Transformations of the State

CRC 597

TranState Working Papers

The Governance of Overlapping Jurisdictions. How International Cooperation Enhances the Autonomy of Competition Authorities

Michael Blauberger

No. 102

Universität Bremen • University of Bremen
Jacobs Universität Bremen • Jacobs University Bremen
Universität Oldenburg • University of Oldenburg

Staatlichkeit im Wandel • Transformations of the State
Sonderforschungsbereich 597 • Collaborative Research Center 597

Michael Blauberger

The Governance of Overlapping Jurisdictions

How International Cooperation Enhances the Autonomy of Competition Authorities

TranState Working Papers

No. 102

Sfb597 „Staatlichkeit im Wandel“ − “Transformations of the State“
Bremen, 2009
[ISSN 1861-1176]

Michael Blauberger
The Governance of Overlapping Jurisdictions. How International Cooperation Enhances the Autonomy of Competition Authorities
(TranState Working Papers, 102)
Bremen: Sfb 597 „Staatlichkeit im Wandel“, 2009
ISSN 1861-1176

Universität Bremen
Sonderforschungsbereich 597 / Collaborative Research Center 597
Staatlichkeit im Wandel / Transformations of the State
Postfach 33 04 40
D - 28334 Bremen
Tel.:+ 49 421 218-8720
Fax:+ 49 421 218-8721
Homepage: http://www.staatlichkeit.uni-bremen.de

Diese Arbeit ist im Sonderforschungsbereich 597 „Staatlichkeit im Wandel“, Bremen, entstanden und wurde auf dessen Veranlassung unter Verwendung der ihm von der Deutschen Forschungsgemeinschaft zur Verfügung gestellten Mittel veröffentlicht.

Deutsche
Forschungsgemeinschaft

The Governance of Overlapping Jurisdictions.

How International Cooperation Enhances the Autonomy of Competition Authorities

ABSTRACT

As a result of international legalization, the potential for conflicts of overlapping jurisdictions has multiplied – vertically between national and international law, as well as horizontally between national and foreign law. In competition control, the latter type of horizontal overlap between US and EU jurisdictions is significant, but very few conflicts actually occur. Rather than solving the underlying issue of extraterritorial jurisdiction, US and EU competition authorities have established a practice of cooperation which aims at preventing conflicts in the first place. Moreover, apart from conflict prevention, transatlantic cooperation significantly enhances the autonomy of competition authorities vis-à-vis politics, judges, and firms.

CONTENTS

The Governance of Overlapping Jurisdictions

How International Cooperation Enhances the Autonomy of Competition Authorities

INTRODUCTION[1]

International legalization, rather than substituting international for national law, creates a multiplicity of legal orders. As a result, conflicts of overlapping jurisdictions may occur vertically, between national and international law, as well as horizontally, between different national legal orders. The latter type of horizontal overlap is prominent in competition control where international legalization is characterized only marginally by the emergence of new international rules, but by an expanding reach of already existing national and European law beyond traditional territorial borders.

A number of high profile conflicts of horizontally overlapping jurisdictions between US and EU competition authorities have attracted intense scholarly interest during the past decade – e.g. the merger cases GE/Honeywell and Boeing/McDonnell-Douglas or the antitrust investigations against Microsoft (cf. Damro 2001; Chun 2002; Morgan and McGuire 2004; Grant and Neven 2005; Fox 2007). Most prominently, the emergence of conflicts is explained by different traditions of competition policy and divergent industrial policy goals. Given these differences and the broad jurisdiction of both US and EU competition authorities, however, we should be much more astonished that there are so *few* conflicts. Typically, transgovernmental networks that exchange information, cooperate in enforcement and prepare regulatory convergence are referred to in order to explain how conflicts are moderated or prevented (Friedberg 1990; Devuyst 2001; Raustiala 2002; Mehta 2003; Slaughter 2004: 174f.; Damro 2006b). Yet these explanations tend to neglect the *political* implications of international cooperation between competition authorities and their governance of overlapping jurisdictions.

International cooperation, this paper argues, significantly enhances the autonomy of EU and US competition authorities. If cooperation fails and competition authorities clash over individual cases, they become susceptible to external influence. Then, governments may try to intervene; firms can choose forums; and judges get the ultimate say in cases of conflict. By contrast, transgovernmental networking makes competition authorities institutionally more independent and allows them to privilege more clearly undistorted competition over other policy goals.

The argument will be developed in four steps: First, the general challenge of overlapping jurisdictions is described and the political implications of different strategies to

[1] I would like to thank Markus Krajewski, Tilman Krüger, Susanne K. Schmidt and two anonymous referees for their helpful comments on this paper.

deal with overlapping jurisdictions are emphasized. Subsequently, the field of competition policy is introduced and existing explanations of conflicts and cooperation between US and EU authorities are discussed. The main argument on the autonomy of competition authorities vis-à-vis politicians, judges and firms is elaborated in the following chapter. The conclusion summarizes the main findings of the paper and outlines routes for further research.

THE GOVERNANCE OF OVERLAPPING JURISDICTIONS

International legalization loosens the traditional link between territory and law (Raustiala 2006). While nation states are still defined along territorial borders, law is increasingly international or regional (e.g. European). International and European law hardly ever replace domestic law, but they add additional legal layers which overlap and, therefore, potentially conflict with domestic law (Zürn and Leibfried 2005: 21f.). Moreover, the rise of global and regional transborder activities also involves an increased interpenetration of domestic and foreign legal orders.

We may, thus, distinguish two basic types of overlapping jurisdictions that may lead to conflicts between legal orders. *Vertical conflicts* arise between different levels of jurisdiction, i.e. between domestic, regional and international law. *Horizontal conflicts* emerge between different domestic legal orders. Going beyond this distinction, some authors note that vertical conflicts may also involve controversies across legal sectors – e.g. if international trade law clashes with domestic environmental regulation – and, therefore, propose to speak of *diagonal conflicts* (Joerges 2007: 8). Furthermore, horizontal conflicts can also occur on a purely international level, i.e. between different international regimes (Fischer-Lescano and Teubner 2004).

Table 1: Strategies to govern overlapping jurisdictions

	vertical	**horizontal**
conflict solution	supremacy, sovereignty	mutual recognition, extraterritoriality, negative comity
conflict prevention	harmonization, ‘vertical’ convergence	transgovernmental networks, ‘horizontal’ convergence positive comity

As to the available strategies to govern overlapping jurisdictions, we can draw a line – albeit not always a very clear one – between *solving* conflicts and *preventing* them in the first place. While a strategy of conflict resolution seeks to settle the question of which law should apply, a strategy of conflict prevention seeks to render the same question more or less irrelevant. Vertical conflicts can be solved centrally, e.g. by establishing a doctrine of supremacy, or decentralized, based on a traditional understanding of territorial sovereignty. Harmonization or convergence towards a higher level model renders conflicts less likely as different legal orders produce similar results. Horizontal conflicts can be solved by mutual recognition between different domestic legal orders or by clearly circumscribing the reach of extraterritoriality. Convergence between different domestic legal orders and cooperation in transgovernmental networks may help to prevent horizontal conflicts in the first place. For example, according to the principle of positive comity, a governmental agency rather than enforcing its own law extraterritorially may request a foreign agency to get active on its behalf (Slaughter 2004: 250-253).

The questions of how to solve or to prevent conflicts between overlapping jurisdictions are of fundamental importance for any political system as they touch upon the basic distribution of regulatory competences. However, these issues are mostly debated by legal scholars or economists, while political science often remains silent. The ‘constitutionalization’ of European law, for example, has mainly been an invention of European lawyers (Weiler 1991), and the principle of mutual recognition is often overlooked in contributions about European governance (Schmidt 2007). Debates on the ‘pluralism’ or the ‘fragmentation’ of international law are largely confined to legal circles (cf. Walker 2008; Koskenniemi and Leino 2002). Scholars of law and economics treat issues of overlapping jurisdictions mainly as a matter of (in)efficient allocation of competences and, therefore, ask for ways to reduce transaction costs and try to identify the optimum regulatory level (Trachtman 2001; Budzinski 2008). In contrast, a political science approach needs to ask for the actors that have an interest in a particular strategy to deal with overlapping jurisdictions and for the implications of this strategy concerning the policy goals at issue as well as regards the distribution of competences (cf. Budzinski and Christiansen 2005).

OVERLAPPING JURISDICTIONS IN COMPETITION CONTROL

Competition control lends itself to investigate overlapping jurisdictions probably better than any other policy field. As the next subsection will show, we find a long history and a great variety of horizontal, vertical and diagonal overlaps between different jurisdictions in competition control. At the same time, we only find a surprisingly low number of conflicts emerging from these overlaps. As will be shown subsequently, existing explanations do not sufficiently account for the political implications of this observation.

Conflicts about extraterritorial competition control

In the field of competition policy, we can observe all of the different types of judicial overlap described above. Within the EU, competition control is hierarchically organized. The European Commission is the central authority in a system of largely decentralized competition enforcement through national competition agencies (Wilks 2005). Beyond the European context, no comparable system of international competition control has been established so far. Although the idea to create a global competition regime dates back to the Havana Charter of 1947 (Wigger 2005: 6f.), competition control remains the joint task of horizontally overlapping national and European competition regimes. Finally, competition control inherently cuts across many other policy areas such as trade or industrial policy (Bourgeois and Demaret 1995) and may thus trigger sectoral or ‘diagonal’ conflicts. In the following, the paper focuses on global competition control and, therefore, excludes intra-European conflicts between jurisdictions.

Given that no global regime has been established so far, the history of international competition control is mainly one of extraterritorial application of US and, more recently, EU competition rules. The basic justification for the extraterritorial application of domestic law was developed by an US Court of Appeals in its 1945 *Alcoa* judgement[2]. According to the so-called ‘effects doctrine’, jurisdiction can be exerted if a certain anticompetitive practice has an intended effect on the US market, even if the practice is located outside the US (cf. Raustiala 2006: 229). In their follow-up judgements, many US courts have tried to specify the criteria of ‘intent’ and/or ‘effect’ in order to determine the scope of extraterritorial jurisdiction (Dlouhy 2003: 69-73). One of the most elaborate tests for the effects doctrine was developed in the *Timberlane I-III* judgements[3]. The Timberlane test proposes a three-stage approach to establish extraterritorial jurisdiction: first, there needs to be ‘some effect – actual or intended’ – on the US market; second, it has to be shown that this effect ‘is sufficiently large to present a recognizable injury to the plaintiff’; and, third, extraterritorial jurisdiction should only be asserted if the interests of the US are ‘sufficiently strong vis-à-vis those of other nations’. Particularly the last criterion was meant as a self-restriction against a too expansionist extraterritorial application of US competition law. In *Hartford Fire*[4], however, the US Supreme Court rejected any such *comity* considerations, unless in situations of ‘true conflict’, i.e. in cases in which foreign law requires a firm to act in a way that does not comply with US competition law (Dlouhy 2003: 164). Lastly, in 2004, the US Supreme Court restricted the reach of extraterritoriality in the *Empagram* case[5] and argued against an ‘unreasonable interference with foreign jurisdictions’. In brief, the Court based its judgment on the US Foreign Trade Antitrust Improvements Act (FTAIA) of

2 United States v. Aluminium Co. of America 148 F. 2d 416 (1945) – “Alcoa”.

3 Timberlane Lumber Co. v. Bank of America, N.T. and S.A. 549 F. 2d 597 (1976) – „Timberlane I“; Timberlane Lumber Co. v. Bank of America Nat. Trust and Sav. Ass`n 574 F. Supp. 1453 (1983) – „Timberlane II“; Timberlane Lumber Co. v. Bank of America Nat. Trust and Sav. Ass`n 749 F. 2d 1378 (1984) – „Timberlane III“.

4 Hartford Fire Ins. Co. v. California 509 U.S. 764 (1993) – “Hartford Fire”.

5 Hoffmann-LaRoche Ltd. v. Empagran S. A., 542 U.S. 155 (2004) – „Empagran“.

1982 and rejected the damages claims of a group of foreign firms against an international vitamins cartel for injuries suffered outside US territory (cf. Buxbaum 2004).

In the EU, Treaty rules on competition do not explicitly address the issue of extraterritoriality and the European Court of Justice (ECJ) has never officially endorsed the American effects doctrine – yet, the alternative 'economic entity' and 'implementation doctrines' developed by the ECJ have led to very similar conclusions in practice (Friedberg 1990). The 'economic entity doctrine' was established in the ECJ's *Dyestuffs* judgement[6] in 1972. The Court ruled that a non-EC enterprise can be held liable for anticompetitive practices of its subsidiary located in the EC, if the parent enterprise exercised control over its subsidiary and, therefore, both constituted a 'single economic entity' (Geradin *et al.* 2008: 4f.). The 'implementation doctrine' developed by the ECJ in *Woodpulp*[7] goes even further as it includes also cases of purely non-European enterprises. According to this doctrine, European competition rules can be applied in cases in which anticompetitive practices are actually 'implemented' on EU territory, regardless of where and by whom these practices were agreed upon. Finally, the 'effects doctrine' has been referred to by the Commission and various Advocate-Generals (Geradin *et al.* 2008: 6), but it took until 1999 for the Court of First Instance (CFI) to officially endorse the doctrine in its *Gencor* judgement.[8] The case concerned the European Commission's decision to prohibit the merger of South African Gencor Ltd. and British Lonrho Plc. The CFI ruled that the Commission was entitled to apply the EC Merger Regulation as the proposed merger would have had an 'immediate and substantial effect in the Community'.

In sum, both US and EU authorities apply their competition laws extraterritorially and courts have developed logically distinct, but practically quite similar doctrines for justification. In the context of global competition policy, the EU acts as a state-like player and some commentators argue that European extraterritorial jurisdiction has become even more expansive than US extraterritoriality (cf. Dlouhy 2003: 140f.; Chun 2002: 74). Undoubtedly, there is potential for conflicts of horizontally overlapping jurisdictions and during the past decades several high profile conflicts between US and EU authorities emerged, mainly in the field of merger control (see Table 2). For example, when the EU threatened to prohibit the merger of Boeing and McDonnell Douglas, the US Senate signalled fierce resistance: "Free and fair trade is a cornerstone of our

---

6 European Court of Justice, Case 48/69, Imperial Chemical Industries Limited v. Commission [1972] E.C.R. 619 – "Dyestuffs".

7 European Court of Justice, Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85. A. Ahlström Osakeyhtiö and others v Commission [1988] E.C.R. 5193 – "Woodpulp".

8 Court of First Instance, Case T-102/96, Gencor v. Commission, [1999] E.C.R. II-753 – "Gencor".

relations with Europe, but the EU's threatened actions contribute little to either and we ought to resist them. Their demands in this case are clearly unreasonable and an infringement upon US sovereignty" (cited in Dlouhy 2003: 23). Similarly, when the European Commission prohibited the GE/Honeywell merger in 2001, US Treasury Secretary Paul O'Neil blamed it for being "the closest thing you can find to an autocratic organization that can successfully impose their will on things that one would think are outside their scope of attention" (cited in Fox 2007: 331f.).

Table 2: Horizontal conflicts between US and EU competition authorities

Case	**Year**	**Field**
Dyestuffs	1972	Cartel
IBM	1985	Abuse of dominant position
Wood Pulp	1988	Cartel
De Havilland/Alenia-Aerospatiale	1991	Merger
Boeing/McDonnell Douglas	1997	Merger
Air Liquide/BOC	1999	Merger
General Electric/Honeywell	2001	Merger
Microsoft	2004	Abuse of dominant position

Adopted from Budzinski 2008: 46f.

All of the listed conflicts have attracted intense public and scientific attention. Obviously, most of these cases were politically highly salient and some of them led to landmark decisions in terms of legal doctrine – but are they *typical* and, thus, do they constitute good examples to understand more generally the governance of overlapping jurisdictions in international competition control?

Some authors argue that, in fact, these cases are 'atypical' (Devuyst 2001: 142f.) and result from 'flaws' in economic analysis and bilateral cooperation (Damro and Guay 2009). In Boeing/McDonnell Douglas, for example, competition authorities still lacked the necessary experience in transatlantic cooperation and, therefore, rather than seeking early and informal consultations, US authorities mistakenly tried to increase public pressure on the European Commission (ibid.: 19). Moreover, it took very long for Boeing to realize that it could not simply ignore the Commission's demands without risking the prohibition of the merger; as such, Boeing's behaviour contributed to an aggravation of the conflict (Devuyst 2001: 144). Similarly, General Electric publicly pressured the European Commission for a quick decision which made transatlantic cooperation difficult and turned out to be counterproductive to the firms' interest (Damro and Guay 2009: 29f.). Also, Damro (2001) has put forward an explanation of transatlantic conflict, which emphasizes the political-strategic considerations of the European Commission. By exercising extraterritorial competition control against strong US businesses, the Commission could "enhance its credibility in the eyes of the member states" as well as "in the eyes of non-Union third parties" (ibid. 217). Yet, this strategy of conflict was only possible due to the very particular features of the case in which both, the US government and Boeing had a strong interest in compromising with the Commission and to ensure a quick positive decision (ibid. 218).

In contrast, other authors regard the conflicts mentioned to indicate more systemic “transatlantic divergence” (Morgan and McGuire 2004). First, US and EU competition authorities are seen to traditionally differ on their policy goals: “We protect competition, you protect competitors” (Fox 2003). According to this criticism, EU competition control is overly strict in cases of market concentration and tends to neglect efficiency gains and pro-competitive effects resulting from economies of scale (Chun 2002: 65; Fox 2003: 160; Niels and ten Kate 2004: 12). Secondly, and linked to the first argument, EU competition control is (or was) said to lack appropriate economic analysis (Morgan and McGuire 2004: 45-50). Modernization efforts in European antitrust since 2004 are interpreted as a reaction to this criticism and a move towards the US approach (Fox 2007: 359; Wigger and Nölke 2007). Finally, Klodt (2001: 880) takes the Boeing/McDonnell Douglas case and other examples to argue that opposed industrial policy goals are at the heart of transatlantic conflicts in competition control and strongly advocates an harmonization of international competition rules.

Cooperation and convergence

If the latter set of explanations on systematically divergent competition approaches and on the lack of international harmonization was right, however, we should rather be surprised of the low number of conflicts between US and EU competition authorities (cf. Parisi 1999: 133; Devuyst 2001: 142). Since the adoption of the EC Merger Regulation in 1989, a total number of 4015 merger cases have been notified to the European Commission of which hundreds involved non-EU enterprises.[9] For example, in 2001 – the year of the GE/Honeywell conflict –, the Commission contacted US authorities in 84 cases under investigation (see Table 3). From 1992 until 2005, 1355 cases – to a large part merger cases – were dealt with bilaterally between the European Commission and the US Department of Justice (DoJ) and/or the US Federal Trade Commission (FTC). In at least 75 cases between 1993 and 2004, competition authorities from the US and the EU both took final decisions (Lévêque 2007: 4). In its annual reports on competition policy and the Competition Policy Newsletter, the European Commission regularly informs about cases in which EU and US competition authorities synchronized their enforcement activities and reached congruent final decisions.[10]

---

[9] For a quick statistical overview of merger cases investigated by the Commission, see: http://ec.europa.eu/competition/mergers/statistics.pdf [last checked on 17 July 2009].

[10] Each annual report on competition policy contains one subsection on international activities and typically gives some details on cases which were dealt with bilaterally, see e.g. European Commission (2008: 147).

Table 3: Case notifications between EU and US competition authorities[11]

Year	**EC → US**		**US → EC**		**Sum**	
	Total	*Mergers*	*Total*	*Mergers*	*Total*	*Mergers*
1992	26	11	40	31	66	42
1993	44	20	40	20	84	40
1994	29	18	35	20	64	38
1995	42	31	35	18	77	49
1996	48	35	38	27	86	62
1997	42	30	36	20	78	50
1998	52	43	46	39	98	82
1999	70	59	49	39	119	98
2000	104	85	58	49	162	134
2001	84	71	37	25	121	96
2002	63	56	44	27	107	73
2003	56	*	46	*	102	*
2004	54	*	28	*	82	*
2005	82	*	27	*	109	*
Total	796	459*	559	315*	1355	764*

* Missing data

The figures already indicate that intense cooperation between EU and US competition authorities exists. Most notably, case notifications are not about determining who has the ultimate say in a particular case (Parisi 1999: 137), but about mutually informing each other at an early stage about potential parallel investigations. Thus, cooperation between competition authorities mainly aims at preventing conflicts between overlapping jurisdictions rather than at dissolving the overlap itself (cf. Damro 2006a: 100f., 113f.).

In several bilateral agreements, the European Commission and the US government have institutionalised their cooperation in competition control since the early 1990s. Following an initiative of competition Commissioner Sir Leon Brittan, the European Commission and US competition authorities (DoJ and FTC) concluded their first bilateral agreement in 1991: the *EU/US Competition Cooperation Agreement* (Devuyst 2001: 134-136).[12] The agreement obliges competition authorities to mutually notify investigations that ‘may affect important interests of the other Party’ (Article II). Fur-

[11] Based on the Commission’s annual reports to the Council and the European Parliament on its bilateral cooperation in competition policy [COM(2000)618, COM(2002)45, COM(2002)505, COM(2003)500] and on the Annual Reports on Competition Policy 2003 to 2005. Unfortunately, the most recent reports do not mention the number of notifications and the Commission could not provide the data upon request.

[12] O.J., L 95/47 (1995). For an overview on the different bilateral agreements, see: http://ec.europa.eu/competition/international/bilateral/usa.html [last checked: 21.07.2009].

thermore, it establishes regular contacts for the exchange of non-confidential information (Article III) and it strengthens enforcement cooperation and coordination (Article IV). The 1991 agreement explicitly refers to 'negative comity', i.e. to taking into account the 'important interests' of the other party when investigating or deciding a particular case (Article IV), but it also implicitly establishes a possibility for positive comity, as one party may request the other to investigate a particular case and to enforce competition (Article V).

The latter principle has been regulated in more detail in the 1998 *EU/US Positive Comity Agreement* (Devuyst 2001: 136).[13] If an anticompetitive practice does not have 'a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory' or if 'anti-competitive activities (…) occur principally in and are directed principally towards the other Party's territory' (Article IV), the agreement suggests that a case should be entirely deferred to the competition authority of the Requested Party. In 1999, a supplement to the existing agreements was concluded between US and EU competition authorities in order to allow officials from both sides to reciprocally attend hearings with involved enterprises during the investigation and decision-making stages – the so-called *Administrative Arrangements on Attendance in Hearings (AAA)*. Last but not least, an informal transatlantic *Merger Working Group* was established by US and EU competition authorities to identify potential areas of convergence in merger control (Damro 2006a: 133-138). In 2002, the Working Group issued non-binding best practice guidelines on cooperation in merger cases which, again, clearly emphasize the goal of conflict prevention rather than solution:

> *"In today's global economy, many sizeable transactions involving international businesses are likely to be subject to review by the EU and by the US. Where the US and EU are reviewing the same transaction, both jurisdictions have an interest in reaching, insofar as possible, consistent, or at least non-conflicting, outcomes. Divergent approaches to assessment of the likely impact on competition of the same transaction undermine public confidence in the merger review process, risk imposing inconsistent requirements on the firms involved, and may frustrate the agencies' respective remedial objectives."*[14]

In the theoretical debate on international governance and cooperation, Anne-Marie Slaughter (2004: Ch. 5) has received broad attention for her argument that transgovernmental networks enhance global governance effectiveness. She distinguishes between *information*, *enforcement* and *harmonization* networks. Most theoretical accounts of transatlantic competition cooperation fit very well with Slaughter's overall framework.

---

[13] O. J. L 173/28 (1998). Merger cases are excluded from this agreement.

[14] See online: http://ec.europa.eu/competition/mergers/legislation/eu_us.pdf [last checked: 21.07.2009].

“Distilling and disseminating credible information” (ibid.: 177), i.e. *exchange of information* between agencies helps to “avoid unnecessary duplication of work and costs, both for the competition authorities involved and for the businesses whose conduct is subject to review” (Devuyst 2001: 132). Moreover, if firms under investigation are seated abroad, competition authorities crucially depend on information collected by their foreign counterparts. As a premise, confidential business information is excluded from information exchange – but, in order to facilitate swift investigations and to lower transaction costs, businesses may choose to partly waive their confidentiality rights and to allow different competition authorities access to information that has been submitted to one of them (Parisi 1999: 138f.).

“Improving compliance” is another virtue that Slaughter (2004: 183) ascribes to transgovernmental networks. As has been shown by various authors (cf. Budzinski 2008: Ch. 2; Klodt 2005: Ch. 2), globalization goes along with a drastic increase in international anticompetitive practices and transnational mergers. Cooperation between US and EU competition authorities, therefore, has to be seen as a reaction to economic internationalization in order to ensure *enforcement* of competition rules (Damro 2006b). Moreover, by synchronizing their investigations and by reaching congruent decisions, competition authorities increase the predictability of competition control and make compliance with demands from different jurisdictions easier (Devuyst 2001: 132).

Finally, network cooperation in individual competition cases may help to create “convergence and informed divergence” (Slaughter 2004: 171). In the short run, of course, “voluntary cooperation does not immediately lead to a perception by competition authorities to adopt the same or similar laws and procedures” (Wigger 2005: 13). Nevertheless, we can observe various signs for a *convergence trend* between US and EU competition control. Friedberg (1990) was one of the first to argue that US and EU visions of extraterritorial jurisdiction were approaching each other. As has already been mentioned, the EU modernization efforts since 2003, e.g. the appointment of a Chief Competition Economist and the introduction of more refined economic analysis, were largely interpreted as a move towards established US practice (Fox 2007: 359; Röller and Buigues 2005). The Merger Working Group’s best practice guidelines are probably the most obvious example of a soft harmonization between US and EU competition regimes (Damro 2006a: 133-138).

To summarize, the field of competition policy is not only a master example of overlapping jurisdictions – it also exhibits one of the most developed systems of international, mainly bilateral, cooperation. While cooperation in transgovernmental networks does not resolve the underlying issue of overlapping jurisdictions, it is largely successful in preventing jurisdictional conflicts between US and EU competition authorities. Jurisdictional conflict is an exception, not the rule. Still, international competition control is more than “just an exercise in the reduction of transaction costs (…) Competition law has potent historical, economic, political, and social roots that make it a market nation’s ultimate form of public law” (Waller 1997: 395). Taking this reminder seriously, the next section discusses the political implications of transatlantic competition cooperation.

AUTONOMY THROUGH COMPETITION POLICY COOPERATION

The rise of networks, Raustiala argues “is aided by the perception that many regulatory issues are technocratic” (2002: 24). This perception seems to be largely reaffirmed by the above-cited accounts of transgovernmental cooperation between US and EU competition authorities. Cooperation in competition control helps to overcome information deficits, to prevent duplication of work, to improve legal certainty and to gradually harmonize competition rules and practices (cf. Whytock 2005: 51).

Nevertheless, transatlantic cooperation between competition authorities is not politically neutral. In the following, it will be argued that cooperation significantly enhances the independence of competition authorities from other institutions and it increases their autonomy to pursue undistorted competition vis-à-vis other policy goals. This aspect of autonomy was essential when Keohane and Nye (1974: 42, 46f.) first wrote about transgovernmental relations and the incentives for sub-units of government to engage in transgovernmental coalitions. Accordingly, conflict prevention between EU and US competition authorities has to be interpreted also as a means to increase agency autonomy and to forestall external intervention by politicians, judges, and firms.

Autonomy from politics

EU competition control operates in a politically complex environment (cf. Cini and McGowan 2009: 150-161). The Commission acts as the agent of EU Member states and its decisions may be challenged by Member states or interested third parties in the European Courts. Moreover, the Commission itself cannot be regarded as a unitary actor, comparable to an independent competition agency, but it is divided into different Directorates-General, each with its own policy priorities. Still, competition decisions have to be taken collectively by the College of Commissioners. Critics of the latter aspect, mainly from the German competition agency (*Bundeskartellamt*), have been – so far unsuccessfully – demanding the establishment of an independent European Cartel Office (Wilks and McGowan 1995: 265).

In terms of policy goals, competition policy touches upon a broad variety of other economic policies such as single market integration, industrial policy, trade policy, and regional policy (Buigues *et al.* 1995; Välilä 2008; Blauberger 2009: 723). Market concentration, for example, may be desirable from an industrial policy perspective, if larger enterprises invest relatively more in research and development, but it could still be undesirable in terms of free competition (Gual 1995: 19). Conversely, strict competition control of domestic firms might be considered disadvantageous for reasons of strategic trade policy (Brander and Spencer 1985). Finally, European Treaty rules on cartels and the Council regulation on mergers explicitly provide certain exemptions justified with reference to public concerns such as "technical and/or economic progress".[15] Thus, European competition control under the leadership of the Commission's Directorate-General for Competition (DG COMP) always needs to be cautious to consider other Directorate-Generals, EU Member states and their respective policy preferences.[16]

The development of bilateral competition agreements[17] with US authorities provides telling examples of the Commission's attempts to increase its autonomy from Member states through transatlantic cooperation. In order to bypass the requirements of EU Member state ratification and US congressional approval, EU and US competition authorities initially decided in early 1991 to negotiate an executive agreement rather than an international treaty (Damro 2006a: 100-105; 2006b). Negotiations between the competition authorities proceeded quickly and the bilateral agreement was signed by the end of 1991. Only shortly after this, however, the French government sued the Commission for breaching its competences when entering into an international agreement without Council approval. The ECJ confirmed the French position and declared the agreement void.[18] However, although the ECJ's judgement constrained the Commission not to conclude international agreements without Council approval (Waller 1997: 382), the substance of the agreement remained unaltered and finally passed the Council in 1995 (Damro 2006a: 111-113). Moreover, subsequent harmonization measures between US

---

15 Article 81(3) TEC and Article 2(1) of the Council Regulation (EC) No 139/2004 ('Merger Regulation').

16 As regards policy objectives other than competition, US competition authorities and the judges that ultimately decide are traditionally more restricted than the multi-faceted European Commission. The pursuit of policy goals beyond competition is left to the legislature: "American antitrust law is applied with a peculiar set of blinders designed to prevent the consideration of any factor outside the narrow question of whether an agreement or practice unduly restricts competition (…) The U.S. approach is premised on the preservation and enhancement of competition as the paramount and overriding goal of the antitrust laws to be applied by the courts, while an active Congress stands ready to pass subsequent specific statutes when it wishes to achieve some other result or promote a different social or policy goal. Such compartmentalization reflects basic separation of powers notions fundamental to the United States" (Waller 1994: 586f.). US resistance against an international harmonization of antitrust rules can partly be explained by competition officials' concerns that this separation might be undermined, e.g. through inclusion of trade issues in competition control (Waller 1997: 378f.).

17 See above, footnotes 12 and 13.

18 European Court of Justice, Case 327/91 France v. Commission [1994] E.C.R. 3666.

and EU authorities were framed differently, i.e. as non-binding ‘arrangements’ or ‘best practice guidelines’ which did not require Council approval.

Individual cases also show the autonomy enhancing effects of cooperation between competition authorities and, vice-versa, the increase of political interventions in cases of conflict. In *Worldcom/MCI* in 1998, for example, the European Commission and the US DoJ tightly coordinated their investigations and were able to jointly enforce strict remedies before the merger could be executed.[19] In *MCI Worldcom/Sprint* in 2000, both the EU Commission and the US DoJ reached the same conclusion to prohibit the merger which would have created one of the world’s largest telecoms firms.[20] The decision of the EU Commission received harsh criticism from some US senators who tried to retaliate by blocking foreign acquisitions of US telecom. Eventually, however, cooperation between competition authorities increased their autonomy from political intervention: “Ironically, while both U.S. and European regulators agreed that the Sprint-WorldCom deal was simply too big, it’s the politicians who have bridled at the merger’s rejection” (Bodony and Krapf 2000). Another telling example is the permitted takeover of *Peoplesoft* by *Oracle* (both US software companies), in which close cooperation among them led US and EU authorities to reach the same conclusion – despite theoretical and methodological differences (Vinje and Paemen 2006: 22).[21] The EU Commission largely synchronized its own investigations with those of the US DoJ and, in its final decision, referred to evidence from the US trial. In the recent *Google/Doubleclick* merger, politicians and non-governmental organizations voiced strong concerns as regards privacy protection. Even the European Parliament, usually no player in competition control, discussed the question whether competition authorities should consider privacy concerns in their assessment.[22] The Commission as well as the US FTC, however, referred these broader concerns to the legislature and allowed the merger on the basis of a – largely identical – pure competition analysis.[23]

---

19 Case M.1069, O.J. L 116 (1999). In order to receive EU and US approval for the merger, Worldcom had to sell its internet services. See also: “MCI to Sell Wholesale Internet Unit to Cable and Wireless”, NY Times (29.5.1998).

20 Case M. 1741, O.J. L 300 (2003).

21 Case M.3216, O.J. L 218 (2005). See also: “Merger control: Main developments between 1 September and 31 December 2004”, Competition Policy Newsletter (Spring 2005), p. 74f.

22 See „Google spars with European lawmakers over privacy”, Reuters (21.1.2008), online: http://www.reuters.com/article/internetNews/idUSL215785220080121?rpc=28 [last checked: 30.7.2009].

23 Case M.4731, decision no yet published in the Official Journal. See also: “Google/DoubleClick: The first test for the Commission’s non-horizontal merger guidelines”, Competition Policy Newsletter (Summer 2008), p. 53-60.

The few cases of conflict between EU and US competition authorities, by contrast, were characterized by high levels of politicization. While the conflicts were partly caused by political intervention, conflicting approaches of competition authorities also provided opportunity structures for further intervention. In *Aérsopatiale/de Havilland*, the European Commission's first merger prohibition in 1991, Commissioner Sir Leon Brittain asserted himself against US and Canadian authorities that had previously allowed the merger, mainly for industrial policy reasons (Klodt 2001: 885).[24] Nevertheless, the decision-making process within the Commission exhibited a deep cleavage between those advocating a strict application of European competition rules and others, foremost DG Industry as well as the French and Italian Commissioners, supporting the merger for domestic industrial policy and employment considerations (Cini and McGowan 2009: 154f.). Although DG Comp prevailed in the individual case, the Commission's reputation for stringent competition policy was clearly damaged (Wilks and McGowan 1995). In *Boeing/McDonnell Douglas*, the EU Commission threatened to prohibit the merger of two US companies that had been permitted by the US FTC in early July 1997.[25] In response, US politicians pressured the EU Commission: US President Clinton considered a WTO complaint, US Congress condemned the EU's 'unwarranted interference', and, finally, the Commission tied its merger approval to a package of remedies offered by Boeing (Damro and Guay 2009: 17f.). While the Commission's insistence in this individual case certainly helped to establish itself as a global competition player (Damro 2001), both US and EU competition authorities soon realized that repeated conflicts would undermine their credibility in the long run (Damro and Guay 2009: 19). In 2001, the Commission took its first decision to block a merger of two US companies –*General Electric* and *Honeywell* – that had already been allowed by the US DoJ.[26] Once again, the Commission reaffirmed its global role, but none of the competition authorities involved remained without damage to its image. Both sides were accused of being influenced by protectionist domestic industrial interests and flawed competition analyses (Fox 2007; Klodt 2005: 54).

To summarize, conflict prevention between EU and US competition authorities reduces the likelihood of political intervention and, thus, increases the autonomy of competition control. If conflicts cannot be prevented, however, they have to be solved and this is usually the task of judges.

[24] Case M.53, O.J. C 128 (1991).

[25] Case M.887, O.J. C 59 (1997).

[26] Case M.2220, O.J. C 46 (2001).

Autonomy from judges

Next to competition authorities, courts are clearly the most important players in competition control, albeit with very different functions in the US and in the EU. In the US, competition authorities investigate and enforce, but courts have the final say in establishing whether a firm’s behaviour is classified as anti-competitive (Waller 1994: 588f.). In the EU, the Commission does not only investigate and enforce competition rules; it also takes the final decisions. These decisions can be challenged in court, but most of the time, the ECJ has been a major ally of the Commission in expanding European competition control, e.g. when it found that existing Treaty rules authorized the Commission to control mergers and, thus, paved the way for the first European merger regulation (Cini and McGowan 2009: 128-131).[27]

In many respects, therefore, competition authorities cannot be autonomous from judges and there is also no perceived need for more autonomy as courts are usually not regarded as pursuing an independent competition or industrial policy agenda. With respect to extraterritoriality, however, the jurisprudence’s contribution remains largely inconclusive until today. In his very detailed study, Dlouhy (2003) discusses decades of judicial efforts to define the scope of US and EU extraterritorial jurisdiction in competition law. For example, innumerable qualifications of the effects doctrine have been made, but no standard could be agreed upon: anticompetitive behaviour should be intended or not; it should have ‘some effect’, ‘any effect’, an ‘appreciable effect’, a ‘substantial effect’, a ‘direct and substantial effect’ or a ‘direct and influencing effect’ (ibid.: 69-73). Dlouhy (ibid: 139, own translation) concludes: “Every US courts seems to apply more or less different criteria. Any attempt to establish a commonly agreed effects test ultimately failed”. Moreover, as was discussed above, EU and US competition authorities try to prevent conflicts between overlapping jurisdictions rather than dissolving the overlap – but once a dispute has reached the courts, it is often too late for strategies of conflict prevention. Judicial efforts to include comity considerations in competition jurisdiction remain equally inconclusive. While the ECJ is largely silent on the matter, US courts oscillate between very restrictive interpretations of comity as in *Hartford Fire* and broader considerations as in *Empagram*: “Comity is not a matter of rigid obligation, but, rather, a protean concept of jurisdictional respect. And to complicate matters, comity, like beauty, sometimes is in the eye of the beholder” (cited in Späth 2006).

As a consequence, efforts to control the impact of extraterritoriality and to include comity considerations into competition analysis have not been given up, but EU and US competition authorities try to tackle these questions cooperatively before they reach the

[27] European Court of Justice, Joined Cases 142 and 156/84, BAT&Reynolds v. Commission [1987] E.C.R. 4487.

courts. Referring to guidelines of the US DoJ from 1988 on the extraterritorial application of US competition law, Damro (2006a: 45) argues:

> *“From the perspective of the US competition authorities, judges are ill-suited for determining extraterritorial jurisdiction. (…) Rather the competition regulators only feel comfortable with ‘intergovernmental consultation and negotiation’ which explicitly means the executive branch and implicitly means the agencies responsible for implementing competition policy. Thus, while comity-like interest-balancing might be permitted in determining extraterritorial jurisdiction, the DoJ guidelines make it clear that any interest-balancing should be conducted under the discretion of the competition regulators, not the courts or legislature. This position is reflected in the EU-US Bilateral Agreement and Positive Comity Agreements.”*

The bilateral EU and US cooperation agreements on competition use very prudent language in order to signal that they do not redefine the scope of extraterritorial jurisdiction and/or comity and, thus, that they do not challenge legislative and judicial authorities: “Nothing in this Article limits the discretion of the notified Party under its competition laws” and “Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws” of the US, the EU or its Member states.[28] Yet, by rendering questions of jurisdictional overlap and the limits of extraterritoriality less salient, they ultimately aim at increasing the autonomy of competition authorities from jurisprudence.

According to official justifications, the 1998 Agreement on Positive Comity shall reduce cases of extraterritorial competition control and, thus, could be interpreted as an attempt to substitute expansionist jurisprudence on extraterritoriality by a more deferential approach through EU and US competition authorities (Damro 2006a: 122f.). Quite to the contrary, however, the agreement leaves the fundamental issue of jurisdiction largely untouched while practically creating new opportunities for US and EU authorities to enforce their competition laws (Dlouhy 2003: 233-235). In its ‘Antitrust enforcement guidelines for international operations’, the US DoJ describes several hypothetical situations under which it would consider a positive comity request.[29] For example, the DoJ could request the European Commission to investigate an international cartel for which US authorities lack jurisdiction because it impacts only indirectly on the US market. The only formal positive comity request on the basis of the 1998 Agreement so far concerned an anticompetitive conduct on European territory for which US au-

---

28 Articles V and IX and of the 1991 Agreement and Article VII of the 1998 Agreement.

29 See sections 3.1 and 3.2 of the guidelines, online: http://www.usdoj.gov/atr/public/guidelines/internat.htm [Last checked: 31.07.2009].

thorities lacked enforcement capacities and 'deferral' to the EU Commission was seen as the more promising option (Baetge 2009: 383).

To sum up, courts play an important role in competition control and the extraterritoriality of US and EU competition law was established by judges. As to the overlap of competition jurisdictions, however, jurisprudence remains inconclusive and, at least as a side-effect, the strategy of conflict prevention practiced by EU and US competition authorities diminishes the influence of the judiciary.

Autonomy from firms

Finally, competition authorities depend on close cooperation with industry, e.g. when firms provide information about ongoing or potential investigations and when remedies are negotiated in merger review (cf. Cini and McGowan 2009: 156). Given its immense workload, the Commission has an interest in reaching consensus with the enterprises involved and in pre-empting anticompetitive behaviour from the beginning rather than fighting too many conflicts at the same time.[30] If firms publicly pressure competition authorities, however, the credibility of competition control gets undermined. All cases of transatlantic conflict in competition control involved such attempts to put pressure on EU and/or US competition authorities.

In the forefront of the Commission's *GE/Honeywell* decision (cf. Fox 2007; Damro and Guay 2009), for example, GE chief executive John F. Welch publicly criticized the Commission's investigations: "The European regulators' demands exceeded anything I or our European advisers imagined, and differed sharply from antitrust counterparts in the U.S. and Canada."[31] Moreover, GE tried to put pressure on the Commission by lobbying American politicians: "We thought it would be impossible that the Europeans would try to block a U.S.-U.S. deal that had been given the go-ahead by Washington (…) The conventional wisdom was that the political pressure would be too great."[32] In reaction, the European Commission needed to be strict in order to show its political independence: "Of course, political pressure can help, but not when it's done publicly (…) [The Commission] cannot be seen to be bowing to political pressure, so if anything this has only harmed the deal's chances."[33]

As an individual case, *GE/Honeywell* clearly helped to demonstrate the Commission's autonomy rather than undermining it. In general, however, repeated conflicts with firms and US authorities would soon overstrain the Commission's enforcement

---

30 For example, while the Commission had prohibited 20 mergers until the end of 2008, firms withdrew their merger proposals in 33 cases before such a decision became necessary. See also footnote 9.

31 See "G.E. Purchase Of Honeywell Now Appears Near Collapse", New York Times, 15 June 2001.

32 See "Failure to Acquire Honeywell Is Sour Finish for G.E. Chief", New York Times, 3 July 2001.

33 See above, footnote 31.

capacities and decrease the credibility of its competition analysis. Moreover, divergent approaches between EU and US authorities would also encourage ‘forum shopping’ on the part of firms complaining about their competitors. On the one hand, as one could observe in the *Empagran* case, US competition control is particularly attractive for competitors trying to sue for high compensations (‘treble damages’, cf. Waller 1994: 588f.). On the other hand, complainants that do not see great chances too succeed in US courts might prefer the European Commission’s strict approach in the *GE/Honeywell* merger or in its antitrust investigations against *Microsoft*.[34] Systematic forum shopping in competition control, however, would lead to a typical prisoner’s dilemma in which each individual firm has an interest in strict control for all others and no restrictions for itself (Kerber and Budzinski 2004: 50). Moreover, if forum shopping increases, competition authorities at least partly lose their control on the cases to deal with and on the information they receive.

Cooperation among competition authorities does not remove the need for them to also coordinate with firms, but it strengthens the authorities’ role in setting the rules during this coordination process. For example, in cases in which firms are represented by different lawyers in the EU and in the US, Parisi (1999: 141) strongly recommends firms to build “as much co-operation and co-ordination between its lawyers as between the reviewing authorities”. Similarly, in order not to complicate parallel investigations and to avoid delays, firms need to notify synchronously to both authorities and facilitate information exchange through waiving their confidentiality rights. Finally, as earlier examples have shown, transatlantic cooperation enables competition authorities to impose strict conditions where these are deemed necessary (*MCI/Worldcom*) and to resist firm lobbying against negative decisions (*Worldcom MCI/Sprint*).

CONCLUSION

This article started out with a general overview on the governance of overlapping jurisdictions and introduced the more specific problem of horizontal overlap in competition control. Due to the fact that US as well as EU authorities apply their competition rules extraterritorially, significant potential for horizontal judicial overlap exists. Yet, apart from some high profile conflicts that have attracted great public interest, most competition decisions are taken separately but complementary by US and EU competition authorities. Two main insights can be derived from the case of competition control and both aspects would clearly benefit from further research, including comparison with other policy fields. Being a frontrunner in international legalization, the field of competition policy is particularly interesting for studying the governance of overlapping jurisdictions, but one has to be cautious in generalizing from this field.

[34] See, for example, “U.S. Businesses Turn to Europe To Bar Mergers”, New York Times, 19 June 2001.

First, strategies of conflict prevention rather than conflict solution prevail in most cases of transatlantic judicial overlap in competition control. Given the increasing complexity of international legalization and the absence of a hierarchical system of dispute settlement (comparable e.g. to the ECJ), preventing conflicts seems to be more feasible than any attempt to clearly re-define borders between jurisdictions. Transgovernmental networks as described forcefully by Anne-Marie Slaughter (2004) play a key role in preventing conflicts in the case at hand. In order to assess more generally the importance and the effectiveness of this ‘new world order’, however, one would have to go beyond competition policy and ask: (Why) Do we find strategies of conflict prevention dominant in some policy fields and strategies of conflict solution in others? Under what conditions should we expect conflict prevention to be effective?

Second, apart from effectively preventing conflicts between jurisdictions, transgovernmental cooperation may also serve the self-interest of the institutions involved. Transatlantic cooperation, it has been argued, increases the autonomy of US and EU competition authorities from politics, judges, and firms. Political intervention is largely seen as an obstacle to effective competition control and, thus, more autonomy of competition authorities helps to privilege the goal of competition over other policy goals. In addition, cooperation strengthens the position of competition authorities in their interaction with courts and firms. These political implications deserve attention when investigating the governance of overlapping jurisdictions. Extending the analysis beyond competition policy, one would, therefore, have to ask: Who benefits from cooperation in transgovernmental networks? What are the implications for the different policy goals involved?

The argument put forward in this article builds on transgovernmentalist approaches and stresses the relevance of administrative networks in effectively preventing jurisdictional conflicts. In pointing to the political implications of network cooperation, however, it adds a more critical notion. Independence of competition authorities may improve the effectiveness of competition control, but competition is just one policy goal among others. If other policies, which are affected by competition control, do not lend themselves equally well for transgovernmental cooperation, their goals may be disadvantaged. Moreover, such an asymmetry between policy goals would not result from a deliberate political choice, but rather from the de-politicisation of potential conflicts between overlapping jurisdictions.

References

Baetge, Dietmar. 2009. *Globalisierung des Wettbewerbsrechts*. Tübingen: Mohr Siebeck.

Blauberger, Michael. 2009. "Of 'Good' and 'Bad' Subsidies: European State Aid Control through Soft and Hard Law." *West European Politics* 32 (4):719-37.

Bodony, Tim, and Eric Krapf. 2000. "Are Telecom Trade Wars Brewing?" *Business Communications Review* 30 (9):18.

Bourgeois, Jacques, and Paul Demaret. 1995. "The Working of EC Policies on Competition, Industry, and Trade: A Legal Analysis." In *European Policies on Competition, Trade, and Industry. Conflict and Complementarities*, ed. P. Buigues, A. Jacquemin and A. Sapir. Aldershot: Edward Elgar, 65-114.

Brander, James, and Barbara J. Spencer. 1985. "Export Subsidies and International Market Share Rivalry." *Journal of International Economics* 18 (1-2):83-100.

Budzinski, Oliver. 2008. *The Governance of Global Competition*. Cheltenham: Edward Elgar.

Budzinski, Oliver, and Andt Christiansen. 2005. "Competence Allocation in the EU Competition Policy System as an Interest-Driven Process." *Journal of Public Policy* 25 (3):313-37.

Buigues, Pierre, Alexis Jacquemin, and André Sapir. 1995. "Introduction: Complementarities and Conflicts in EC Microeconomic Policies." In *European Policies on Competition, Trade and Industry. Conflict and Complementarities*, ed. P. Buigues, A. Jacquemin and A. Sapir. Aldershot: Edward Elgar, xi-xxii.

Buxbaum, Hannah L. 2004. "National Courts, Global Cartels: F. Hoffman-LaRoche Ltd. v. Empagran, S.A. (U.S. Supreme Court 2004)." *German Law Journal* 5 (9):1095-106.

Chun, Yeo Jin. 2002. "The GE-Honeywell Merger Debacle: The Enforcement of Antitrust/Competition Laws across the Atlantic Pond." *New York International Law Review* 15 (2):61-81.

Cini, Michelle, and Lee McGowan. 2009. *Competition Policy in the European Union*. Houndmills/New York: Palgrave Macmillan.

Damro, Chad. 2001. "Building an International Identity: The EU and Extraterritorial Competition Policy." *Journal of European Public Policy* 8 (2):208-26.

———. 2006a. *Cooperating on Competition in Transatlantic Economic Relations. The Politics of Dispute Prevention*. Houndmills: Palgrave Macmillan.

———. 2006b. "Transatlantic Competition Policy: Domestic and International Sources of EU-US Cooperation." *European Journal of International Relations* 12 (2):171-96.

Damro, Chad, and Terrence Guay. 2009. "Comparing International EU Competition Cases: What Can Business and Politics Learn?" Paper presented at the EUSA 11th Biennial International Conference, Los Angeles [23-25 April 2009].

Devuyst, Youri. 2001. "Transatlantic Competition Relations." In *Transatlantic Governance in the Global Economy*, ed. M. A. Pollack and G. C. Shaffer. Lanham: Rowman & Littlefield Publishers, 127-51.

Dlouhy, Alexander. 2003. *Extraterritoriale Anwendung des Kartellrechts im europäischen und US-amerikanischen Recht*. Baden-Baden: Nomos.

European Commission. 2008. *Report on Competition Policy 2007. Including Commission Staff Working Document. COM(2008) 368 Final*. Brussels.

Fischer-Lescano, Andreas, and Gunther Teubner. 2004. "Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law." *Michigan Journal of International Law* 25 (4):999-1046.

Fox, Eleanor M. 2003. "We Protect Competition, You Protect Competitors." *World Competition* 26 (2):149-65.

———. 2007. "GE/Honeywell: The U.S. Merger that Europe Stopped - A Story of the Politics of Convergence." In *Antitrust Stories*, ed. E. M. Fox and D. A. Crane: Foundation Press.

Friedberg, James J. 1990. *The Convergence of Law in an Era of Political Integration: The Wood Pulp Case and the Alcoa Effects Doctrine*. Morgantown, USA: West Virginia University.

Geradin, Damien, Marc Reysen, and David Henry. 2008. "Extraterritoriality, Comity and Cooperation in EC Competition Law." *GCP. The Online Magazine for Global Competition Policy* 30 July 2008.

Grant, Jeremy, and Damien J. Neven. 2005. "The Attempted Merger Between General Electric and Honeywell: A Case Study of Transatlantic Conflict." *Journal of Competition Law and Economics* 1 (3):595-633.

Gual, Jordi. 1995. "The Three Common Policies: An Economic Analysis." In *European Policies on Competition, Trade, and Industry. Conflicts and Complementarities*, ed. P. Buigues, A. Jacquemin and A. Sapir. Aldershot: Edward Elgar, 3-48.

Joerges, Christian. 2007. "Conflict of Laws as Constitutional Form: Reflections on the International Trade Law and the Panel Report on the EC Biotechnical Products Case." Paper presented at the New International Law Conference, Oslo [15-18 March 2007].

Keohane, Robert O., and Joseph S. Nye. 1974. "Transgovernmental Relations and International Organizations." *World Politics* 27 (1):39-62.

Kerber, Wolfgang, and Oliver Budzinski. 2004. "Competition of Competition Laws: Mission Impossible?" In *Competition Laws in Conflict. Antitrust Jurisdiction in the Global Economy*, ed. R. A. Epstein and M. S. Greve. Washington D.C.: AEI Press, 31-65.

Klodt, Henning. 2001. "Conflicts and Conflict Resolution in International Anti-trust: Do We Need International Competition Rules?" *The World Economy* 24 (7):877-88.

———. 2005. *Towards a Global Competition Order*. Berlin: liberal Verlag.

Koskenniemi, Martii, and Päivi Leino. 2002. "Fragmentation of International Law? Postmodern Anxieties." *Leiden Journal of International Law* 15:553-79.

Lévêque, François. 2007. *Merger Control: More Stringent in Europe than in the United-States?* Paris: Cerna, Centre d’économie industrielle.

Mehta, Kirti. 2003. "International Competition Policy Cooperation." In *Transatlantic Economic Disputes*, ed. E.-U. Petersmann and M. A. Pollack. Oxford: Oxford University Press, 281-96.

Morgan, Eleanor J., and Steven McGuire. 2004. "Transatlantic Divergence: GE-Honeywell and the EU's merger policy." *Journal of European Public Policy* 11 (1):39-56.

Niels, Gunnar, and Adriaan ten Kate. 2004. "Introduction: Antitrust in the U.S. and the EU - Converging or Diverging Paths?" *Antitrust Bulletin* 48 (1-2):1-27.

Parisi, John J. 1999. "Enforcement Co-Operation among Antitrust Authorities." *European Competition Law Review* 20 (3):133-42.

Raustiala, Kal. 2002. "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law." *Virginia Journal of International Law* 43 (1):1-92.

———. 2006. "The Evolution of Territoriality: International Relations and American Law." In *Territoriality and Conflict in an Age of Globalzation*, ed. M. Kahler and B. Walter. Cambridge: Cambridge University Press, 219-50.

Röller, Lars-Hendrik, and Pierre Buigues. 2005. *The Office of the Chief Competition Economist at the European Comission*. Brussels.

Schmidt, Susanne K. 2007. "Mutual Recognition as a New Mode of Governance." *Journal of European Public Policy* 14 (5):667-81.

Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton: Princeton University Press.

Späth, Patrick. 2006. "Zum gegenwärtigen Stand der Doctrine of Comity im Recht der Vereinigten Staaten von Amerika." *Praxis des Internationalen Privat- und Verfahrensrechts* 26 (2):184-93.

Trachtman, Joel P. 2001. "Economic Analysis of Prescriptive Jurisdiction and Choice of Law." *Virginia Journal of International Law* 42 (1):3-79.

Välilä, Timo. 2008. "'No Policy is an Island' - On the Interaction between Industrial and Other Policies " *Policy Studies* 29 (1):101-18.

Vinje, Thomas, and Dieter Paemen. 2006. "Transatlantic Issues in the European Merger Review of Oracle/PeopleSoft: Harmonious Dissonance." In *Handbook of Research in Trans-Atlantic Antitrust*, ed. P. Marsden. Aldershot: Edward Elgar, 16-40.

Walker, Neil. 2008. "Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders." *International Journal of Constitutional Law* 6 (3-4):373-96.

Waller, Spencer W. 1994. "Neo-Realism and the International Harmonization of Law: Lessons from Antitrust." *University of Kansas Law Review* 42:557-604.

———. 1997. "The Internalization of Antitrust Enforcement." *Boston University Law Review* 77 (2):343-404.

Weiler, J.H.H. 1991. "The Transformation of Europe." *The Yale Law Journal* 100 (1):2402-83.

Whytock, Christopher A. 2005. "A Rational Design Theory of Transgovernmentalism: The Case of E.U.-U.S. Merger Review Cooperation." *Boston University International Law Journal* 23 (1):1-53.

Wigger, Angela. 2005. *The Convergence Crusade: The Politics of Global Competition Law and Practices*. Paper presented at the 46th Annual ISA Convention, Honolulu [1-5 March 2005].

Wigger, Angela, and Andreas Nölke. 2007. "Enhanced Roles of Private Actors in EU Business Regulation and the Erosion of Rhenish Capitalism: the Case of Antitrust Enforcement." *Journal of Common Market Studies* 45 (2):487-513.

Wilks, Stephan. 2005. "Agency Escape: Decentralization or Dominance of the European Commission in the Modernization of Competition Policy?" *Governance* 18 (3):431-52.

Wilks, Stephen, and Lee McGowan. 1995. "Disarming the Commission: The Debate over a European Cartel Office." *Journal of Common Market Studies* 32 (2):259-73.

Zürn, Michael, and Stephan Leibfried. 2005. "Reconfiguring the National Constellation." In *Transformations of the State?*, ed. M. Zürn and S. Leibfried. Cambridge: Cambridge University Press, 1-36.

BIOGRAPHICAL NOTE

Dr. Michael Blauberger is research fellow at the Collaborative Research Center “Transformations of the State”, University of Bremen.

Telephone: +49 421 218-8735
Fax: +49 421 218-8721
E-Mail: michael.blauberger@sfb597.uni-bremen.de
Address: University of Bremen, Collaborative Research Center “Transformations of the State“, Linzer Strasse 9a, D 28359 Bremen