

# The Commission and national governments as partners: EC regulatory expansion in telecommunications 1979–2000

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**ABSTRACT** General integrationist models underline conflicts between the Commission and national governments. They cite telecommunications as an exemplar of the Commission imposing its choices on unwilling member states. However, a close examination of the development of substantive EC regulation in telecommunications shows that the Commission and national governments acted in partnership. Major conflicts concerned constitutional issues rather than substantive ones. How and why the partnership came to exist is analysed using a principal–agent framework. The article argues that formal and informal institutional controls made the Commission very sensitive to the preferences of national governments in substantive EC telecommunications regulation, resulting in partnership in developing substantive EC regulation. Four processes whereby such controls operated were: the participation of national governments at all stages of decision-making; incrementalism; compromises and linkages; national discretion in implementation. In contrast, effective controls and processes did not apply to constitutional issues, leading to conflict rather than co-operation between the Commission and governments.

**KEY WORDS** European Commission; principal–agent; regulation; telecommunications.

Explicitly or implicitly, general models of European integration claim that European Community (EC) regulatory expansion involves a conflictual struggle for power between the European Commission and national governments. The Commission is seen as a policy entrepreneur, taking the initiative to drive forward integration (Sandholtz and Zysman 1989). Neofunctionalists emphasize the Commission's ability to expand its role against the wishes of governments, thanks to the support of transnational groups and the European Court of Justice (ECJ) (Sandholtz and Stone Sweet 1998). Intergovernmentalists argue that the Commission is generally unable to impose its preferences on member states, but equally assert or assume that the Commission and national governments compete to direct and control integration (Moravcsik 1998, 1999).

EC telecommunications regulation<sup>1</sup> is used as an, if not *the*, exemplary case to support general claims that the Commission is powerful and able to lead

European Union (EU) policy-making (cf. Majone 1996; Sandholtz and Stone Sweet 1998; Sandholtz and Zysman 1989). The integration literature relies on studies of telecommunications which argue that the Commission took the initiative and persuaded or obliged national governments to accept its role; it did so by applying its legal weaponry, in alliance with the ECJ and supported by transnational interests operating at the EC level (Schmidt 1996, 1998; Sandholtz 1993, 1998; cf. Schneider *et al.* 1994). The studies postulate that the Commission was 'the driving force' behind EC policy (Schneider and Werle 1990: 96), 'has put the Council under clear supranational pressure to agree on regulatory measures' and 'initiated an influential European-wide policy debate and enacted its own measures' (Schmidt 1996: 244–5). Great emphasis is laid on conflicts between the Commission and member states, with claims that the former wrested powers from national governments using its Treaty powers, particularly Article 86[90], backed by the ECJ.

The present article has two purposes. The first is to challenge these existing views of the relationship between the Commission and national governments in telecommunications. It argues that the development of EC telecommunications regulation has occurred through co-operation and partnership between the Commission and national governments. Partnerships in the EU involve close consultation, real participation, deliberation and a genuine pooling of power among actors (cf. Thielemann 1999; Scott 1998). The case of telecommunications suggests that partnerships can exist at the EC level between national governments and the Commission. The two shared a common agreement on the expansion of the EC's role and on most substantive issues. Their co-operation grew and was maintained over many years. Conflicts between the Commission and certain national governments on substantive regulatory matters were limited and were often more concerned with procedures and timing than the principles and direction of EC action; moreover, they were resolved by compromise and delays. Sharp disagreements occurred on constitutional questions, where the issues went far beyond telecommunications to the institutional design of the EC. Studies emphasizing conflict in telecommunications have conflated substantive policy with constitutional issues about the allocation of general powers between Commission and Council.

The second aim is more general: to use telecommunications to identify important factors shaping the partnership between the Commission and national governments. The article offers a broad institutionalist response within a principal-agent analytical framework. Principal-agent models of the EU state that national governments create the Commission as an agent by delegating powers to it, notably of proposing and enforcing legislation. Inter-governmentalist and neofunctionalist models of EU integration refer to the principal-agent framework, and indeed sometimes derive their arguments from particular interpretations of that framework (cf. Moravcsik 1998; Sandholtz and Stone Sweet 1998). Thus far, studies have given most attention to the reasons for delegation and to institutional design (Pollack 1997; Tallberg

2000; Moravcsik 1998; Majone 1996). However, delegation of formal powers is only the beginning of the relationship between the Commission as agent and national governments as its principal(s).

Agents have their own preferences and a degree of autonomy. Principals face 'agency losses' from two sources: 'shirking', because the agent follows its own preferences which diverge from those of its principal(s); 'slippage' owing to institutional incentives causing the agent to behave contrary to the wishes of its principal(s). Principals can establish mechanisms to attempt to reduce their losses, notably administrative procedures such as screening and selection mechanisms that apply before the agent acts, and ongoing devices that apply after delegation (cf. Kiewiet and McCubbins 1991; McCubbins and Schwartz 1984). Studies of the EU have concentrated on the extent to which member states retain control over the Commission (and the ECJ), and conversely the autonomy of the latter (cf. Pollack 1997, 1998; Moravcsik 1998, 1999; Schmidt 2000). However, investigation of autonomy and control are difficult (Pollack 1998; Moe 1987). There are problems in defining the two concepts. Their empirical application is treacherous; for instance, agents may appear to be autonomous if principals do not apply sanctions, but this may be because of controls being so effective and agents rationally anticipating principals' responses that sanctions do not need to be used.

The present article looks instead at co-operation and conflict between Commission and national governments. These aspects are more amenable to direct empirical analysis than autonomy and control. They are not only interesting in their own right, but also offer a good indicator of attempts by agents to escape from control by principals. Conflict between national governments and the Commission is strong evidence that the latter is attempting to escape from control by the former (cf. Pollack 1998). Conversely, co-operation between them points to the Commission fulfilling its functions without agency losses for its member state principals.

The central argument is that formal and informal institutional controls limited agency losses for national governments in dealing with the Commission as their agent in developing substantive EC telecommunications regulation. The Commission performed valuable functions for governments, but was also very sensitive to their preferences. Four processes whereby both formal controls and less formal institutions (norms) operated to prevent agency losses are found: the participation of national governments at all stages of decision-making; incrementalism; compromises and linkages; national discretion in implementation. Effective controls resulted, through these processes, in partnership between the Commission and national governments in expanding substantive EC regulation. In contrast, effective controls and resulting processes of decision-making did not apply to constitutional issues, leading to conflict rather than co-operation.

Telecommunications offer a valuable case for considering the relationship between the Commission and national governments within the framework of principal-agent models for several reasons. First, the sector provides an exam-

ple of maximalist Commission and EC action: the Commission has been able to exercise its powers (notably Article 86[90]) to a much greater degree and earlier than in other sectors such as electricity or gas (Schmidt 1996, 1998; Fuchs 1994). There is a lengthy period of EC regulation, offering much material for study. Second, as noted, telecommunications are repeatedly cited as an example of conflict between Commission and member states. Within principal-agent studies, a similar emphasis on conflict is found (cf. Schmidt 2000). Hence if co-operation can be found in this sector, then generalizations relying on it need to be re-evaluated. Third, the sector contains both co-operation between the Commission and national governments (over the content of regulation) and conflict (over constitutional matters), thereby illuminating the conditions for co-operation and its limits.

After examining the context for regulatory change in European telecommunications, the article shows that EC regulation developed through a partnership between Commission and national governments in three phases: entry of the EC into telecommunications regulation (1979–87); substantial but limited liberalization and re-regulation between 1987 and 1992; the extension of the EC's regulatory framework across the entire sector (1993–2000). The conclusion draws out the wider implications of the empirical findings.

## I. THE CONTEXT OF EC TELECOMMUNICATIONS REGULATION: PRESSURES FOR CHANGE AND ALTERNATIVE ARENAS FOR INTERNATIONAL CO-OPERATION

Until the 1980s telecommunications regulation in EC member states was marked by long-standing features. A public telecommunications operator (PTO) enjoyed a monopoly over most of the sector, including the supply and operation of the infrastructure and almost all services. Major PTOs included the Direction Générale des Télécommunications (the DGT, renamed France Télécom in 1988), the Deutsches Bundespost, the Post Office and, in Italy, ASST (l'Azienda di Stato per Servizi Telefonica) and the STET (Società Finanziaria Telefonica). The PTOs were state-owned and operated as traditional public-sector bureaucracies. There were no independent or semi-independent sectoral regulators.

Monopoly provision by bureaucratic state suppliers came under increasing pressures for liberalization and a more commercial approach to supply from the late 1960s onwards. Technological and economic developments undermined national monopolies and bureaucratic supply (Stehmann 1995; Thatcher 1999a: ch. 3). New economic and regulatory models challenged previous assumptions that telecommunications networks were 'natural monopolies' and that public ownership prevented private exploitation of market power; instead, they trumpeted the virtues of competition. In the United States AT&T's monopoly was reduced and it was broken up in 1984; reforms in America acted as an example to policy-makers in Europe and led to

lobbying by American firms and officials for European markets to be opened to competition and hence to US firms (Hills 1986).

Yet pressures for regulatory change did not necessarily point to action by the EC. Member states could and did initiate reforms independently of the EC. Britain introduced competition and privatized BT without reference to the EC (Thatcher 1999a). France and Germany began to take modest steps towards reforms, such as liberalizing parts of the market (Thatcher 1996, 1999a, 1999b; Noam 1992; Werle 1990). US lobbying for liberalization was concentrated on Britain and Germany.

In contrast the conditions for EC regulation seemed unpropitious. Member states had alternative arenas for international co-operation. When the EC was established in 1957–8, the six founding members debated whether to undertake co-operation in the postal and telecommunications sectors within the EC or establish an organization outside the EC. The latter option was chosen, and in 1959 the CEPT (Conférence Européenne des Administrations des Postes et des Télécommunications) was born. The CEPT was highly intergovernmental, with few powers over PTOs. Telecommunications were not mentioned in the Treaty of Rome and until the mid-1980s the EC played no role in their regulation. Between 1959 and 1977 the EC's PTT (posts, telecommunications and telegraph) ministers met only twice (Schneider and Werle 1990: 87).

## II. PREPARING THE GROUND: THE EC'S ENTRY INTO TELECOMMUNICATIONS REGULATION 1979–87

The EC's entry into telecommunications regulation was the consequence of co-operation between national policy-makers and the Commission. Discussions about an EC telecommunications policy began in 1979–80 among Viscount Davignon (Commissioner for Industry), national government/PTO officials and representatives of industry (Sandholtz 1992: 226–7). The Council invited the Commission to make specific proposals, leading to the latter issuing three Recommendations to the Council (Commission 1980). Thereafter EC policy involved both the Commission and national officials. In 1983 the SOG-T (Senior Officials Group on Telecommunications), consisting of representatives of member states (notably from PTOs/PTT and economics ministries), was set up with the agreement of the Industry Council (Ungerer and Costello 1988: 130–1; Sandholtz 1992: 228–9). The Council responded to proposals prepared by the Commission in co-operation with the SOG-T; the latter was important in ensuring that national governments supported Commission proposals (personal interviews).

EC action between 1979 and 1987 was modest, with little binding legislation. Limited proposals for market opening were balanced by other measures to spend EC funds. The Commission's 1980 proposals urged telecommunications administrations to harmonize standards, open national markets for one type of terminal equipment (telematic equipment) and begin an experiment in opening up public procurement by inviting competitive tenders for at least 10

per cent of their equipment orders for 1981–3. The Commission's ideas were accepted by the Council, but it watered down the proposals and passed only non-legally binding Recommendations in November 1984 (Council 1984a, 1984b; Sandholtz 1992: 227). Nonetheless, in 1983 the Commission put forward six 'lines of action' (Commission 1983) that included the modest market-opening aims of 1980 but added research and development, improving transnational infrastructure and aiding less developed EC regions. They were discussed by national officials in the SOG-T and led to a 'telecommunications action programme' that was approved by the Council of Industry Ministers in December 1984 (Commission 1984; *Agence Europe*, 20 December 1984; Ungerer and Costello 1988: 135–6; Sandholtz 1992: 230–1).

The 1984 programme was followed by timid action. A first step to opening terminal equipment markets was taken in 1986, when the Council passed a Directive that obliged member states to recognize tests in other member states for whether terminal equipment met 'common conformity specifications' (Council 1986). However, mutual recognition depended on European standards being set by the CEPT and then accepted by the EC. Setting EC standards was slow; the Commission was to be advised by the SOG-T and was heavily reliant on the CEPT, itself dominated by PTOs (cf. Delcourt 1991). Moreover, an R&D programme for telecommunications was launched (RACE – Research and Development in Advanced Communications Technologies for Europe) and assistance to less developed regions was undertaken through the STAR (Special Telecommunications Action for Regional Development) programme (Sandholtz 1992: 236–56; cf. Peterson and Sharp 1998; Ungerer and Costello 1988: 158–60).

The small steps taken by the EC between 1979 and 1987 balanced liberalization with the prospect of EC expenditure, especially for poorer member states, and with R&D co-operation that would assist European manufacturers to face competition. Moreover, they complemented action at the national level, as member states including Britain, France and Germany began to discuss and even introduce regulatory reforms such as limited liberalization and regulation of competition (cf. Thatcher 1999a; Werle 1990). Although limited, EC measures were the fruit of a nascent co-operative relationship between the Commission and national governments. They ensured that by 1987 the EC, including the Commission, had become an actor in European telecommunications regulation whose presence was accepted by national governments, PTOs and manufacturers and prepared the ground for future developments.

### III. SIGNIFICANT BUT MODEST LIBERALIZATION AND RE-REGULATION 1987–92

Between 1987 and 1992 significant EC regulation was introduced following the 1987 Green Paper (Commission 1987). It largely consisted of sector-specific measures, and was led within the Commission by Directorate-General

(DG) XIII (telecommunications) and DG IV (competition). National governments accepted the expansion of the EC's role in telecommunications. Conflicts on the substance of EC measures were limited, divided member states themselves and were resolved through compromises. Agreement spanned 'liberal' countries (led by Britain) who sought liberalization and others more concerned to regulate competition (notably France and 'southern' states). Sharp conflicts concerned the institutional allocation of powers, particularly the application of Article 86[90], rather than the principle of the expansion of EC regulation or the substantive proposals made in telecommunications.

The Commission and national governments acted in partnership. Their relationship rested on several features of decision-making: the Commission seeking consensus on the content of its ideas before moving to legislation; delays between ideas being floated and action; a balance between liberalization and re-regulation; compromises in decision-making; modest EC action which covered only part of the sector, leaving many spheres to member states.

The Community's regulatory framework involved both liberalization and re-regulation. Liberalization directives ended the right of member states to have legal monopolies ('special and exclusive rights') over supply. Thus the 1988 Terminals Directive (Commission 1988) obliged member states to end special or exclusive rights over the supply of terminal equipment. The 1990 Services Directive (Commission 1990) prohibited monopolies over advanced services, such as e-mail, fax services, data transmission and processing services; member states could ban competition only in 'reserved services', most notably public voice telephony. The 1990 Public Procurement Directive (Council 1990b) insisted that supply contracts in telecommunications (and other utilities) be opened to public competitive tender. At the same time 're-regulation' saw EC rules to ensure that competition was 'fair and effective'. The 1990 Open Network Directive (Council 1990a) set out the principles governing access to the telecommunications infrastructure (cf. Austin 1993; Sauter 1996):<sup>2</sup> all conditions imposed by PTOs had to be based on objective criteria, non-discriminatory, transparent and public; tariffs had to be cost-oriented; restrictions on access were to be minimized. A Directive on mutual recognition of type approvals (Council 1991) set out 'essential requirements' that terminal equipment must meet and allowed the EC to set Community-wide standards. The liberalization and re-regulatory directives insisted that within member states regulatory functions (such as issuing licences or policing standards) had to be entrusted to bodies independent of suppliers.

National governments supported and indeed actively participated in the expansion of EC regulation. They and their PTOs endorsed the principle of EC action to ensure limited liberalization and the proposals of the Green Paper (personal interviews; *Financial Times*, 12 June 1987, 11 July 1988, 2 December 1987; *Agence Europe*, 23 December 1986, 23 January 1987, 23 February 1988; Commission 1988). Discussion of legislation took place between the Commission and the SOG-T; the process was thereby dominated by national officials and PTOs, particularly on re-regulatory matters (cf. Austin

1993). In 1988 the Telecommunications Council passed a Resolution welcoming the Green Paper (Council 1988), as did the European Parliament (*Agence Europe*, 15 December 1988). Similarly the content of specific EC legislation to open national markets was accepted by the member states, including liberalization measures that prohibited member states from maintaining national barriers, notably the Terminals Directive 1988, the Services Directive 1990 and the Public Procurement Directive, even though several directives were passed by the Commission under Article 86[90] (see below).<sup>3</sup> Most legislation, including re-regulatory Directives and the Public Procurement Directive, was passed by the Council under Article 95[100a] (harmonization).

One reason for the support among member states was that the development of EC regulation saw clear sign-posting and time for preparation. Thus as part of the '1992 initiative' the Commission (led by DG XIII) published a Green Paper in 1987 aimed at providing momentum and an agenda for reform (Commission 1987). The Green Paper was followed by a six-month consultation period for submissions. The first legislative acts based on its proposals began in 1988, but many of their provisions came into effect only one or two years after the Directives were passed (particularly for liberalization under the Terminals and Services Directives). The late 1980s and early 1990s were a time of reform at the national level. Countries such as France and Germany were undertaking major changes, including substantial liberalization and altering the institutional position of their PTOs away from civil service status and towards public corporations (cf. Thatcher 1999a; Gensollen 1991; Werle 1990). Hence EC measures accompanied reform processes within member states, while also allowing governments and their incumbent PTOs the time to ensure that they could cope with EC liberalization and re-regulatory requirements. Indeed for these actors EC measures were useful at the national level because they could be used to justify changes that met fierce opposition, especially from trade unions (Thatcher 1999b).

Another factor responsible for national governments accepting the content of EC regulation was that liberalization measures were balanced by re-regulatory ones. Countries such as France and 'Mediterranean' nations, worried by 'unrestrained competition', were assuaged by EC rules to prevent damage to broader public policy objectives. The 1987 Green Paper recognized that PTOs fulfilled legitimate, unprofitable 'public service' functions (e.g. providing 'universal service') that should be pursued, even if this meant member states limiting competition. Moreover, EC legislation laid down 'essential requirements', such as safety and protecting networks, which member states could protect by imposing conditions on suppliers.

A final and crucial factor in the national governments and the Commission working together to expand EC regulation was the balance between matters covered by EC legislation and those left to member states. The 1987 Green Paper and subsequent legislation remained relatively modest until 1992 and left great power to member states. They were free to maintain monopolies over 'reserved services', notably public voice telephony and the infrastructure which



accounted for more than 85 per cent of the telecommunications sector in Europe (Ungerer and Costello 1988). Thus regulation of the bulk of the sector remained a national matter. Moreover, member states could maintain their 'national champion' PTOs in public or private ownership. No attempt was made to follow the example of the anti-trust suit that had led to the break-up of AT&T in the United States in 1984 by applying competition law to break up the vertically integrated PTOs. A further route for national discretion within EC directives arose from the fact that much EC legislation was broad and required fleshing out, particularly re-regulatory measures. The Commission had to consult committees composed of national representatives established under directives (e.g. the Open Network Provision (ONP) Committee and the Approvals Committee for Terminal Equipment); if it wished to make standards mandatory, it had to follow general comitology procedures, notably obtaining a qualified majority vote or else be forced to turn to the Council. Finally, Directives were to be interpreted and implemented by national regulatory authorities (NRAs), consisting of government departments and national independent/semi-independent regulators. The NRAs had much discretion since EC legislation was broad and relied on their action, but laid down few stipulations on their organizational position and procedures.

Disagreements on the substance of the legislation did occur, but concerned limited issues over the extent and timing of EC liberalization and re-regulation. Moreover, the lines of division were not the Commission versus national governments. Rather, member states were often divided between a 'liberal group' led by Britain (despite its apparent opposition to the extension of EC power), which was later joined by West Germany, and a more restrictionist, protectionist group often composed of France and 'southern' states. The 'liberals' wanted more extensive and faster EC liberalization (for instance, to cover public voice telephony – *Agence Europe*, 23 February 1988, 26 March 1988). On re-regulation there was a reversal of roles, with member states such as France and 'southern' countries keen to extend EC regulation and make standards compulsory, whereas Britain and 'northern' states wished to limit EC requirements (*Agence Europe*, 26 April 1989, 27 April 1989, 7 February 1990; *Financial Times*, 22 May 1989, 1 December 1989, 11 December 1989).

These matters were settled by compromises. Certain services were liberalized later than others or enjoyed specific provisions in EC legislation. Thus obtaining acceptance from France and other 'southern' states for the Services Directive (Commission 1990) involved allowing national authorities to impose additional licence conditions for basic data services, while for public procurement (Council 1990b), a small Community preference was allowed (3 per cent) and EC norms were given priority in tenders.<sup>4</sup> Temporary derogations from the requirement to liberalize services were given to countries with 'small or underdeveloped infrastructures' (Spain, Portugal, Greece and Ireland). Perhaps most important of all liberalization legislation was accompanied by 're-regulatory' directives that established EC 'essential requirements', such as

ensuring the safety of employees and operators and protecting public networks against damage.

The sharpest debates were over the legal form of the Terminals and Services Directives and broader issues of the constitutional allocation of powers between the Commission and the Council. The Commission, emboldened by the degree of support for its Green Paper and legal discussions during the mid-1980s, issued the Terminals and Services Directives under Article 86[90](3). Article 86[90](1) forbids member states from introducing or maintaining measures contrary to the Treaty with respect to public undertakings and those enterprises to which member states have granted 'special and exclusive rights'. Exceptions are permitted under Article 86[90](2) for undertakings entrusted with operating services of 'general economic interest'. The Commission is given the responsibility for ensuring application of the Article, including the power to issue Directives to member states under Article 86[90](3). Almost all member states initially opposed (at least in public) the use of Article 86[90], including Britain, France, Italy and West Germany (*Agence Europe*, 28 April 1988, 2 May 1988; *Financial Times*, 28 April 1988). They argued that the Commission should use Article 95[100a], thereby requiring approval by the Council and the European Parliament. The Terminals and Services Directives were both challenged before the ECJ, giving rise to two important cases (ECJ 1991, 1992). The ECJ largely upheld the Commission, finding that regulatory measures relating to public enterprises that could directly or indirectly harm trade were illegal and that its use of Article 86[90](3) to issue the directives was lawful.

In analysing EC telecommunications regulation, attention has been focused on the legal action over the use of Article 86[90] (cf. Schmidt 1996, 1998; Sandholtz 1998). National governments opposed the Commission having powers to pass legislation, preferring to protect the Council's position. Many worried about the use of Article 86[90] in other fields. However, the central issue was the legal status of the Directive, not the principles of EC action to ensure liberalization, which were accepted by member states. Close examination of events indicates the difference between the constitutional/legal issues and the substance of EC legislation in telecommunications. The 1987 Commission Green Paper argued that general EC competition law applied to telecommunications and invoked the applicability of Article 86[90], and early in 1988 the Commission used Article 86[90] to issue the Terminals Directive. Nevertheless, the Green Paper was welcomed by the Telecommunications Council in June 1988 and member states did not even attempt to link their acceptance to the Commission abandoning the use of Article 86[90]. Moreover, even as a legal challenge to the Terminals Case was still being decided, the Commission proceeded with the Services Directive under Article 86[90] to end national monopolies over most services. In response, the Council of Telecommunications Ministers agreed that EC legislation imposing liberalization for advanced services on member states should be passed (*Agence Europe*, 23 February 1988, 1 July 1988; *Financial Times*, 14 September 1989),

while recognizing disagreements over the legal basis of action. Hence a 'political compromise' was reached in 1989 between the Commission and the Council whereby Article 86[90] was used, and member states accepted the contents of the Services Directive (although not its legal form), provided the re-regulatory ONP Directive was passed (*Agence Europe*, 8 December 1989, 9 December 1989).

It is important not to conflate disagreements over Article 86[90] between the Commission and certain member states with positions over the substance of EC telecommunications regulation. The period 1987–92 saw significant EC legislation that imposed obligations on member states. It was enacted following discussions between the Commission and national governments, and with the support of the latter on its substance. Most directives were passed by the Council under Article 95[100a]. National governments worked closely and mostly in agreement with the Commission.

#### IV. ESTABLISHING AN EXTENDED EC REGULATORY FRAMEWORK 1993–2000

After 1993 the EC's regulatory framework was greatly extended across the entire telecommunications sector, including core areas previously left to member states. The application of general competition law was added to sectoral liberalization and re-regulatory measures (cf. Scott and Audéod 1996); DG IV played a more prominent role under its Commissioners Sir Leon Brittan and then Karel van Miert. Nevertheless, EC regulation continued to be developed through a partnership between the Commission and national governments. They engaged in lengthy discussions of proposals. Member states accepted the substance of EC regulation and disagreements were confined to timing and scope, rather than the principles of EC action. Many compromises were accepted and the Commission did not pursue ideas that met with strong opposition from governments. Agreement was greatly aided by balance between different types of measure, long delays between ideas and legislation coming into force and the scope for national discretion within EC legislation.

Liberalization directives were passed in the mid-1990s to prohibit monopolies in those parts of the telecommunications sector not covered by earlier EC measures: satellite services, mobile communications, voice telephony and the infrastructure (Commission 1994, 1995, 1996a,b; Council 1995). EC legislation insisted that competition in the largest segments of the telecommunications market, public voice telephony and the fixed-line public infrastructure, be permitted by 1 January 1998 in most member states. In addition the Cable Directive (Commission 1999a) required PTOs to separate their cable television activities from their telecommunications businesses.

Re-regulation came through EC Directives on universal service, interconnection and licensing, numbering (Council 1995; European Parliament and Council 1997a, 1997b, 1998). The Interconnection and Universal Service

Directive (European Parliament and Council 1997b) defined the scope of universal service and the mechanisms that member states could establish to finance its costs.<sup>5</sup> Standards for voice telephony services were laid down, covering matters such as quality of service, provision of advanced facilities and tariff conditions. For interconnection, obligations were imposed on member states to ensure that interconnection terms were effective, 'fair' and transparent. The rules were particularly aimed at the incumbent PTOs, who had 'significant market power'.<sup>6</sup> Licensing was a key matter, as NRAs issued licences and hence could influence entry and the terms of competition. EC rules specified the services for which NRAs could insist on individual licences and limited the circumstances under which NRAs could impose licence conditions.<sup>7</sup> Legislation continued to specify that NRAs had to be separate from suppliers and were to act in a manner that is 'objective, proportional and non-discriminatory' and 'transparent'; a few procedural rules were also established, such as maximum delays for granting licences. In June 2000, the Commission made further proposals (Commission 2000) to consolidate existing rules, co-ordinate the actions of NRAs and specify their procedures and duties more precisely. However, these proposals remain the subject of debate.

General competition law became a significant part of EC regulation of telecommunications during the 1990s. The most important applications concerned the spate of joint ventures, co-operation agreements and takeovers by national champion PTOs such as BT, France Télécom and Deutsche Telekom (cf. Elixmann and Hermann 1996).<sup>8</sup> Significant competition concerns were raised since these incumbent PTOs held dominant positions in national markets, and rival PTOs made complaints to the Commission.<sup>9</sup> DG IV investigated the agreements and bids under general competition law. Nonetheless, the Commission approved alliances and internationalization by the national champion PTOs and imposed few conditions (cf. Blandin-Obernesser 1996: 142–7).

Thus by 2000 EC regulation had expanded across the entire telecommunications sector, taking the form of liberalization, re-regulation and general competition regulation. It insisted on competition in the core of the sector (infrastructure, voice telephony and mobiles). It covered central regulatory questions, including licensing, interconnection, universal service and alliances/takeovers. Yet the degree of consensus among member states remained high: there was support or at least acceptance of EC liberalization and re-regulation (personal interviews). Even the continued use by the Commission of Article 86[90](3) to pass liberalization directives only elicited minor complaints by a few member states; no further legal challenges were mounted and the Commission's powers to issue Directives under Article 86[90](3) were not altered in the Maastricht and Amsterdam Treaties.<sup>10</sup>

Instead of opposing the Commission, national governments actively cooperated with it in expanding EC regulation. They invited it to bring forward proposals – for example, to deal with universal service, licensing, interconnection and numbering (Council 1993; *Agence Europe*, 22 April 1993, 17

November 1994, 19 November 1994, 29 November 1995; *Financial Times*, 26 January 1995, 25 April 1995; *Le Monde*, 15 June 1995). They created the Bangemann group, consisting of industrialists and experts chaired by Martin Bangemann, Commissioner for Industry and Information Technology (DG XIII and DG III). Its report (High-Level Group 1994) urging a rapid move towards competition was accepted by the heads of government at the Corfu summit (cf. *Financial Times*, 22 June 1994, 25 June 1994, 28 June 1994) and provided impetus for further EC liberalization measures. Similarly, national governments welcomed Commission Directives for satellites and 'alternative infrastructures' (use of cable television and private networks for public telecommunications services), even though they were issued under Article 86[90] (*Financial Times*, 18 November 1994; *Agence Europe*, 21 July 1993, 16 November 1994, 19 November 1994).

Discussions over the development of EC action were extensive, and sometimes lengthy and vigorous. However, in so far as disagreements existed, they cut across member states and did not concern the principle of extended EC regulation or the overall direction of change (personal interviews). Rather, the main issues were the timing of liberalization and the degree of discretion left to NRAs to pursue 'social objectives'. The Commission and 'liberal' member states led by Britain and Germany pressed for rapid EC deadlines for competition; other member states, often led by France, Italy and 'southern' countries, pressed for longer transition periods, greater EC re-regulation and scope for member states to impose conditions on suppliers. Conflicts were settled (often slowly) through agreed compromises. Thus, for example, member states were divided over the timing of competition in the fixed-line infrastructure, with the 'southern' states seeking longer delays than Britain and Germany (*Financial Times*, 30 August 1994, 29 September 1994, 17 November 1994, 18 November 1994; *Agence Europe*, 17 November 1994). After long negotiations a two-stage process was accepted with temporary derogations for certain member states.<sup>11</sup> France and other 'southern' member states wanted a more extensive definition of universal service and greater scope for NRAs to insist on individual licences for suppliers;<sup>12</sup> they were opposed by 'liberal' states such as Britain and Germany who feared that NRAs would use such provisions to restrict competition (*Agence Europe*, 8 December 1993, 25 November 1995, 28 November 1995, 20 March 1996, 23 March 1996, 27 June 1996, 4 December 1996, 6 March 1997). Again, the outcomes were laborious compromises between the two groups.<sup>13</sup>

As in the late 1980s and early 1990s, the main opposition by national governments to Commission activity concerned constitutional matters (new EC regulatory organizations) rather than the substantive content of EC regulation. In contrast to the earlier period, the Commission did not introduce major constitutional changes against the wishes of national governments. Thus Ministers rejected a powerful EC 'licensing committee' to police the award of licences (Commission 1992; *Agence Europe*, 10 March 1995; *Financial Times*, 30 September 1996); the Commission did not pursue the idea. During the late

1990s the Commission expressed concerns that NRAs had insufficient powers, resources and independence from incumbent PTOs and that member states were failing to transpose correctly EC legislation. There was support within it, notably by Martin Bangemann (DG XIII and DG III Commissioner), for establishing a European-level agency to ensure even and effective implementation of EC regulation (*Agence Europe*, 24 May 1996, 25 February 1997; *Financial Times*, 3 July 1996, 19 December 1997). The European Parliament repeatedly called for a Euro-telecoms authority or Committee to prevent fifteen differing regulatory areas developing.<sup>14</sup> Despite these pressures no EC-level regulator was created and the Commission pulled back from seeking one (cf. Commission 1999b). The main reason was opposition from member states, who were not ready to accept such a powerful authority (*Agence Europe*, 25 February 1997; *Financial Times*, 19 December 1997; personal interviews). In its June 2000 proposals, the Commission has not sought to revive ideas of a Euro-telecoms regulator (Commission 2000).

Acceptance of EC regulation by member states was aided by delays, clear signposting of changes and extensive consultation carried out by the Commission. Its proposals to liberalize satellite and mobile communications (Commission 1990, 1994) had been foreshadowed in the 1987 Green Paper but were opposed by some governments led by France and Germany (*Financial Times*, 15 November 1990; *Agence Europe*, 19 October 1990). The Commission waited until the Council had accepted the main points of the Satellites Green Paper, and asked the Commission to proceed in November 1991 before finally passing a directive in 1994 (Commission 1994), by which time member states such as France and Germany had begun domestic liberalization (*Agence Europe*, 4 November 1991, 7 November 1991, 13–14 December 1993; *Le Figaro*, 6 December 1991). Even after agreement on the principle of full liberalization and a new regulatory framework, there were further consultation periods on specific proposals that extended over several years; hence, for example, universal service provisions were discussed between 1993 and 1997, when a directive was finally passed. In addition, there were periods for implementation in legislation. In particular the member states agreed on competition in voice telephony and the infrastructure in 1993 and 1994, but the legal deadline for both was fixed at 1 January 1998. Hence for many EC requirements several years passed between initial discussions and the deadline for implementation by member states.

Substantial periods before provisions came into force allowed member states (and their national champion PTOs) to prepare for change. Governments passed domestic legislation to establish new regulatory frameworks that implemented EC legislation, offered national interpretations of EC law and added new elements not required by the EC. They set up semi-independent authorities (for instance, the *Autorité de Régulation des Télécommunications* in France, the *Regulierungsbehörde für Telekommunikation und Post* in Germany and the *Autorità per le Garanzie nelle Comunicazioni* in Italy). Most importantly, they prepared their PTOs for competition, notably by

privatization, tariff rebalancing, modernization of equipment, altering working practices and commercial and international alliances. Thus the diverse Italian PTOs were brought together in Telecom Italia and then sold between 1994 and 1997, the institutional status of France Télécom and Deutsche Telekom was altered and minority stakes were sold (1996–2000). Hence member states were able to attempt to transform their PTOs into international champions, ready to compete at home and abroad.

The balance between the different elements of the EC's regulatory framework provided another crucial factor in the acceptance of EC action by national governments. As in the 1980s creating an EC regulatory framework for telecommunications was a quid pro quo of extending competition. Thus EC rules to protect universal service were an important counterbalance to liberalization, especially for France and other member states worried that competition would lead to fierce price wars and the abandonment of unprofitable services or areas (*Libération*, 18 March 1993; *Financial Times*, 15 March 1996; *La Tribune Desfossés*, 4 May 1995). However, liberalization saw another counterpart in the 1990s: Commission decisions under general competition law allowed national incumbent PTOs to internationalize and form alliances. The linkage was most explicit after the 1993 Council agreement to allow competition in public voice telephony: in the following week the Director-General of DG XIII, Michel Carpentier, stated that the application of EC competition law, especially Articles 81[85] and 82[86], would be altered to allow greater co-operation between European operators (*AFP*, 18 June 1993; *Les Echos*, 21 June 1993; cf. *Le Monde Informatique*, 21 June 1993). As liberalization developed, so too did Commission acceptance of co-operation among PTOs. Although serious competition concerns were raised, the Commission 'traded' approval of agreements for early implementation of liberalization. The clearest case concerned France Télécom and Deutsche Telekom. When the two operators proposed a joint venture for international leased lines and services ('Atlas') in 1993,<sup>15</sup> the most important condition imposed by the Commission was that both countries liberalized 'alternative infrastructures' earlier than required by EC legislation (1998).<sup>16</sup> After long negotiations, involving discussions between Van Miert and ministers and officials from France and Germany, the two countries agreed to a date of July 1996; in return the Atlas alliance was approved, followed by its extension to Sprint.<sup>17</sup> The Commission's application of competition law made liberalization much easier to accept by national governments and their PTOs by the possibility of offsetting loss of domestic monopolies through overseas expansion.

A further reason for national governments accepting EC regulation (and opposing a powerful EC authority) is that they retained considerable power within the new framework. Much EC legislation remained general, and the committee system gave member states and their PTOs a strong voice in detailed rule-making. Moreover, in the absence of a Euro-regulator, implementation remains in the hands of NRAs. Member states retain great freedom over the form of NRAs (for instance, NRAs are not required to be

independent of governments) and over their decision-making procedures and processes. EC legislation has left considerable discretion to NRAs, including over crucial matters such as licensing, interconnection and universal service. Thus NRAs can decide whether to provide monies for universal service costs and choose the form of funding between interconnection charges and a special fund. They have a margin of manoeuvre between issuing individual licences and general authorizations. Although tariffs are to be 'cost-oriented', NRAs are responsible for interpreting and enforcing this requirement, while decisions over retail price controls imposed on PTOs are left to member states.

## V. CONCLUSION

Until 1979 the EC was not a major participant in European telecommunications policy. By 2000 it had passed its own wide-ranging legislative framework. National governments accepted the expansion of EC regulation. Indeed they and the Commission developed it in partnership. Their relationship had three features that made it a partnership. First, they shared a high level of agreement – on the principle of increased EC legislation, on the direction of regulation and on most of the content of legislation. Second, both participated in the development of EC regulation. The Commission made proposals, but usually after it had obtained a green light for legislation from national governments; often the latter called for Commission action or ideas and then welcomed the ensuing results; a substantial portion of legislation was passed by the Council. Third, co-operation between the Commission and national governments was maintained over a lengthy period of time.

As in any partnership there were disagreements and debates between the Commission and governments. However, those over the substance of EC legislative proposals were limited: they were not concerned with its central principles but rather the speed of change and the extent of EC liberalization and re-regulation. Moreover, conflicts were not between the Commission on the one side and national governments on the other. Instead there were divisions among member states, with the same countries favouring greater EC action on some subjects (for instance, 'liberal' states on competition) but seeking to restrict it on others (notably in re-regulation). The sharpest disagreements were about the institutional allocation of powers, namely the right of the Commission to issue directives under Article 86[90]. It is important not to confuse conflicts over the constitutional allocation of powers with acceptance of the substance of telecommunications regulation. The distinction is highlighted by the fact that even when the Commission used Article 86[90], the Council continued to welcome the expansion of EC regulation in telecommunications and accepted the content of directives whose legal basis was being challenged at that very time.

How can the degree of co-operation between national governments and the Commission, as well as its limits, be explained? Applying the principal-agent framework, the Commission performed certain functions that were useful for



its principals. It acted within its delegated discretion and was sensitive to the preferences of its principals. The high degree of agreement on substantive matters was because of little agency shirking and slippage taking place. The performance of functions and lack of agency losses were rooted in institutional conditions – both formal institutions and less formal norms that developed in telecommunications.

National governments faced powerful pressures for change in telecommunications from technological and economic developments, new ideas, domestic interests and international lobbying by foreign governments and firms (Thatcher 1999; Stehmann 1995). These forces undermined traditional institutional arrangements such as monopolies, public ownership, the use of PTOs as tools for fiscal and social purposes and the promotion of purely national firms. Governments desired privatization and liberalization to meet these forces and for their own fiscal and electoral purposes but often met fierce resistance, notably from trade unions, PTO employees and parts of the political left (Thatcher 1999b, 2000). Moreover, liberalization carried the difficulty of ensuring that other countries opened up their markets at a similar time and allowed access on similar terms rather than ‘cheated’ by keeping their national markets closed to competitors. The EC, and especially the Commission, performed valuable functions to aid governments in dealing with these problems.

The Commission acted as broker among member states, facilitating agreement on legislation that would bind all EU countries. It aided governments in dealing with problems of co-ordination and commitment (both *vis-à-vis* each other and in relation to investors – cf. Levy and Spiller 1996). In performing these functions it utilized its institutional position as a body independent of member states with powers of proposing and enforcing legislation. In telecommunications, binding supranational legislation offered major domestic advantages for national governments of providing impetus for reform and a means of blame-shifting. Governments used EC legislation ‘imposed by Brussels’ to justify reforms such as liberalization and privatization and to aid them to overcome domestic opponents to change such as trade unions and parts of the political left (Thatcher 1995, 1996). Yet governments themselves had accepted and/or passed such legislation at the EC level. Their domestic opponents lacked the same institutional position in passing EC legislation. As ‘two-level game’ models point out (cf. Putnam 1988; Moravcsik 1993), international negotiations offer national governments a privileged institutional position that they can exploit at home for their own purposes.

However, an account of the partnership between the Commission and national governments based purely on the functions performed by the Commission will not suffice. The partnership was remarkable. The EC was not the only route for regulatory reform available to national governments: they could have acted at the domestic level irrespective of the EC (following the British example) or, at the supranational level, they could have used the long-established CEPT to engage in intergovernmental co-operation. EC regulation

imposed legally binding obligations and prohibitions on member states that ran counter to the traditional institutional framework of the sector. Agreement on EC regulation was reached across governments of different political hues over two decades. Moreover, there were many potential sources of conflict between governments and the Commission. The former were concerned about protecting their national champions from competition, and individually had incentives to seek methods of cheating. There were significant differences among countries that increased the potential for shirking. The Commission could have exploited these through a 'divide and rule' strategy (cf. Schmidt 2000). It could also have sought to use its European Court victories over the use of Article 86[90] to drive through liberalizing directives irrespective of member state agreement, rather than engaging in the laborious process of achieving consensus.

To provide a more complete explanation of the partnership between national governments and the Commission, and its limits concerning constitutional matters, we need to examine how and why institutional controls resulted in co-operation and prevented Commission shirking and slippage. Four processes emerge whereby controls operated in telecommunications: the participation of national governments at all stages of decision-making; incrementalism; compromises and linkages; national discretion in implementation.

National governments were central actors at all stages of decision-making. In part this was owing to the Council passing directives under Article 95[100a]. However, it extended far beyond this formal, legal sphere. National governments invited the Commission to put forward proposals. Although the Commission had a legal monopoly on making legislative proposals, it consulted governments both informally and through the SOG-T, a body that was created to facilitate co-operation. Green Papers were issued with consultation periods; thereafter legislative proposals were issued, again subject to consultation and debate. Most legislation was passed by the Council; even when the Commission passed directives under Article 86[90], it ensured that their content was accepted by the Council before they were issued.

EC regulation expanded incrementally (cf. Lindblom 1959, 1979). The Commission did not put forward a grand 'masterplan' to liberalize and re-regulate the entire sector that could have attracted great opposition. Initially it put forward modest non-binding norms, followed by limited legislative changes. The pace of change increased in the 1990s; nevertheless EC regulatory expansion still consisted of rapid but limited steps, each building on previous ones. Ideas of possible changes were discussed for long periods and even when legislation had been passed, provisions came into force several years later. The length of the process meant that actors, especially incumbent PTOs, could prepare for change. Incrementalism helped member states and the Commission to advance when there was sufficient consensus. When disagreements arose, they were limited to specific proposals and compromises could be found.

The Commission and member states used frequent compromises and a balance between different aspects of regulation to obtain broad agreement. On the rare occasions when substantial and continuing opposition was expressed by several member states to the content of a proposal, the Commission delayed, substantially altered or even abandoned it. The timing and scope of measures were modified to obtain consensus. The Commission linked different regulatory measures, both within telecommunications and with general competition policy – for instance, liberalization was accompanied by EC re-regulation and in the 1990s full competition was balanced by decisions permitting incumbent PTOs to form alliances and internationalize. The Commission was able to buy off national governments who disagreed with one aspect of policy by linkages to other aspects. Such side payments made compromise much easier for national governments. Diverse interests were satisfied: ‘liberal’ member states obtained the ending of national monopolies, but more ‘protectionist’ ones could point to EC re-regulation; ‘national champion’ PTOs lost their monopolies in the core of the sector, but could seek new markets through alliances and mergers.

National governments also found it easier to accept EC regulatory expansion since they retained a central role in regulation after EC directives had been passed. The Commission proposed broad directives. Producing binding detailed rules at the EC level was subject to a comitology procedure involving national representatives, thereby providing a control mechanism for member states (cf. Franchino 2000). In the absence of an EC telecommunications regulator, NRAs were responsible for implementing EC legislation within member states. They enjoyed significant discretion within the EC’s regulatory framework over prices, licensing and universal service. Moreover, member states had considerable freedom over key organizational aspects of telecommunications, such as the ownership and structure of PTOs and the institutional features and procedures of NRAs.

The processes of decision-making were rooted in the institutional features of delegation to the Commission, notably the controls available to national governments. The nature of such controls prevented national governments suffering agency losses. Principal–agent models tend to focus on the formal institutional design of delegation, particularly controls for principals. These were undoubtedly crucial in EC telecommunications regulation. Formal institutional features such as the legislative powers of national governments, the long-term tenure of many Brussels officials (allowing the Commission to make short-term concessions and derogations in return for the long-term expansion of EC regulation), the existence of comitology controls and the Commission’s ability to link decisions in one field to those in another, all contributed to the partnership between Commission and governments. In addition, however, key informal norms also developed in telecommunications that operated as controls for national governments over the Commission. They included consultation of governments before the Commission proposed legislation, gradualism, patience, compromise and seeking consensus. These informal norms were

clearly linked to the formal institutional design of decision-making, but were also not a necessary result of them. The combination of formal controls and informal norms led, via processes of decision-making, to partnership.

Why did the partnership between the Commission and national governments that operated in substantive telecommunications policy not extend to 'constitutional' ones concerning the allocation of powers? The issues at stake over the latter were less amenable to compromise. They were broader than sectoral regulation as they concerned the relationship between Council and Commission. The latter obtained the right to legislate alone under Article 86[90], reducing the role of the member states. National governments were worried about the application of Article 86[90] in sectors other than telecommunications. The wider use of Article 86[90] was not balanced by new controls for member states, but represented a straightforward transfer of powers from them to the Commission. Moreover, there were few informal norms to smooth the passage of the transfer of powers. On the contrary, the use of Article 86[90] was undertaken by the Commission without lengthy bargaining and consultation with national governments. In principal-agent terms, the Commission was able to 'shirk' by following its own preferences against those of its national government principals, whose controls were insufficient to prevent major agency losses, leading to conflict.

What wider conclusions can be drawn from the case of EC telecommunications regulation? First, the empirical findings of the article suggest that current general models of integration not only miss key features of the relationship between the Commission and national governments, but also exaggerate the degree of conflict between them: at least in policy-making (as opposed to 'grand bargains' over the constitutional allocation of powers), the Commission and national governments can be partners. As in most partnerships, there are conflicts, but these are resolved by compromises and bargaining, and outweighed by co-operation.

Second, the development of substantive EC policy and regulation must be distinguished from constitutional change. The distinction is particularly significant since most intergovernmentalist studies concern Treaties that determine the powers of different EC bodies (cf. Moravcsik 1998, 1999), whereas neofunctionalist works tend to range more widely by including more 'day-to-day' policy-making and regulation (cf. Sandholtz and Stone Sweet 1998). The case of telecommunications suggests that partnership between the Commission and national governments on the distribution of powers between them is much more difficult than on substantive issues, owing to the scope of the issues at stake and fewer institutional mechanisms for resolving the former type of conflicts.

The third conclusion is that principal-agent frameworks can be applied to consider the range of co-operation and conflict between the Commission and national governments. Such frameworks should not assume that conflict between the Commission and national governments is a necessary feature of EC decision-making. Instead, the conditions governing the relationship

between member states as principals and the Commission as their agent must be analysed. In the development of substantive EC telecommunications regulation, the functions performed by the Commission, together with formal controls and less formal norms that evolved over time, led to a partnership between the Commission and national governments. Four processes whereby agency losses were limited for national governments were identified: the participation of national governments at all stages of decision-making; incrementalism; compromises and linkages; national discretion in implementation.

In 'constitutional' matters in which institutional controls (formal and less formal) were weaker, conflict between the Commission and national governments was greater. A comparison of substantive telecommunications regulation with other sectors such as energy or postal services, where there have also been strong functional pressures for EC action and a similar formal institutional framework, but norms of co-operation have been weaker, reveals much greater conflict and slower, more limited EC regulation (cf. Schmidt 1996, 1998). The experience of other sectors shows that functional demands within the same formal institutional framework have not always automatically translated into co-operation between Commission and member states. Such cases suggest that less formal institutions (norms) are also important as controls for member states that limit their agency losses and aid co-operation with the Commission.

Thus three sets of conditions can be put forward within a principal-agent framework to understand whether the Commission and Council are in conflict or co-operate: the functions performed by the Commission; the formal controls available to governments; the informal norms that evolved over time. Strong formal controls and informal norms that the Commission acts according to the preferences of national governments give rise to processes that prevent agency losses. They lead to co-operation and even partnership. When controls for member states are less effective, greater conflict arises.

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## NOTES

- 1 References are to the EC as telecommunications regulation took place under the EC pillar of the EU; in addition, Treaty Article numbers are those of the Amsterdam Treaty, with pre-1999 numbers in [ ].
- 2 The ONP Directive was a framework Directive setting out broad principles, with other, detailed Directives to implement it for specific services.
- 3 For details on the three Directives, see respectively: *Agence Europe*, 23 February 1988, 2 May 1988; *Financial Times*, 15 March 1988, 28 April 1988, 11 May 1988, 1 July 1988; *Le Monde*, 30 April 1988; *Agence Europe*, 1 July 1988; *Financial Times*, 14 September 1989, 13 November 1989; *Agence Europe*, 24 February 1990.
- 4 For details, see *Agence Europe*, 21 April 1989, 27 April 1989, 13 September 1989, 12 October 1989; *Financial Times*, 25 April 1989, 28 April 1989, 5 May 1989, 11 November 1989, *Le Monde*, 9 November 1989; *Financial Times*, 13 November 1989; *Agence Europe*, 24 February 1990.
- 5 A limited number of services was to be available to all users 'at an affordable cost' (notably low-speed fixed public telephone line and emergency services) which national regulatory authorities could finance to pay for losses via a special fund or an interconnection levy; a second group consisted of more advanced services to which all users had a right of access such as leased lines but without a requirement of affordability.
- 6 Key obligations for organizations with 'significant market power' that NRAs were obliged to enforce included: meeting all reasonable requests for access; publication of reference offers for interconnection; charges for interconnection to be cost-oriented and sufficiently 'unbundled'. The Commission also published guidelines for NRAs to use in regulating interconnection pricing and conditions (cf. Sauter 1998).
- 7 For example, NRAs were permitted to require individual licences for public voice telephony, public networks and mobile networks using radio frequencies, or for certain purposes, such as to impose obligations concerning public services or if the licensee had 'significant market power' over public networks or services.
- 8 Key agreements concerning incumbent PTOs in Britain, France, Germany and Italy, with date of formal approval by the Commission, included: Concert, an alliance between BT and MCI to supply international advanced services/networks (1994); Atlas, a joint venture and alliance between FT and DT for international co-operation and advanced services (1996); Phoenix, renamed Global One – a joint venture between FT, DT and Sprint for international advanced services (1996); BT's unsuccessful bid for MCI (1997); Wind, a joint venture between FT, DT and Enel to provide full telecommunications services in Italy (1998); a joint venture between BT and AT&T to supply international advanced services (1999); a joint venture between DT, FT and Energis to build local networks in the UK (1999).
- 9 For example, BT opposed the Atlas venture while Deutsche Telecom and France Télécom attacked BT's bid for MCI – *Financial Times*, 7 December 1994, 28 February 1995, 30 January 1997; *Agence Europe*, 7 April 1996; for comments by Competition Commissioner Karel Van Miert, see *Financial Times*, 28 February 1995, 18 May 1995, 14 June 1995.
- 10 Although a new public service article was inserted in the Amsterdam Treaty.
- 11 Liberalization of the use of 'alternative infrastructures' (such as cable television networks and the private networks of other utilities) was permitted from July 1996 whereas the date for the public fixed infrastructures was set at 1 January 1998 for most member states (with temporary derogations for Greece, Ireland,

- Portugal, Spain and Luxembourg – *Agence Europe*, 16 November 1994, 19 November 1994, 28 November 1995, 29 November 1995.
- 12 As opposed to general or ‘class’ authorizations, which merely required suppliers to register.
  - 13 For example, two categories of universal service were created and for licensing rules stated the conditions under which NRAs could require individual licences.
  - 14 *Agence Europe*, 11 April 1995, 20 February 1996, 24 May 1996, 21 December 1996, 24 February 1997.
  - 15 The alliance was extended to include the US operator Sprint in 1996 and renamed ‘Global One’.
  - 16 For details, see *Financial Times*, 18 May 1995, 2 October 1995, 17 October 1995; *Le Monde*, 1 March 1995, 22 March 1995, 26 May 1995; *Les Echos*, 3 March 1995, 26 May 1995; *La Tribune Desfossés*, 26 May 1995.
  - 17 For the negotiations, see *Les Echos*, 5 September 1995, 18 September 1995; *Financial Times*, 17 October 1995, 16 July 1996, 18 July 1996; *La Tribune Desfossés*, 25 September 1995, 2 October 1995, 3 October 1995.

Interviews were carried out with senior officials in the European Commission between 1993 and July 2000, mostly in DG Information Society (formerly DX XIII) and DG Competition (formerly DG IV).

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