the European competition regime was establishment by member state agreement in the first place. This reality cannot be denied but the member state governments were simply responding to the necessities of making the most from economic integration and later to demands from the Commission, business groups and in time the national competition authorities for greater EU control and policy convergence. Moravscik's assertion that everything of importance that has happened in Western Europe since 1945 can be explained as results of decisions made at the national level is just too simplistic and is open to question. It may in part explain the creation of the EC competition regime but it is not a sufficient explanation of the ongoing evolution of competition policy. We also need to take account of the activist role played by the Commission and in particular, need to recognise the leadership role played by a succession of competition Commissioners in pushing this policy agenda forward as well as consideration of a number of exogenous factors.

The EC competition policy regime epitomises one of the best success stories of the regional integration process, but does it embody an exception or a prototype for other fields of supranational governance? The pursuit of competition policy is a rather distinct and unique arena of 'low politics' where decisions are determined by specialised regulatory (and often independent) agencies. The involvement of majoritarian institutions has been severely limited in an attempt to reduce the politicisation of policy but also on account of the technicalities of economic modelling and legal reasoning. Competition regulation lends itself to the development of supranational governance. Do 'low politics' domains remain the key to understanding the most advanced forms of regional

integration?

The degrees of incompatibility that exist between the EU and American competition regimes have not prevented the forging of closer links and led to mounting pressure for some form of global regime based around the World Trade Organisation. Competition regulation may emerge as the first example of genuine supranational, inter-regional and global regulation. To this end it may be best to regard progress in regional integration in the competition sphere as more of an exception given its very distinctive rationale and features, but a very significant exception that underpins the process of European integration and remains one of its more developed aspects.

Neofunctionalism can be applied and works best, as this study has shown, in the core aspects of the European economic integration process. This approach certainly maintains its value as an explanation and we can use the competition policy example to rebut criticisms of neofunctionalism's value. Ultimately, the entire issue of sectoral integration requires greater consideration and in turn opens up new avenues for research. Indeed, is it time for a complete recasting of neofunctionalism from a rather technocratic and state driven first version (comprising a form of neo-corporatist and peak level bargaining) to one which by the 1990s had assumed a much more market orientated version. Herein lies the success of neofunctionalist logic and competition policy serves as a perfect example. As such Haas' foundational neofunctionalist work remains an 'enduring but endangered legacy' (Schmitter, 2005; 267) and deserves much closer scrutiny and further elaboration once again. To conclude, this author strongly encourages researchers to consider its applicability in all the core areas of European integration.

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Endnotes [↑]

(*I would like to thank the two anonymous referees who supplied very welcome and constructive comments on an earlier version of this article.

(1) The framework for both these evolving competition regimes were laid down in the 1948 Monopolies Act and the 1956 Restrictive Trade Practices Act in the United Kingdom and the *Gesetz gegen Wettbewerbsbeschränkungen* (Law against restraints on competition) in West Germany.

(2) In the EEC Treaty this general objective was to be found under 3(f) and the articles pertaining to competition ran from 85 to 94. The numbering of the latter were amended under the 1999 Treaty of Amsterdam.

(3) The European Competition Network (ECN) was established to facilitate closer co-operation between the national competition authorities and the European Commission and to ensure an effective and consistent application of Article 81 and Article 82 of the EC Treaty. For further information on the ECN's functions see the Joint Statement at <http://register.consilium.eu.int/pdf/en/02/st15/15435-a1en2.pdf>

(4) Lindberg delineated the idea of spill-over very well in a very neat definition that saw a 'situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth' (Lindberg, 1963:10).

(5) The Commission automatically became the one stop shop for processing merger applications where the firms involved had an aggregate worldwide turnover of more than ECU 5 billion; where at least two of the firms involved had an aggregate EU-wide turnover of more than ecu 250 million or her at least two of the companies involved held more than two-thirds of its aggregate EU-wide turnover within one and the same member state.

(6) Basically, the *Philip Morris* case had begun with complaints made to the Commission by two tobacco companies, BAT Industries and RJ Reynolds, about an agreement between two of their competitors, Philip Morris and Rembrandt. This agreement not only gave Philip Morris control over one of Rembrandt's subsidiaries, Rothmans International, but also provided the company with first refusal on any future sale of Rothmans shares. Following an investigation, DGIV insisted that the agreement had to be altered. In Philip Morris's appeal, not only was the Commission decision upheld, but the ECJ also commented on Article 81's (restrictive practices) applicability to mergers. Article 81, it was stated, could be used if a concentration occurred as a result of agreements entered into between two or more companies. In other words, the ECJ affirmed that an agreed share transaction could be classed as a restrictive agreement under Article 81, thus giving the Commission the right to intercede in so-called 'friendly' mergers.

Table I

Tracing the Expansive Development of E(E)C Competition Policy*

	1957	1960s	1970s	1980s	1990s	2000+
Restrictive practices	0	1	2	3	4	4
Abusive Monopolies	0	1	2	2	3	3
Mergers	0	0	0	0	4	4
Liberalized Utilities (telecoms, energy, postal services)	0	1	1	2	4	4
State Aids	0	1	1	2	3	4

Scale Coding

0 = No EU Competence

1 = EU Competence but dormant

2 = EU Competence slowly developing

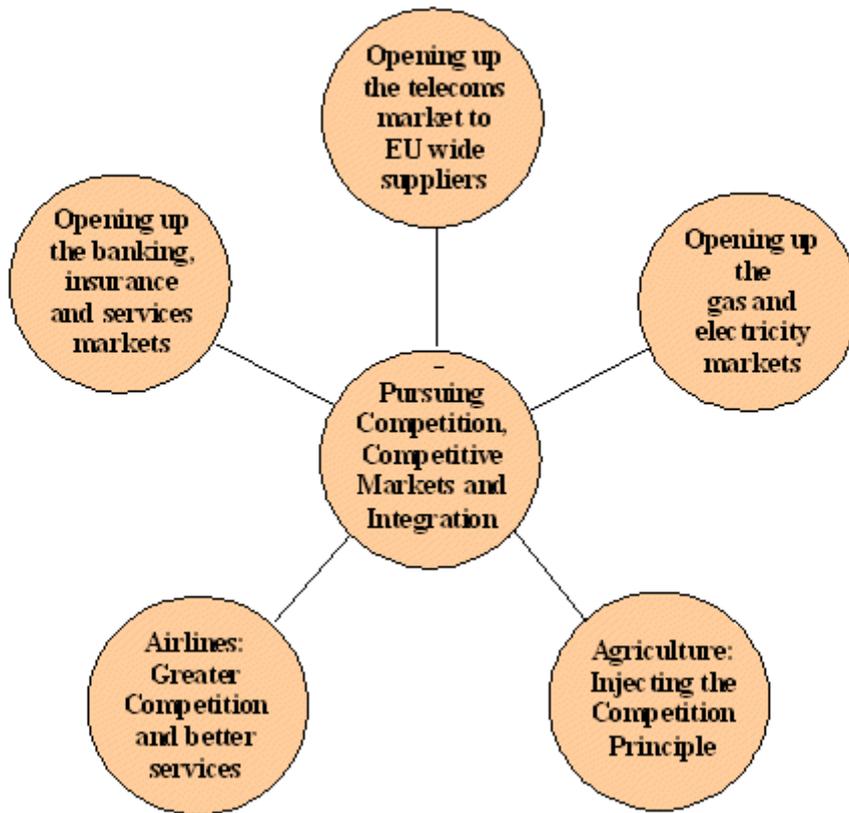
3 = EU Competence and active

4 = EU Competence and very active

*This table relates specifically to the competition policy provisions of the EEC Treaty and subsequent developments and deliberately excludes the competition provisions (Articles 65 and 66) under the (now defunct) ECSC Treaty in these more specific economic sectors. The coding reflects both institutional drive and activity and legislative and administrative changes to how each of the five areas were handled.

Figure 1

Competition Policy: Spilling over into other more sensitive economic sectors



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