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Internal network structures as opportunity structures: control and effectiveness in the European Competition Network

Abstract

European Administrative Networks (EANs) are well-studied platforms of collaboration between national authorities, but the literature typically tends to rely on a small set of explanatory variables: network origins, objectives, and outputs. This external view of EANs leaves important questions unanswered, notably concerning power redistribution and how regulators perceive their EANs. This article highlights the importance of network internal structures, hitherto neglected by the literature, as an explanatory variable for understanding EANs. We contend that internal structures are ‘opportunity structures’ for regulators to set agendas and share resources. When internal structures empower all regulators equally, they feel ownership of the network, emphasise its effectiveness, and maintain productive informal collaborative relationships alongside it. We investigate the case of the European Competition Network (ECN) - a highly structured, hierarchical and formalised network – drawing on structured interviews with 15 National Competition Agencies (NCAs) carried out in 2014. We find that the ECN’s formal internal structures afford all NCAs access to the agenda, foster perceptions of effectiveness, and promote informal sharing of advice and expertise outside the network. We argue that future research should incorporate internal structures into analyses of administrative networks.

Keywords European Administrative Networks, European Competition Network, agenda-setting, internal structures, control, effectiveness

Introduction

Since the 1990s, European Administrative Networks (EANs) have been the focus of a burgeoning literature that conceptualises networks as a new form of governance (Mastenbroek and Martinsen 2018). Contributions to this literature invariably focus on a narrow set of variables to explain EANs that stem from external observation of network features, and typically include network origins, objectives, and outputs, such as reports and soft rules. These variables are employed to address either or both of two key themes: *control* and *effectiveness*. The former pertains to the exercise of agenda-setting power within EANs: the literature debates whether the European Commission uses agenda-setting power to circumvent the member states (Blauberger and Rittberger 2015), or whether the regulators use agenda-setting power to fight bureaucratic battles (Bach, De Francesco et al. 2016). The latter issue relates to the ability of EANs to accomplish their stated goal: regulatory convergence across the EU (Maggetti 2014). The judgement of the literature is that EANs have proven less effective at ensuring convergence than at enhancing regulators' independence (Danielsen and Yesilkagit 2014) or reputation (Heims 2019).

Despite the insights generated by existing scholarship, there are still important gaps in the study of EANs. Primarily, we lack an understanding of internal mechanisms of collaboration (Mastenbroek and Martinsen 2018). Indeed, investigation of the inner architecture of European networks is surprisingly rare in the relevant scholarship. Yet, its importance can hardly be overstated. Examining networks from the inside is particularly necessary for investigating the distribution of agenda-setting power, including among regulators, and the opportunities afforded to its members. There are considerable differences between the expertise, resources and domestic status of European national authorities, but the literature rarely investigates the management or impact of these differences within the network. As a result, little is known

about whether, within EANs, all regulators are equally able to set agendas, and benefit from the exchange of information and resources, whether they feel ownership of their networks or believe that it is dominated by one or a small number of actors, or even if they consider the EAN effective. To address these concerns, the observation of external network features (origins, objectives, outputs) needs to be complemented by an investigation of EANs from the inside. More specifically, to understand EANs, we must consider variables that pertain to their internal organisation.

In this article, we demonstrate the importance of the internal structure of EANs, that is the division of labour between working groups, Directors' meetings, and technical committees. Internal structures are important, because they shape the collaboration within the network -- who should attend, what should be discussed, how proposals are made, how issues of concerns can be raised – and the opportunities that are therefore available to network members. Where these structures are open and members are able to shape the agenda or to benefit from an exchange of resources, the EAN is more likely to foster a sense of ownership in its members.

Sociological approaches underline how structures may represent constraints on, but also provide opportunities for agency (Tarrow 1989). Indeed, existing scholarship shows that European regulators often use networks as opportunity structures to push their preferences through the governance process (Newman 2008). However, such scholarship focuses on outcomes of regulatory collaboration rather than the process as it unfolds within the network. Our analysis focuses on internal processes and regulators' perceptions of their network.

We focus our analysis on the empirical case of the European Competition Network (ECN), an enforcement network with the stated aim of ensuring the coherent application of EU competition rules across the member states (Cseres 2008, Maher 2009, Brammer 2009, Cengiz 2009, Wils 2013). The ECN gathers the National Competition Authorities (NCAs) of each of

the member states, as well as staff from the Directorate General of the European Commission with responsibility for competition (DG COMP). Its existence is enshrined in legislation, Regulation 1/2003, accompanied by a soft law Network Notice. NCAs are required to notify other members of the ECN when they open proceedings and to collaborate with other authorities in cases that cross borders.

We expect that when internal network structures allow all regulators the opportunity to set or shape the agenda, they are more likely to perceive the network as effective and will feel ownership over its processes and deliverables. More positive perceptions are likely to be associated with closer collaboration and, therefore, more effective EANs. In addition, regulators are more likely to engage in interactions outside the formal structures of the network, in the form of bilateral communication and exchange of information between regulators with different levels of experience and resources.

To test these expectations, we used structured interviews with the officials responsible for ECN liaison at 15 European NCAs, representing large and small member states, as well as the four points of the compass. First, we asked them to what extent the internal structure of the ECN allowed their NCA to voice issues of concern or set the agenda, how, and at what level. Second, we asked about levels of activity within the network and the extent to which the network is dominated by certain actors or authorities. We included questions concerning whether the network had brought about convergence in the enforcement of competition rules and asked whether our interviewees thought that the ECN had enhanced the reputation or increased the autonomy of their NCA. Finally, we asked them to report on interaction with other network members, in order to assess whether informal collaboration fosters exchange of expertise and sharing of resources (Vestlund 2015, Vantaggiato 2018). The aim was to examine both the

formal internal structures of network collaboration, that is obligatory, and the informal external interaction, that is voluntary.

Four empirical findings stand out. The first is that NCAs, from smaller or larger member states, possessing more or less resources or experience, consider that internal network structures allow them to influence the network's agenda. In other words, the internal structure of the ECN is configured in such a way that it extends opportunities to all members. Second, neither the Commission nor the NCAs control the network's activities or agenda, contrary to early claims about the creation of the ECN (see Wilks 2005, Riley 2003). Rather, power is shared among the ECN's members. Third, NCAs perceive the ECN as effective. They believe that it fosters a common culture across the EU, although they think that more effort is needed to improve convergence. They also consider that membership of the ECN strengthens them domestically. Finally, resources and expertise are exchanged informally between members of the network, as per Vantaggiato (2018).

By highlighting the importance of the formal internal structures of regulatory networks, we introduce an explicitly institutional dimension into the scholarship on networks. We argue that institutional architecture should be considered a key variable to include in within-case as well as comparative analyses of regulatory networks. Further research should address the question of where to locate other EANs at the intersection of informal collaborative ties and internal structures which distribute power and resources among members.

Effectiveness and control in the study of European administrative networks

The existing literature on European Administrative Networks (EANs) addresses -- roughly -- two main themes: *effectiveness* and *control*. Investigating who holds control over network

agendas and deliverables is important to understand the balance of power and influence within EANs, while assessing network *effectiveness* in achieving the stated or other desirable policy goals, such as promoting regulatory independence, is important in order to determine whether the performance of EANs is satisfactory, or whether additional institutional mechanisms are necessary. Typically, analyses of EANs employ a narrow set of key variables that arise from observation of external network characteristics; namely, network origins, objectives, and outputs. These variables are important and necessary, but not exhaustive.

The EU pioneered “regulation by networks” as a mode of governance when faced with the conundrum of trying to achieve the extent of regulatory harmonization necessary to bring about the Single Market while avoiding the delegation of administrative and regulatory powers to European institutions (Sutherland 1992, Hancher 1996, Dehousse 1997). Several authors (Eberlein and Newman 2008, Van Boetzelaer and Princen 2012) suggest that the main rationale of EANs is to bridge the governance gap between the national and the supra-national/European level, and thus engender (the conditions for) convergence. It follows that cross-national similarity in policy provisions or soft law provide the appropriate measure of network effectiveness (Maggetti and Gilardi 2011, Maggetti and Gilardi 2014). In other words, effectiveness is assessed in terms of network outputs and their alignment with stated objectives. Scholars report a mixed record. Some networks (e.g. securities regulators) have been able to design and implement soft rules across EU member states (Maggetti and Gilardi 2011), while others (e.g. energy regulators) have not (Maggetti 2014). Sectoral differences account to some extent for these divergent outcomes.

‘Effectiveness’ has also been measured in other ways. Some scholars have assessed network effectiveness according to effects on national regulators. Maggetti (2013), for example, reports that cooperation within networks correlates with increased powers, but not budgets. Yesilkagit

(2011) and Danielsen and Yesilkagit (2014) find that collaboration expands regulator autonomy, Vestlund (2015) that networks help create new common resources, and Vantaggiato (2018) that they improve national regulatory practice. In this sense, effectiveness is measured using information on network outputs (reports and soft rules) and regulators' resources (staff and budgets).

As concerns *control*, some authors portray the Commission as network initiator and leader (Dehousse 1997), dominating the network agenda (Wilks 2005) or orchestrating networks to bypass national resistance to market integration (Blauberger and Rittberger 2015). Others suggest that regulators control networks and use them to fight bureaucratic battles rather than as governance tools (Bach, De Francesco et al. 2016). Recent contributions show that national regulators played an active role in establishing networks, with the backing of the European Commission (Mathieu 2016, Boeger and Corkin 2017, Vantaggiato 2019). The main variables used to understand control pertain to network origins -- whether the networks were initiated by regulators or by the Commission, or both.

Effectiveness and control issues *within* EANs may be difficult to perceive from the outside, but they are no less important. Issues of control, as well as how power and resources are distributed among network members, are rarely addressed in the literature (Mastenbroek and Martinsen 2018). Foundational documents concerning EANs and their governance recognise members as equals, but, in practice, different national regulatory authorities command very different levels of expertise, experience and resource. One possibility is that these differences translate into systematic patterns of influence and agenda-setting power with the network, which then comes to reflect the preferences and interests of the best-resourced members. In turn, the distribution of power and influence within EANs is likely to show in the regulators' perceptions of network effectiveness and usefulness. However, in the existing literature,

network effectiveness rarely takes the regulators' point of view into consideration. Moreover, the scholarship typically focuses on regulators from larger and "older" member states, neglecting those from smaller and "newer" countries (i.e. those who entered with EU enlargement in 2004 and later) (Cseres, 2010).

Gauging regulators' perceptions about the operation and effectiveness of their EANs is also important because convergence is likely to occur in the practice of regulation, rather than in the politically costly modification of existing laws. Regulators are often well-equipped with statutory powers, so convergence may arise from consistent application to similar ends across different national markets. Yet by assessing convergence through similarity in national provisions alone, other processes might be overlooked. Furthermore, bringing about regulatory convergence is a long-term process (Strunz, Gawel et al. 2017), which benefits from trust-based collaborative relationships developed over time (Leifeld and Schneider 2012, Danielsen and Yesilkagit 2014, James and Christopoulos 2018). It is surprising, therefore, that the regulators' own assessment of the network's advantages and limitations regarding convergence habitually falls outside the analytical toolkit of scholars.

We expect that these perceptions will be more positive where the network gives access to the agenda to all regulators, whatever the size of their home state or the duration of EU membership. We argue that internal network structures structure opportunities for individual regulators to set or influence the agenda, and gather advice and expertise from their peers and the European Commission.

In the study of networks, the notion of 'opportunity structure' has been used in two related, but separate literatures. The International Relations literature has used the notion of opportunity structure in the context of transnational regulatory networking, particularly in the financial and banking sectors, by linking it to the notion of interdependence (Newman and Bach 2014, Farrell

and Newman 2015). Interdependence across markets and jurisdictions confronts policy-makers with private sector demands for regulatory convergence and opens opportunity structures for national regulators to supply their preferred standards (Farrell and Newman 2014). This research agenda recast political opportunity structure debates from social movement theory (Tarrow 1989) in the context of International Relations analyses exploring the dynamic, or co-evolutionary (Djelic and Quack 2007) interaction between domestic and international political systems (Sikkink 2005). However, this scholarship focuses on the outcome of collaboration. In other words, it focuses on the network as channel of privileged communication with supranational/international decision-makers, not on the internal mechanisms of collaboration and how regulators balance their interests and influence.

The literature on policy networks, meanwhile, used the term in relation to reducing the transaction costs of collaboration (North 1990), and distinguished between institutional, relational and social opportunity structures (Laumann and Pappi 1973). Institutionalised opportunity structures are found in formalised venues and allow actors to minimize the costs of collaboration while maximizing outreach (Lubell, Schneider et al. 2002, Leifeld and Schneider 2012). Institutionalised venues comprise policy committees, working groups, or other institutional arena of decision-making where actors deal with specific political or policy issues – i.e. what we call in this paper ‘internal structures of collaboration’. Institutionalised opportunity structures differ from ‘relational’ and ‘social’ opportunity structures’, which refer to informal relationships between any pair of actors and favour the creation of additional connections between them outside of the framework of institutionalised venues (Leifeld and Schneider 2012, Fischer and Sciarini 2016) – i.e. what we call in this paper the ‘external informal structures of collaboration’, comprising informal bilateral contacts among regulators favouring exchange of expertise and sharing of resources (Vestlund 2015, Vantaggiato 2018).

Our main hypothesis is that, when opportunity structures exist for regulators to set or influence agendas, they will be more motivated to collaborate and share. This likely increases their feeling of control (or ownership) of the network and their perceptions of network effectiveness and usefulness. Moreover, opportunity structures are likely to vary between networks, since EANs are not created equal. In EANs in fields where competence is shared between the national and the EU level (e.g. energy and telecommunications), cooperation is voluntary and rather informal, and EANs have no formal powers or duties (Coen and Thatcher 2008). This differs from enforcement networks, such as the European Competition Network (ECN), which encompass national or local level regulators as well as a supranational regulator, who exercises delegated authority from governments, on behalf of which the national regulators coordinate their action within the network (Slaughter 2004).

To test our expectations, we focus on the case of the ECN. The ECN is different from all other European regulatory networks, in that it is highly structured and its existence is enshrined in a legally binding document (Kassim and Wright 2010). The establishment of the ECN resulted from the work of the European Commission Modernisation Group, which began in 1997 and led to the decentralization of competition enforcement, previously exclusively in the hands of the Commission (Kassim and Wright 2010, Wils 2013).

The establishment of the ECN responded to several exigencies. On the one hand, the enlargement was scheduled to bring ten new countries in the EU, but no increase in the Commission's resources to tackle competition issues was foreseen (Wils 2013). Given the backlog in the Commission's caseload, the EU's expansion was likely to challenge the Commission's capacity. On the other hand, the Lisbon Agenda had marked the upholding of new governance, based on horizontal collaboration and mutual learning, as the mode of governance of the EU (Maher 2007, Lehmkuhl 2008).

Some scholars have suggested that there were political motives alongside the functional account. For example, several authors contended that the creation of the ECN was intended to extent then reach of the Commission extended its reach further into national markets (Riley 2003, Wilks 2005, Thatcher 2011; though see Kassim and Wright 2010). More recent contributors have portrayed the ECN as an instrument of orchestration of the Commission (Blauberger and Rittberger 2015). Others have argued the opposite; namely, that member states approved the establishment of the ECN, because it would afford them more control over competition enforcement at national level and allow more checks on the Commission's decisions (Tarrant and Kelemen 2017).

The stated goal of the ECN is to foster joint enforcement of competition law across the EU (by the European Commission and the NCAs, or by several NCAs affected by a given case) through consistent application of the law, rules on case allocation and cooperation, and exchange of information, in addition to the sharing of practice on broader policy issues. There are legal constraints in Regulation 1/2003, such as the obligation for parallel application of national and EU competition law (Art 3), and requirements to consult the Commission and other members of the network when opening an investigation and before taking a decision (Art 11). Recently, Outhuijse and Cseres (2017) have argued that the scope for joint competition enforcement within the ECN, and particularly horizontal cooperation between NCAs to that effect (Monti 2014), has, however, been limited. NCAs and the Commission largely pursue investigations independently, while the ECN functions more as a platform for discussing enforcement strategies and for exchange of information. Although conceived as an enforcement network, it has entered the realm of policy-making (Outhuijse and Cseres 2017).

The ECN has received its highest praise for its ability to bridge across NCAs, offering them access to peers' expertise and information, as well as an inclusive platform for sharing the

challenges that they face (Kekelekis 2009, Svetiev 2010). Monti (2014: 122) argues that experimentalist governance might be found in the “day-to-day working processes of the network, rather than in its formal output”. The ECN is hierarchically structured across four levels of interaction, ranging from Directors General meetings twice a year to frequent working group meetings where NCAs participate voluntarily. Commission officials participate at all four levels.

Given its hierarchical and formal internal structures, the ECN represents an obvious case for the investigation of the importance of internal network structures. We examine those structures and the perceptions of the NCAs. In the context of the ECN, we observe both institutionalised and relational opportunity structures. The former consist of four hierarchical levels, the latter of the informal connections that NCAs maintain with each other outside of the framework of the ECN. From an opportunity structure perspective, we expect the internal formal network structure to help NCAs implement competition policy and enhance their institutional autonomy and powers (Newman 2008b). We anticipate that the external informal network structure will be effective in fostering exchanges between more and less experienced and resourceful NCAs (Vantaggiato 2018).

Data and methods.

In order to assess how NCAs perceive the ECN’s internal network structures, we carried out structured interviews with the ECN liaison officer at 15 European NCAs. This official is the best placed to comment on the involvement of their NCAs in the ECN, and interviewing this person across different NCAs ensured consistency of perspective. The data was collected in 2014. Interviews were mostly carried out by telephone. Each respondent who agreed to take

the survey was sent a copy of the interview questions in advance. The interviews followed a detailed template, which included a large number of closed questions to ensure comparability. During the interview, one of the authors went through the questions with the respondent, while the other noted the respondent's replies. In two cases, respondents declined the phone interview and sent their replies via email. In one case, the respondent declined the phone interview and the interview was carried out face-to-face, at the NCA's headquarters in the country of origin. We chose phone or in-person interviews over mailed questionnaires or an internet survey for three main reasons: to build a relationship of trust with officials in sensitive roles; to make it possible to deal instantly with potential misunderstandings concerning the aim or the meaning of questions; and to be able to ask questions or engage in further dialogue with willing interviewees.

We obtained replies from a total of 15 NCAs, out of 28. They include the NCAs of Belgium, Croatia, Denmark, Finland, France, Germany, Ireland, Italy, Hungary, Latvia, Malta, Slovenia, Spain, Sweden, and the UK. The sample therefore covers a range of NCAs from 'old' and 'new' Member States, from north and south, covering different sizes of national markets and with different levels of resources. In order to protect the anonymity of our respondents and of their replies, the following tables and figures do not link replies to individual respondents, but presents the data in aggregate form. We also conducted a number of background interviews – with officials in the Commission, and senior officeholders in two NCAs – in order to gain a wider understanding of the operation of the ECN.

Our questions focused primarily on our respondents' assessment of experience with the internal structures of the ECN, as well as with the Directorate General for Competition (DG COMP). We also asked respondents to name between 3 and 5 NCAs with which they are most frequently in contact outside the internal structures of the ECN. One respondent declined to provide such

information. The aim of this question was to reconstruct the structure of informal bilateral interactions between European NCAs. Although lacking data from all network members, the responses allow the reconstruction of most of the network structure and the identification of the central actors. We then relied on measurements of network analysis to further explore the patterns of interaction among NCAs outside the ECN, specifically indegree (i.e. the number of incoming connections of each NCAs) as a measure of network influence, and outdegree (i.e. the number of outgoing connections of each NCAs) as a measure of network activism (see Robins 2013). We tested the strength of the association between NCAs' indegree and outdegree, and the number of cases that they dealt with since the establishment of the network, as well as the number of their full-time staff resources, through statistical analysis.

We first present results concerning the NCAs' assessment of the internal formal structures of the ECN. In terms of these structures, there are four levels within the network: Directors General, plenary, working groups, and sectoral sub-groups. We operationalise opportunity structures as the ability of NCAs to set or influence the agenda of the network. Then, we present the external informal network structure of the ECN, which we expect to be dedicated to exchange of technical information and experiences. We operationalise experience through the number of competition cases that NCAs treated between 2004 and 2017 (the year of our analysis)¹. We operationalise resources as numbers of staff in individual NCAs in 2014 (the year when we carried out the survey).

Analysis.

¹ The number of cases was retrieved in October 2017 at the following link <http://ec.europa.eu/competition/ecn/statistics.html>

NCA's assessment of the formal internal structures of the ECN.

There is a high level of agreement among NCAs concerning how participation into the formal structures of the ECN affects them. Most respondents confirmed that the regular meetings of Directors General constitute an opportunity for their Director General to voice issues of concern or interest to their NCAs, and that these meetings sometimes led to concrete action. Examples include concerns voiced about the autonomy of some NCAs, the desirability of including more stringent provisions on enforcement as part of the overhaul of Regulation 1/2003, and discussions of market integration ranging from agricultural policy and dairy products to e-book regulations.

Table 1 reports NCAs' levels of agreement with statements concerning the usefulness of the Plenary meetings, of working groups and subgroups. One respondent disagreed with the first statement, as they deem larger authorities to be more influential within the ECN. One respondent disagreed with the second statement and affirmed that the ECN plenary is a discussion forum, where no formal decisions are made – the only respondent to express this view. Several authorities replied with a “don't know” because they are either very new to the ECN, and therefore have not yet chaired or participated in a working group, or attended the relevant meeting (e.g. the ECN plenary).

The third and fourth statements gathered the highest levels of agreement. They testify to the ability of the ECN to allow NCAs to voice their concerns or make proposals, including the creation of working groups on topics of particular concern to them, regardless of the status or size of their NCA. The last three statements in the table, concerning cooperation at operational level within the working groups, also received very high levels of agreement. One respondent stated that when working groups are created, but achieve limited participation from the NCAs, they are disbanded without hesitation. Thus, working groups are not fully institutionalised.

This testifies to the practical, operational nature of working group collaboration. Moreover, several respondents noted that propositions made in the working groups are discussed at the Directors General meeting. This suggests that the governance of the ECN is bottom-up, rather than top-down.

Table 1 - NCAs' assessment of the formal internal structures of the ECN – *Opportunity structures*

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
'The ECN plenary offers an opportunity for all NCAs, whether from larger or smaller member states, to discuss and debate issues that concern them'	8	6	1		
'Decisions taken by the ECN plenary have concretely assisted my NCA by resolving an issue of concern'	5	6	1		3
'Creating an ECN working group offers opportunities for any NCA whether from a larger or a smaller state to explore horizontal issues of concern or interest'	12	3			
'Chairing or participating in ECN working groups has enabled my NCA to address particular issues of concern or interest to it'	10	5			
'Chairing or participating in ECN working groups has enabled my NCA to resolve issues of particular concern or interest to it'	6	7			2
'Creating an ECN subgroup offers opportunities for any NCA whether from a larger or a smaller state to explore issues in competition policy implementation and enforcement in particular sectors'	8	6			1
'Chairing or participating in an ECN subgroup has enabled my NCA to address and resolve issues of direct interest or concern to it'	5	7			3

The NCAs' assessment of the effectiveness of the ECN on convergence in the application of competition rules across the EU is also very positive. The ECN performs an important socialisation role by fostering the emergence of a common ethos across NCAs, as well as functioning as an effective dissemination platform for good or innovative practice across the EU. In table 2, one NCA expressed disagreement with the second statement on the grounds that the ECN not always manages very effectively, in their opinion, to perform the tasks set out in the Commission's Network Notice.

Table 2 - NCAs' assessment of the wider impact of the ECN across the EU – *Effectiveness (for policy convergence)*

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
'The ECN has made the coherent application of Community antitrust rules possible within the EU'	7	7			1
'The ECN has brought about a convergence of antitrust practice within the EU'	7	7	1		
'The ECN enables innovative practices to be disseminated among NCAs within the EU'	5	8			2
'The ECN enables best practice to be disseminated among NCAs within the EU'	7	8			
'The ECN has helped to build a common competition culture among EU NCAs'	7	8			

There was some divergence between respondents in their assessments of the effectiveness of the ECN in increasing the independence and reputation of individual NCAs. Most respondents

report that the status of their NCA has improved in their national setting, as a result of the ECN. However, the positive reputational effect of ECN membership did not always also translate either into greater independence and autonomy from national ministries, which varies considerably across NCAs (Guidi 2014), or in increased resources (in line with Maggetti 2014). In one case, a respondent disagreed with the statement on autonomy on the grounds that the NCA in question has always been extremely independent. At any rate, we cautiously interpret this finding as suggesting that NCAs command more authority towards business and industry, which, arguably, is a key resource in the implementation of competition policy at national level.

Table 3 - NCAs' evaluation of the ECN's impact on their NCA – *Effectiveness (for reputation/independence)*

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
'My NCA is stronger as a direct result of the ECN's creation'	5	7	1		1
'My NCA has greater authority because it is able to access the expertise and experience of other NCAs'	5	7	1		2
'Membership of the ECN has led to the investment of more resources in my NCA'	1	5	4	2	3
'The ECN has enhanced the authority of my NCA within the domestic setting'	3	7		2	3
'The ECN is an important source of the authority and independence of my NCA vis-à-vis government ministries'	4	3	3	3	2

As mentioned, an early wave of literature interpreted the creation of the ECN as a direct attempt of by the Commission to extend its power over NCAs (Wilks 2005). Table 4 and Table 5 suggest that this interpretation is not shared within the NCAs a decade after the ECN came into

operation. The majority of the respondents describe the ECN as ‘a partnership of equals’ and the European Commission as a manager rather than an orchestrator or a principal.

Table 4 - NCAs' evaluation of the position of competition authorities in the ECN - *Control*

Please tell us which of the following statements best captures your evaluation of the ECN:

a. ‘The ECN is a partnership of equals’	4
b. ‘The ECN is a partnership of equals, in which the Commission is primus inter pares’	9
c. ‘The ECN is dominated by the Commission’	0
d. ‘The ECN is dominated by NCAs from the larger member states’	2

Table 5 - NCAs' assessment of the role of DG COMP within the ECN - *Control*

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
‘In allocating cases, the Commission has largely acted according to the spirit and letter of the Network Notice’.	1	10			4
‘In stating its opinion on how EU law should be applied, the Commission has largely acted according to the spirit and letter of the Notice’.	5	9			1
‘The Commission’s role in the network is more of facilitator or manager than policy leader.’	2	8	4		
‘In general, the Commission treats NCAs within the network as equal partners in a common enterprise.’	2	12	1		
‘The Commission has not needed to seek recourse to Article 11(6)*, since it has other means of ensuring that there is no deviation from its favoured view.’	3	8			4

We closed our interviews by asking NCAs what could be improved within the ECN. Most respondents replied “more of it”. They considered the ECN to be under-utilised as a platform for fostering convergence in sanctions and, therefore, in enforcement. Several respondents lamented that differences in procedural rules at national level are barriers to cooperation (see also Cseres 2010) and effective enforcement. One respondent thought that the ECN is still too focused on the relationship between the Commission and the NCAs rather than attempting to deepen horizontal relationships between the NCAs (a point also raised by Monti 2014). Another expressed the following view:

“We have had discussions concerning who is actually responsible for setting EU competition policy. This comes up when we have to apply provisions in new things like the online economy and we have to find a common way in the ECN. You can say that the European Commission is always in the driver’s seat for all new issues and we are all arms of the Commission. Our preferred approach would be one where you have a decentralized system where also NCAs are in a position to develop competition policy in coordination with their peers, and then all NCAs follow that practice. For us, it is not DG COMP that sets the standard, but rather our peers set a precedent that often other NCAs then follow: this is the issue we have got to face directly in the coming years.”

This role of the Commission concerning new competition issues is supported by legal provisions. Regulation 1/2003 states that in case of a novel question, the Commission may issue a declaratory decision, and provide for NCAs to seek informal advice from the Commission (recitals 14 and 38 respectively); while the case allocation rules of the Network Notice (paragraph 15) state that the Commission is likely to be well placed to act if a new

competition issue arises. While not formally binding, these provisions have set the tone within the ECN.

The informal relational structure of the ECN.

To gauge the structure of informal collaboration among NCAs outside the ECN, we asked our interviewees the question: “Which are the 3-5 NCAs with which your NCA is most frequently in contact?”. Their replies suggest a directed network of nominations, which we show in figures 1 to 3. In the first two figures, the NCAs are colour-coded according to the number of competition cases that each has dealt with since 2004 and divided into four groups. In figure 3, the nodes of the network (i.e. the NCAs) are colour-coded as per the number of staff units they had in 2014 (the year when we conducted the interviews).

In figure 1, node sizes correspond to the indegree of NCAs, i.e. the number of incoming ties they receive. In this case, the ties are the nominations made by their counterparts. In figure 2 and 3, node sizes correspond to the outdegree of NCAs, i.e. the number of outgoing ties they maintain with their peers. In the figures, missing respondents are identified by the triangle shape. We assigned a minimal amount of indegree and outdegree to these respondents in order for them to appear in the plot.

Although we do not have data for the whole network, specific patterns emerge. Figure 1 shows that NCAs with the highest number of cases are the most sought after. Two of the triangle nodes (i.e. missing respondents) also have high indegree scores. Figure 2 shows that NCAs that have dealt with fewer cases possess more outgoing than incoming ties. Sending more outgoing ties signifies search for information and valuable partners. In figure 3, NCAs with intermediate numbers of staff appear as the most active. This pattern is suggestive of a mechanism of

compensation, whereby NCAs use external informal network ties to compensate for lacking resources (Vantaggiato 2018). The four isolated nodes in both figures correspond to NCAs that none of our 15 respondents nominated among their frequent contacts.

When asked what they thought accounted for different levels of engagement in the ECN, all respondents provided the same reply: the most active NCAs are those that possess the highest resources and deal with the most cases. Figure 1 shows that they are also the most pursued network partners. In the words of our respondents:

“Actually, what matters is number of cases; and the Commission knows who has experience. For bread and butter issues, all have experience, so they don’t need to ask others how they do it. But in some areas, like telecoms, issues are technical and then you need advice. What matters is the degree to which your market is affected and specific knowledge.”

“Some NCAs simply don’t have staff to send to meetings or deal with topics we deal with.”

Hence, interdependence (Van Boetzelaer and Princen 2012), expertise and the number of cases are the key drivers of collaboration within this network. Expertise and number of cases are correlated: the higher the number of cases a NCA has dealt with, the higher the level of expertise accumulated. These factors, in turn, are correlated with country size. The Pearson’s correlation coefficient between NCAs’ indegree and the total number of cases they have dealt with between 2004 and 2017 is, indeed, very high at .65 and statistically significant at 0.000 level (including only NCAs for which we have a measure of indegrees).

Figure 1 - Informal network structure; node size = indegree

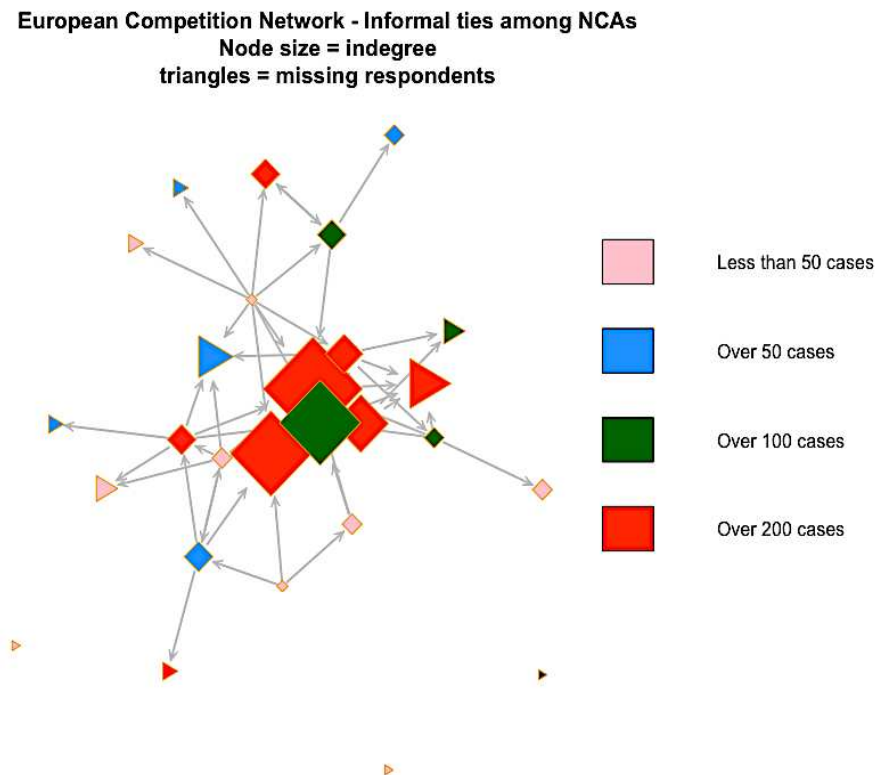


Figure 2 - Informal network structure - node size = outdegree

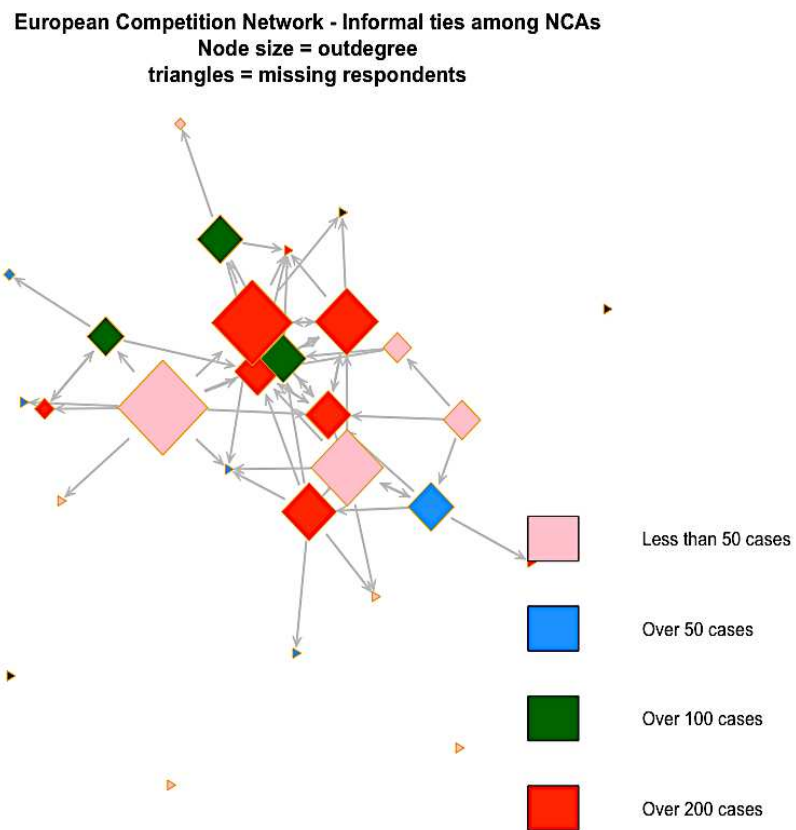
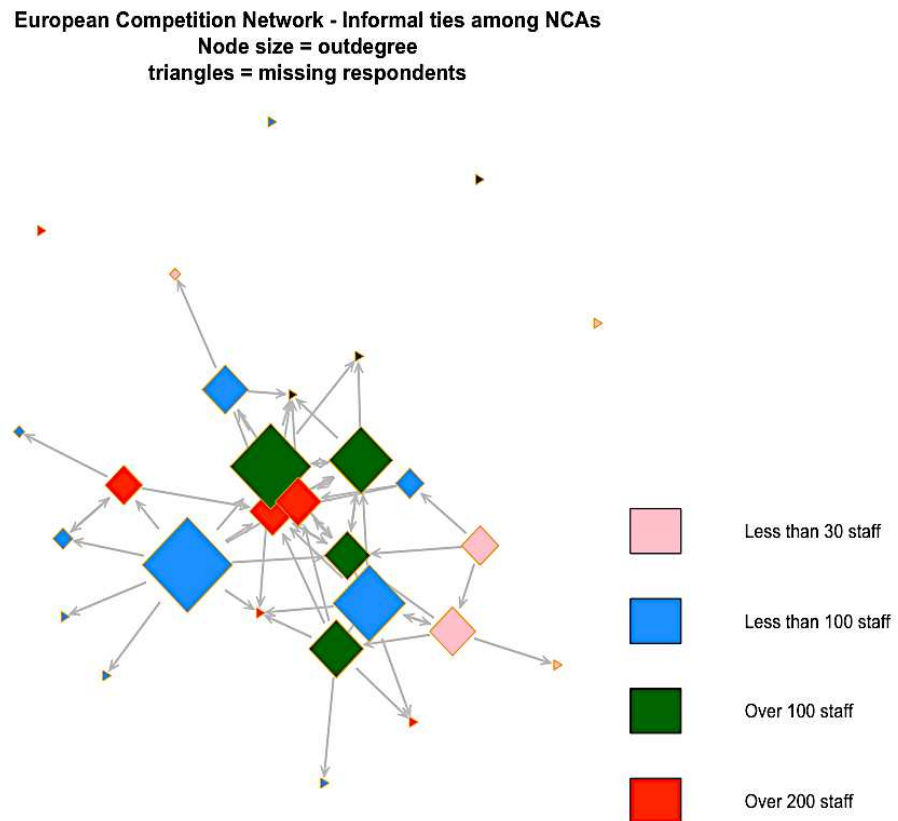


Figure 3 - Informal network structure - node size = outdegree



In terms of the most frequent informal ties, the responses suggest a continuum between interactions within the ECN and outside of it. Informal subgroups of regulators meet annually to discuss topics of common interest, or interdependence, e.g. where the same companies are working in their national markets. These show that the ECN fosters genuine collaboration and continued interaction even outside of its formal structures. In the words of our interviewees:

“Between 2002 and 2005 we had close cooperation with other countries of the Visegrad group, but since all became EU members this was replaced by the ECN. This year our NCA initiated a conference... we also invited [neighbouring countries]... the

conference was very successful and we decided this will become a practice for this group.”

“We have an annual meeting with colleagues from the Netherlands, Germany, Luxembourg and Britain, in presence of the Commission, where we discuss for half a day on topics that we discussed at the D[irectors]G[eneral] meeting, but are of specific relevance to us; it is very operational and very important. For a couple of years, the second most important source of cartel cases after leniency [applications].”

“We have good links with many colleagues. At subgroup level, we have a neighbours’ meeting with colleagues from “old Europe”; because the markets are more integrated, there are many of the same companies across these markets. It happens once a year. Often we share information on cases we are working on at the same time.”

Conclusion

Scholarship on European Administrative Networks (EANs) is rich in descriptions of the origins of networks, assessments of network effectiveness as measured through adoption of similar soft or hard rules across different member states, and analysis of control. However, it leaves important questions unanswered, particularly regarding the internal structures and operation of EANs, and how these affect the distribution of power, resources, and influence among network members. This article is premised on the view that the examination of external network features alone is insufficient and that understanding the impact of networks on regulators needs to be accompanied by an analysis of internal interactions. As a first step in addressing these gaps, we investigated the internal structures that organise interaction within a particular network.

We formulated the following expectations: if internal network structures represent opportunities for all network members to set or influence agendas, irrespective of their status or resources, then network members (i.e. the regulators) are likely to feel a greater sense of ownership of the network, and to consider it effective in fulfilling its mission. We also anticipated that a sense of equal access would be associated with patterns of strong informal bilateral interaction outside the formal structure of the network.

We focus on the empirical case of the ECN: an enforcement network with highly formalised hierarchical internal structures. Our sample comprises a representative sample of NCAs from across the EU and from big and small countries. This allows us to capture a wide range of perceptions and to avoiding the bias towards Western Europe that has typified comparative analysis in the past (Csere 2010).

Our findings show that NCAs consider that the ECN presents them with opportunity structures that affords all of them access. Far from inhibiting their initiative, the ECN's four-tiered structure allows all NCAs, whatever their size or status, to influence the network's agenda. The ECN's internal structure facilitates exchange at all levels, enabling NCAs to share expertise and experience with their peers. Our respondents perceive the ECN as a collaborative enterprise where the Commission has the role of manager rather than orchestrator or hegemon. They believe that the ECN is effective at promoting convergence and ensuring the coherent application of competition law across the Member States -- although they also think that joint enforcement could be improved.

Most of our respondents deem that the net effect of the ECN on their national standing has been positive. Moreover, we assessed whether patterns of informal collaboration between NCAs correspond to exchange of expertise and sharing of resources. We find, in line with Vantaggiato (2018), that NCAs with more resources and expertise are often consulted by those

with fewer resources, suggesting that well-functioning internal collaboration structures foster the diffusion of best practice.

The recently adopted ‘ECN Plus’ Directive highlights the necessity of fuller convergence across NCAs in institutional and procedural issues. The initial Commission proposal underlined the importance of institutional features of NCAs for the effectiveness of network cooperation and ultimately of policy implementation: differences in enforcement and sanctioning powers of NCAs allow companies to engage in regulatory arbitrage. The adopted Directive aims at strengthening and harmonizing investigation, enforcement and sanctioning powers of NCAs (including a coordinated leniency programme for whistleblowing), guaranteeing their independence within their national contexts and requiring Member States to provide them with the necessary financial and human resources. Our interviewees had suggested the desirability of movements in these directions. The findings of our research suggest that the structures of collaboration within the ECN are an appropriate mechanism for effective competition enforcement across the EU.

This article contributes to the literature by demonstrating the importance of structure as a variable in understanding administrative networks. Our findings highlight the importance of taking institutional architecture into account. Since the ECN lies at one end of a spectrum in terms of the detail and complexity of its structure, one possibility would be to investigate other networks and compare how internal structures shape opportunity and experience, and encourage informal interaction between network members.

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