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**Project of paper to be presented in the contributed paper sessions of the
3rd ACLE Competition and Regulation Meeting**

University of Amsterdam, Friday, March 16, 2007
Amsterdam, The Netherlands

**Protecting antitrust agencies from special interest influences: lessons from the French
case**

The paper claims that even in a well developed antitrust framework, such as the one existing in France, there are still too many loopholes that active lobbies can use to influence the authorities. Even if the politicians do not actually abuse these opportunities, a better protection from special interest influences could improve the credibility of the entire system and the confidence that businessmen can put in competition laws.

The paper is organized as follows.

In an introductory section (I), we refer to the modern theory of governance and political economy (especially the articles by Maskin and Tirole, “The Politician and the Judge: Accountability in Government”, AER, 2004 and Shleifer, “Understanding Regulation”, European Financial Management”, 2005) to justify our proposals for further protections of antitrust agencies from special interest influences (for a similar argument in the field of law see for instance M. Gal “Reality Bites (or Bits): The Political Economy of Antitrust Enforcement”, New York University School of Law, 2006). The area of antitrust is complex and the quality of the decisions cannot be fully and rapidly assessed by the voters. This is typically a situation where the conduct of the policy should be given to an independent agency (Maskin-Tirole). Moreover, as argued by Shleifer, an optimal solution of the trade-off

between the disorder of market forces and the dictatorship of the government can be obtained by giving more importance to specialised courts. We will argue that improvements can still be made in the antitrust laws in order to reinforce its efficiency in the direction suggested above.

In section II, we will then turn to the French case and provide some observations of lobbying activities by a sample of large firms. Several cases taken in the fields of merger control (Coca-Cola-Orangina; Boeing-Jeppesen; French beer market) or in other antitrust issues: abuse of dominant position (La Poste) or collusion (RPM in the sector of TV, DVD players and similar brown products) will be mentioned to illustrate the risks of political interference in the French antitrust system. We will also report some results obtained from survey data obtained in the end of year 2005 while preparing a participation to a seminar of the French antitrust office DGCCRF. Sixty one large firms operating in France answered a questionnaire prepared and sent by the law firm Jeantet & Associés (Paris) containing 29 questions on their perception of the way antitrust laws were interfering with their marketing strategies. A set of questions were especially dealing with lobbying and related issues. It appears that 62% of the firms which answered the questionnaire declared using lobbying devices. The perception that they have of the chances of success, both at the French level and at the European level are interesting to analyse. One can also understand from the survey data the areas of antitrust more open to special interest influences.

In Section III, we try to identify where are the major loopholes in the French antitrust organization. At the stage of the design of the law, the French antitrust law allows less exemptions nowadays than it used to be several years ago (see OECD reports). However, a whole part of the antitrust law regarding the relationships between suppliers and resellers (Titre IV), designed to protect small retailers, is still a constant cause of concern. Similarly, past public monopolies in the field of energy use their political clout to obtain delays and arrangement in order to sustain as long as possible their dominant position. The two other main sources of lobbying access to policy are located in the procedure of merger control and in the new instruments giving more regulatory and discretionary power in the hand of the authorities, the so-called procedures of “remedies and settlements” (“engagements”, transactions”). The French system of merger control leaves still a too much room to the ministry of the economy, from the study of the case up to the final decision.

The new instruments, such as the design of remedies and settlements in a short period of time, can provide efficient ways of saving the authority’s scarce resources and as a result

concentrate their efforts on the most important cases, which require to follow a long procedure. However, these instruments may open new loopholes, if they come to substitute negotiated procedures between firms and the authority to the former kind of enforcement of the rules. Again the issue of the independence of the agency and of the control of the courts appear to be crucial.

In the last section (IV), we suggest several institutional moves which could be an attractive alternative to the present regulatory system. Freeing the merger control from the politicians, reinforcing the independence of the agencies, giving more weight to the courts, are the major moves which seem to be small reforms worth to be implemented in order to improve the credibility and efficiency of the French antitrust framework.

References to previous work on the subject

The survey data have been reported and discussed in :

Bougette, P, Donnedieu de Vabres, L, Montet, C. and F. Venayre (2006) « Stratégie et droit de la concurrence : Une enquête auprès des grandes entreprises françaises », Atelier de la concurrence, Revue de la Concurrence et de la Consommation, Janvier-Février, Supplément au n° 14, pp. 2-10

See also for more theoretical arguments the article in the same issue of this Journal : Bougette, P. Montet, C. et F. Venayre “L’adaptation légale de la stratégie d’entreprise au droit de la concurrence”, pp. 11-23

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Research interest: Applied microeconomics, applied game theory (author of “Game Theory and Economics”, Palgrave, 2003, Chinese translation 2005), competition policy : more than 20 years of consultancy with law firms in France and other European countries; major cases: Pepsico against Coca-Cola/Orangina, Boeing/Jeppesen, Carrefour/Promodès, Interbrew against Heineken and Kronenbourg, Pharmacia-Upjohn; member of the Editorial Board of “Revue Lamy de la Concurrence”, and of “Revue Juridique et Economique Polynésienne.