

The EU Commission and National Governments as Partners: EC Regulatory Expansion in Telecommunications 1979-2000

Mark Thatcher

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Explicitly or implicitly, general models of European integration claim that EC regulatory expansion involves a struggle for power between Commission and national governments. The Commission is seen as a policy entrepreneur, taking the initiative to drive forward integration (Sandholtz and Zysman 1989). It seeks regulatory expansion due to constraints on its expenditure (Majone 1996, ch4). Neo-functionalists emphasise 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 (Sandholtz and Stone Sweet 1998; Stone-Sweet and Burrell 1998). Intergovernmentalists differ in their conclusions about the distribution of power (arguing that the Commission is generally unable to impose its preferences on member states), rather than the assumption that Commission and national governments are in conflictual competition with each other for power (Moravcsik 1998, 1999).

In explanations of European integration, EC telecommunications regulation¹ is used as one of the exemplary cases to support general claims that the Commission is powerful, successful and able to lead EU policy making (cf. Majone 1996, Stone Sweet and Sandholtz 1998, Sandholtz and Zysman 1989). The integration literature relies on studies of telecommunications which postulate that the Commission was "the driving force" behind EC policy (Schneider and Werle 1990, p96; cf. Sandholtz 1992). These studies argue that 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 European Court of Justice (ECJ) and supported by transnational interests operating at the EC level (Schmidt 1996, 1998 Sandholtz 1993, 1998; cf. Schneider et al 1994). Schmidt states that "the Commission has put the Council under clear supranational pressure to agree on regulatory measures" and claims that the Commission "initiated an influential European-wide policy debate and enacted its own measures" which "did not reflect the lowest common denominator among governments as an intergovernmentalist position would mandate" (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. Telecommunications are presented as an example of maximum Commission power and ability to expand the EC's role even if opposed by several member states, in contrast to other sectors such as electricity (Schmidt 1996, 1998; Fuchs 1994).

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 is argued that the development of EC telecommunications

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 [].

regulation has occurred mainly through cooperation and partnership between the Commission and national governments. They two shared common agreement on the expansion of the EC's role and on most substantive issues. The partnership grew over time, and EC regulation developed incrementally. Hence the establishment of an EC regulatory framework was marked by considerable consensus. Insofar as there were conflicts between the Commission and certain national governments on substantive regulatory matters, these 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 did occur on institutional questions, particularly whether the Commission could issue directives under Article 86[90], but these did not prevent cooperation between national governments and the Commission on the expansion of EC telecommunications regulation nor agreement on its content. Studies emphasising conflict in telecommunications have conflated issues of substantive policy with questions of the allocation of general powers between Commission and Council; whilst the former saw substantial agreement, sharp conflict was concentrated in the latter, where the issues went far beyond telecommunications to matters of institutional design of the EC.

The second aim is more general, namely to use telecommunications to identify characteristics of the relationship between the Commission and national governments that aided the partnership between them. It highlights six key features of decision making at the EC level: the central role of national governments; incrementalism; advance sign-posting and signalling of changes; frequent compromises; balance and linkages between different elements of regulation; national power and discretion after directives were passed. Analysis of the telecommunications sector suggests that current general models of integration not only miss these 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 institutional allocation of powers), the Commission and national governments are often partners. As in most partnerships, there is some conflict and question of power, but also great cooperation and resolution of differences by compromises and bargaining.

The article begins by examining the context for regulatory change in European telecommunications, underlining the unfavourable background to EC regulation until the 1980s. It then shows that EC regulation developed through a partnership between Commission and national governments, in three phases, beginning with the entry of EC into telecommunications regulation (1979-1987) before the Single European and Single Market initiative, followed by a second phase of substantial but limited liberalisation and re-regulation between 1987 and 1992 and a third phase involving the extension of the EC's regulatory framework across the entire sector (1993-2000). The conclusion draws out the wider implications of the findings for the relationship between Commission and national governments and arguments about EC decision making and integration.

The focus of the analysis is on the relationship between the Commission and national governments. The large-scale task of explaining the entirety of EC telecommunications regulation from national preference formation to implementation of EC legislation is not attempted here: it would require inclusion of factors such as technology and ideas, events at the national and non-EC international levels and other

actors such as interest groups and firms. Instead, the purpose is to look at the partnership between the Commission and national governments, using telecommunications as a case study.

1. The context of EC telecommunications regulation: pressures for change and alternative fora

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 Générales 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 STET. The PTOs were state-owned; most were also often part of the civil service, being units within Post and Telecommunications ministries.² In matters such as conditions of supply and customer rights, the PTOs 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 liberalisation and a more commercial approach to supply from the late 1960s onwards. Technological and economic developments undermined national monopolies and bureaucratic supply (Stehman 1995; Thatcher 1999a, ch3). 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 major changes in the early/mid 1980s such as competition and the privatisation of BT, without reference to the EC (Thatcher 1999a). France and Germany also began to make modest steps towards reforms, such as liberalising parts of the market (Thatcher 1996, 1999a, 1999b, Noam 1992, Werle 1990). US lobbying for liberalisation was concentrated on Britain and Germany.

In contrast, the conditions for EC regulation seemed unpropitious. Member states had alternative fora for international cooperation. When the EC was established in 1957-58, the six founding members debated whether to undertake cooperation in the postal and telecommunications sectors within the EC or to establish an organisation 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 inter-governmental, with few powers over PTOs. Telecommunications were

² In Britain, the PO ceased to be part of the civil service in 1969; BT was separated from postal services in 1981, but remained in public ownership until 1984; in Italy, several PTOs existed, under several different institutional positions within the public sector.

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).

2. Preparing the ground: the EC's entry into telecommunications regulation 1979-87

During the period between 1979 and 1987, the EC took its first few steps in telecommunications regulation. Although there was little EC legislation, the ground was laid for future developments: member states accepted the Commission as a legitimate actor in telecommunications and agreed on future directions for EC regulation. Action took place before the Single European Act and the Single Market initiative, thus requiring unanimity in the Council of Ministers. Nevertheless, gradually the EC's presence was established through an increasingly close and interactive relationship between national governments and the Commission.

The EC's entry into telecommunications regulation was the result of cooperation between national policy makers and the Commission. Discussions of 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: 130-1; Sandholtz 1992: 228-9). The Council responded to proposals prepared by the Commission in cooperation with SOG-T; the latter was important in ensuring that national governments supported Commission proposals (personal interviews). Within the Commission, Davignon had set up an Information Technologies Task Force in 1979; it was merged with other units in 1986 to form DG XIII covering telecommunications and information technology, offering a Commission organisation to provide expertise and focus in telecommunications.

EC action between 1979 and 1987 was very 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 harmonise 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% of their equipment orders for 1981-83. The Commission's ideas were accepted by the Council, but it watered-down the proposals and only passed non-legally binding Recommendations in November 1984 (Council 1984a, b, 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 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 recognise 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 very slow; the Commission was to be advised by the SOG-T and was also heavily reliant on the CEPT, itself dominated by PTOs (cf. Delcourt 1991).³ 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) (Sandholtz 1992, 236-256; cf. Peterson and Sharp 1998; Ungerer and Costello 1988, 158-60).

The small steps taken by the EC between 1979 and 1987 balanced liberalisation with the prospect of EC expenditure, especially for poorer member states, and with R&D cooperation that would assist European manufacturers to face competition. Moreover, they complemented action at the national level, as member states such as Britain, France and Germany began to discuss and even introduce regulatory reforms such as limited liberalisation and regulation of competition (cf. Thatcher 1999a, Werle 1990). They also offered a European response to the 1984 break up of AT&T and ensuing American pressures for opening of European markets (cf. Hills 1986). Although limited, EC measures were the fruit of a nascent cooperative 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.

3. Significant but modest liberalisation and re-regulation 1987-1992

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 DGXIII (telecommunications) and DG IV (competition). National governments accepted the expansion of the EC's role in telecommunications. Although conflicts existed, on the substance of EC measures these were limited, divided member states themselves and were resolved through compromises. Agreement spanned 'liberal' countries (led by Britain) who sought liberalisation 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

³ The power of PTOs was seen in the most successful example of European standard setting: the GSM (Groupe Spécial Mobiles) standard for digital cellular mobile telephony. GSM was begun by the CEPT and was a pan-European agreement, not just a Community one, key decisions being made in 1985 by PTOs and national officials (cf. Salgues 1995: 31-2). The EC then followed the lead offered by CEPT and PTOs by passing legislation enforcing the choice of the GSM standard and frequencies by national PTTs/PTOs (Council 1987a; cf. Council 1987b).

Commission and national governments acted in partnership. Their relationship rested on the Commission seeking consensus on the content of its ideas before moving to legislation, delays between ideas being floated and action, a balance between liberalisation and re-regulation, compromises in decision making and the modesty of EC action whereby it only covered part of the sector, leaving many spheres to member states.

The Community's regulatory framework involved a combination of liberalisation and re-regulation. Liberalisation directives ended the right of member states to have legal monopolies ('special and exclusive rights') over supply. Thus the 1988 Terminals Directive (Commission 1988a) 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 only ban competition in 'reserved services', most notably, public voice telephony. In addition, 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 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).⁴ These included: 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 minimised. For terminal equipment, a Directive on mutual recognition of type approvals (Council 1991)⁵ set out 'essential requirements' that terminal equipment must meet and allowed the EC to set Community-wide standards; if a type of equipment was certified in one member state as meeting these standards, all other member states were to allow it to be marketed and used. The liberalisation 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.

Expanded EC regulation attracted wide support from national governments and saw their active participation. Governments and their PTOs supported the principle of EC action to ensure limited liberalisation and the proposals of the Green Paper (personal interviews; Financial Times 12.6.87, 11.7.88, 2.12.87; Agence Europe 23.12.86, 23.1.87, 23.2.88, Commission 1988). In 1988, the Telecommunications Council passed a Resolution welcoming the Green Paper (Council 1988), as did the European Parliament (Agence Europe 15.12.88). Similarly, the content of specific EC legislation to open national markets was accepted by the member states, including liberalisation measures that prohibited member states from maintaining national barriers, notably the Terminals Directive 1988,⁶ the Services Directive 1990⁷ and the Public Procurement Directive,⁸ even though several directives were passed by the Commission under Article 86[90] (see below). Member states also supported EC re-

⁴ The ONP Directive was a framework Directive setting out broad principles, with other, detailed Directives to implement it for specific services, such as data transmission and leased lines (Sauter 1996).

⁵ It repealed Directive 86/361/EEC (Council 1986).

⁶ Agence Europe 23.2.88, 2.5.88, Financial Times 15.3.88, 28.4.88, 11.5.88, 1.7.88, Le Monde 30.4.88.

⁷ Agence Europe 23.2.88, 1.7.88, Financial Times 14.9.89

⁸ Financial Times 13.11.89, Agence Europe 24.2.90

regulation of liberalised markets and participated in its elaboration. Discussion of the ONP Directive took place between the Commission and the SOG-T, from 1986 onwards; the process was thereby dominated by national officials and PTOs (Austin 1993). Most legislation, including the re-regulatory Directives and the Public Procurement Directive, were passed by the Council under Article 95[100a] (harmonisation, which required a qualified majority in the Council, following the 1987 Single European Act).

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 (cf. CEC 1988) and the first legislation based on its proposals began in 1988. Moreover, many legislative provisions only came into effect one or two years after the Directives were passed (particularly for liberalisation 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 undertook major changes, including substantial liberalisation and altering the institutional position of their PTOs away from civil service status and towards public corporations (cf. Thatcher 1999a, Gensollen 1991, Werle 1990, Koebberling 1993). One purpose was to prepare PTOs for the advent of extended competition and a more commercial world in telecommunications. Hence EC measures accompanied reform processes within member states, whilst also allowing governments and their incumbent PTOs the time to ensure that they could cope with EC liberalisation 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 is that liberalisation 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 recognised that PTOs fulfilled legitimate, unprofitable public service' functions, especially providing 'universal service', that should be protected and accepted that member states could protect these by restrictions on competition. Moreover, 'essential requirements' were laid down, such as safety and protecting networks. Member states could impose conditions on suppliers to ensure that these 'essential requirements' were fulfilled or to protect remaining 'special and exclusive rights'

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 regulation and those left to member states. The 1987 Green Paper and subsequent legislation involved significant moves towards a competitive market in terminal equipment and advanced services. At the same time, EC action until 1992 remained relatively modest 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% of the telecommunications sector in Europe (Ungerer and Costello 1988). Thus regulation of the bulk of the sector remained a national matter. No attempt was made to follow the example of the anti-

trust suit that 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. Member states could thus maintain their vertically-integrated 'national champion' PTOs, in public or private ownership. Moreover, much EC legislation was broad and required fleshing out, particularly re-regulation. Committees composed of national representatives were established under the Directives (the ONP Committee and the Approvals Committee for Terminal Equipment). The Commission had to consult these committees, notably in developing standards; 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 - those bodies with regulatory responsibilities and powers in member states, including government departments and independent/semi-independent bodies). The NRAs had much discretion since EC legislation was broad and relied on their action, yet the EC laid down few stipulations concerning their organisational position and procedures. In contrast, general competition law, especially Articles 85 and 86 - the Commission's most developed and potentially powerful instruments, wielded directly by the Commission- remained little used in the period 1987-1992.⁹ Hence the national level remained significant for regulation in practice.

Disagreements on the substance of the legislation did occur, but concerned limited issues of the extent and timing of EC liberalisation 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 liberalisation (for instance, to cover public voice telephony- Agence Europe 23.2.88, 26.3.88). 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 26.4.89, 27.4.89, 7.2.90, Financial Times 22.5.89, 1.12.89, 11.12.89).

These matters were settled by compromises. Certain services were liberalised later than others or enjoyed specific provisions in EC legislation. Thus, for example, 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, whilst for public procurement, a small Community preference was allowed (3%) and EC norms were to be given priority in tenders.¹⁰ Temporary derogations to services liberalisation were given to countries with 'small or underdeveloped infrastructures' such as Spain, Portugal, Greece and Ireland. Perhaps most important of all, liberalisation legislation was accompanied by 're-regulatory' Directives that established EC 'essential

⁹ In 1991, the Commission issued a set of guidelines on the application of competition law to telecommunications (Commission 1991). They were very general, did not have legal force and carefully balanced prohibitions on anti-competitive agreements with possible exemptions if sufficient benefits were provided.

¹⁰ For details, see Agence Europe 21.4.89, 27.4.89, 13.9.89, 12.10.89, Financial Times 25.4.89, 28.4.89, 5.5.89, 11.11.89, Le Monde 9.11.89, Financial Times 13.11.89, Agence Europe 24.2.90.

requirements', such as ensuring the safety of employees and operators, protecting public networks against damage and allowing interoperability of equipment.

The sharpest debates concerned the legal form of the Terminals and Services Directives and broader issues of the institutional 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, chose to issue 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 of 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.¹¹ They argued that the Commission should use Article 95[100a], thereby requiring approval by the Council and European Parliament. The Terminals and Services Directives were both challenged before the European Court of Justice, giving rise to two important cases (ECJ1991, 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 the 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 concerning the use of Article 86[90] (cf. Schmidt 1996, 1997, Sandholtz 1998). However, the central issue at stake was the legal status of the Directive, not the principles of EC action to ensure liberalisation. National governments opposed powers over legislation being held by the Commission rather than the Council. Many also worried about the use of Article 86[90] in other fields. Yet they were agreed on the substance of EC legislation in telecommunications. This can be seen from the fact that the Telecommunications Council welcomed the Green Paper in June 1988, despite the fact that it had argued that general EC competition law applied to telecommunications and had invoked the applicability of Article 86[90]. Moreover, earlier in 1988, the Commission had used Article 86[90] to issue the Terminals Directive. Yet member states did not even attempt to link their acceptance of the Green Paper in June 1988 to the Commission abandoning the use of Article 86[90]. Indeed, while 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 liberalisation for advanced services on member states should be passed (Agence Europe 23.2.88, 1.7.88, Financial Times 14.9.89), whilst recognising disagreements over the legal basis of action. Hence a 'political compromise' was reached in 1989 between the Commission and 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 were passed (Agence Europe 8.12.89 and 9.12.89).

¹¹ Agence Europe 28.4.88, 2.5.88, Financial Times 28.4.88

It is important not to conflate disagreements over Article 86[90] between the Commission and certain member states with positions concerning the substance of EC telecommunications regulation. The period 1987-1992 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.

4. 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. To sectoral liberalisation and re-regulatory measures was added the application of general competition law (cf. Scott and Audéod 1996); DGIV played a more prominent role under its Commissioners Sir Leon Brittan and then Karel van Miert, working with DG XIII. Nevertheless, member states accepted the substance of EC regulation, including 'southern' states previously concerned about liberalisation; disagreements were confined to timing and scope, rather than the principles of EC action. EC regulation continued to be developed through a partnership between the Commission and national governments. There were lengthy consultations and discussions of proposals between them, and the Commission did not pursue ideas that met with strong opposition from governments. Agreement was greatly aided by the balance of measures, so that liberalisation was matched by re-regulation and a loosening of general competition law which allowed alliances between PTOs and compromises. Moreover, long delays between ideas and legislation coming into force allowed member states to prepare their PTOs for competition (notably through privatisation), whilst the breadth of the EC's regulatory framework provided much scope for national discretion even after EC legislation applied.

Liberalisation directives were passed in the mid-1990s to prohibit monopolies all remaining parts of the telecommunications sector: satellite services, mobile communications, voice telephony and the infrastructure (Commission 1994, 1995, 1996, Council 1995). Competition in the largest segments of telecommunications market, public voice telephony and the fixed-line public infrastructure, was to be permitted by 1st January 1998 in most member states (temporary derogations were given to states with 'small or underdeveloped infrastructures').¹² In addition, the Cable Directive (Commission 1999) required PTOs to legally separate their cable television activities from their telecommunications businesses.

Re-regulation saw EC Directives passed concerning universal service, interconnection and licensing, numbering (Council 1995, European Parliament and Council 1997a, 1997b, 1998). The interconnection and universal directive defined the scope of universal service and the mechanisms that member states could establish to finance its costs.¹³ Standards for voice telephony services were laid down, covering matters such

¹² Up to five years for Greece, Portugal, Spain and Ireland and two for Luxembourg

¹³ 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) for which national regulatory authorities could finance to pay for losses via a special fund or an interconnection levy; a second group consisted

as quality of service, provision of advanced facilities and tariff conditions. For interconnection, a series of obligations were imposed on member states concerning suppliers and NRAs (national regulatory authorities) to ensure that interconnection was effective and 'fair', as well as transparent; the rules were particularly aimed at the incumbent PTOs, who had 'significant market power'.¹⁴ Licensing was a key matter, as NRAs issued licences and hence could influence which suppliers entered the market and the terms on which they competed. EC rules specified the services for which NRAs could insist on individual licences and limited the conditions under which NRAs could impose licence conditions.¹⁵ The Numbering Directive (European Parliament and Council 1998) allowed number portability. 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'; in addition, a few procedural rules were also established, such as time periods for granting licences.

Unlike the 1980s, general competition law became a significant part of EC regulation of telecommunications during the 1990s. The most important examples concerned the spate of joint ventures, cooperation agreements and takeovers by national champion PTOs such as BT, France Télécom and Deutsche Telekom (cf. Elixmann and Herman 1996).¹⁶ These raised significant competition concerns since incumbent PTOs held dominant positions in national markets and rival PTOs made complaints to the Commission.¹⁷ DG IV investigated the agreements and bids under general competition law. Nonetheless, the Commission approved alliances and internationalisation by the national champion PTOs and imposed few conditions for its accord (cf. Blandin-Obermesser 1996: 142-7).

Thus by 2000, EC regulation had expanded across the entire telecommunications sector, taking the form of liberalisation, 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 very high: there was support or at least

of more advanced services to which all users had a right of access such as leased lines but without a requirement of affordability.

¹⁴ Key obligations for organisations 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).

¹⁵ For example, NRAs were permitted to require individual licenses 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.

¹⁶ 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 cooperation 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).

¹⁷ For example, BT opposed the Atlas venture whilst Deutsche Telecom and France Télécom attacked BT's bid for MCI – Financial Times 7.12.94, 28.2.95, 30.1.97, Agence Europe 7.4.96; for comments by Competition Commissioner Karel Van Miert, see Financial Times 28.2.95, 18.5.95, 14.6.95

acceptance of EC liberalisation and re-regulation (personal interviews). Even the continued use by the Commission of Article 86[90](3) to pass liberalisation 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] were not altered in the Maastricht and Amsterdam Treaties. Rather, national governments actively cooperated with the Commission in expanding EC regulation. They invited the Commission to bring forward proposals - for example, to deal with universal service, licensing, interconnection and numbering (Council 1993; Agence Europe 22.4.93, 17.11.94, 19.11.94, 29.11.95, Financial Times 26.1.95, 25.4.95, Le Monde 15.6.95). They created the Bangemann group, consisting of industrialists and experts chaired by Martin Bangemann, Commissioner for Industry and Information Technology (DGXIII and DGXIII); 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 22.6.94, 25.6.94, 28.6.94) and provided impetus for further EC liberalisation measures. Similarly, national governments welcomed Commission directives for satellites and alternative infrastructures, even though these were issued under Article 86[90] (Financial Times 18.11.94, Agence Europe 21.7.93, 16.11.94, 19.11.94).

Discussions over the development of EC action were extensive, and sometimes lengthy and vigorous. However, insofar as disagreements existed, they cut across member states and did not concern the principle of extended EC regulation nor the overall direction of change (personal interviews). Rather, the main issues were the timing of liberalisation 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, whereas other member states, often led by France, Italy and 'southern' countries, pressed for longer transition periods; conversely, the latter group sought 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 30.8.94, 29.9.94, 17.11.94, 18.11.94, Agence Europe 17.11.94). After long negotiations, 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 1st January 1998 for most member states (with temporary derogations for Greece, Ireland, Portugal, Spain and Luxembourg).¹⁸ On the other hand, 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;¹⁹ they were opposed by 'liberal' states such Britain and Germany who feared that NRAs would use such provisions to restrict competition (Agence Europe 8.12.93, 25.11.95, 28.11.95, 20.3.96, 23.3.96, 27.6.96, 4.12.96, 6.3.97). The outcomes were laborious compromises between the two groups (for example, by creating two categories of universal service or, for licensing, by rules stating the conditions under which NRAs could require individual licences).

¹⁸ Agence Europe 16.11.94, 19.11.94, 28.11.95, 29.11.95

¹⁹ As opposed to general or 'class' authorisations, which merely required suppliers to register.

When the Commission met determined opposition from governments, it substantially altered or abandoned its ideas. Thus, Sir Leon Brittan's review of public voice telephony services recommended in 1992 that rapid liberalisation should take place (Commission 1992a). In the face of strong resistance by France and Germany and some smaller states, the Commission undertook a six-month consultation exercise and then put forward the compromise of opening all public voice telephony to competition by 1st January 1998, with longer periods for states with small or under-developed networks. Suggestions of strong EC-level regulatory bodies were dropped when opposed by governments. Thus Ministers rejected a powerful EC 'licensing committee' to police the award of licences (Commission 1992b; Agence Europe 10.3.95, Financial Times 30.9.96); 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; in addition, member states were failing to correctly transpose EC legislation, leading to infringement proceedings. 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 24.5.96, 25.2.97, Financial Times 3.7.96, 19.12.97). The European Parliament also repeatedly called for a Euro-telecoms authority or Committee in order to prevent fifteen differing regulatory areas developing.²⁰ 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 25.2.97, Financial Times 19.12.97, personal interviews).

Thus, as in the late 1980s and early 1990s, the main opposition by national governments to Commission activity concerned institutional matters (in this case, new EC organisations with powers) rather than the substantive content of EC regulation. Acceptance of EC regulation by member states was aided by clear sign-posting of changes and extensive consultation carried out by the Commission. Its proposals to liberalise satellite and mobile communications (Commission 1990c, 1992, 1994) had been foreshadowed in the 1987 Green Paper. Initially, liberalisation of satellites was supported by Britain, but opposed by, inter alia, France and Germany (Financial Times 15.11.90, Agence Europe 19.10.90). In response, the Commission waited until the Council accepted the main points of the Satellites Green Paper, and asked the Commission to proceed in November 1991 (Agence Europe 4.11.91 and 7.11.91; Le Figaro 6.12.91); it then engaged in a long period of consultations before passing a Directive in 1994 (Commission 1994), during which time member states such as France and Germany had begun domestic liberalisation (Agence Europe 13-14.12.93). Similarly, full liberalisation of public voice telephony and the infrastructure was preceded by the Commission's review of public voice telephony services in 1991-2 (itself arising from the 1987 Green Paper) and the Bangemann Report (High-Level Group 1994). Even after agreement on the principle of full liberalisation and a new regulatory framework, there were further consultation periods on specific proposals, notably the timing of liberalisation and the scope of universal service, 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 implementation periods in legislation, so creating further delays between political

²⁰ Agence Europe 11.4.95, 20.2.96, 24.5.96, 21.12.96, 24.2.97

agreements on extension of competition and the date on which full competition was required. 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 1st January 1998. Hence for many EC requirements, several years passed between initial discussions and the deadline for implementation by member states.

These substantial periods before provisions came into force allowed member states (and their national champion PTOs) several years 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* in Germany and the *Autorità per le Comunicazioni* in Italy). Most importantly, they prepared their PTOs for competition, notably by privatisation, tariff rebalancing, modernisation of equipment, altering working practices and commercial and international alliances. Thus, for example, 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 not only could member states retain their vertically-integrated PTOs, but they were able to attempt to transform them 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 liberalisation of voice telephony and the infrastructure for most member states (and their incumbent PTOs), in order to safeguard services and avoid uncertainty. Thus, for instance, EC rules to protect universal service were an important counterbalance to liberalisation, especially for France and other member states anxious that competition would lead to fierce price wars and the abandonment of unprofitable services or areas (*Libération* 18.3.93, 14.6.9, *Financial Times* 15.3.96, *La Tribune Desfossés* 4.5.95). However, liberalisation saw another counterpart in the 1990s: Commission decisions under general competition law that allowed national incumbent PTOs to internationalise and form alliances. The linkage was most explicit after the 1993 Council agreement to allow competition in public voice telephony: the following week, the Director General of DG XIII, Michel Carpentier, stated that the application of EC competition law, especially Article 81[85] and 82[86], would be altered to allow greater cooperation between European operators (*AFP* 18.6.93, *Les Echos* 21.6.93; cf. *Le Monde Informatique* 21.6.93). As liberalisation developed, so too did Commission acceptance of PTO cooperation. When serious competition concerns were raised, the Commission 'traded' approval of agreements for early implementation of liberalisation. 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 1993,²¹ the most important condition imposed by the Commission was that both countries liberalised alternative infrastructures.²² After long negotiations, involving discussions between Van Miert and ministers and officials

²¹ The alliance was extended to include the US operator Sprint in 1996 and renamed 'Global One'.

²² For details, see *Financial Times* 18.5.95, 2.10.95, 17.10.95; *Le Monde* 1.3.95, 22.3.95, 26.5.95; *Les Echos* 3.3.95, 26.5.95; *La Tribune Desfossés* 26.5.95

from France and Germany, the two countries agreed to introduce competition in alternative infrastructures from July 1996; in return, the Atlas alliance was approved, followed by its extension to Sprint.²³ The Commission's application of competition law made liberalisation much easier to accept by national governments and their PTOs. It allowed them to seek to offset loss of domestic monopolies through overseas expansion. It also appeared to aid them to meet competition through alliances with other powerful PTOs.

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. Thus, for example, for the interconnection and universal and ONP directives, a Regulatory Committee of representatives of member states was established; binding decisions require a qualified majority vote. 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 indeed government departments are counted as NRAs) 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 authorisations. Although tariffs are to be 'cost-oriented', NRAs are responsible for interpreting and enforcing this, whilst decisions over retail price controls imposed on PTOs are left to member states. Challenges to NRA decisions can be slow, especially relative to a rapidly-developing market, and require using national administrative or legal channels and/or action by the Commission. Hence in practice, the implementation of EC legislation depends greatly on NRAs.

The growth of EC regulation across the entire telecommunications sector after 1992 resulted from a close, cooperative relationship between the Commission and national governments. Their relationship was built on an active role for governments in elaborating and implementing EC action, the long periods between changes being discussed and their legal implementation, and compromises and balance among different regulatory elements.

5. Conclusion

Until 1979, the EC was not a major participant in European telecommunications policy. By 2000, it had developed its own wide-ranging legislative framework. National governments accepted the expansion of EC regulation. Indeed, they and the Commission developed it together, in partnership. National governments agreed both to the principle of increased EC legislation and to the direction of regulation. The Commission made proposals, but usually after it had obtained a green light for

²³ For the negotiations, see *Les Echos* 5.9.95, 18.9.95, *Financial Times* 17.10.95, 16.7.96, 18.7.96, *La Tribune Desfossés* 25.9.95, 2.10.95, 3.10.95

legislation from national governments; often the latter called for Commission action or ideas and then welcomed the ensuing results.

The degree of consensus from national governments was remarkable given that EC regulation imposed legally-binding obligations and prohibitions on member states and ran counter to the traditional institutional framework of the sector, which had been based on monopolies and the concentration of policy, regulation and supply in government ministries. Nor was the EC the only route for regulatory reform available to national governments: they could have acted at the domestic level or, at the supra-national level, they could have used the long-established CEPT to engage in inter-governmental cooperation. Moreover, agreement on EC regulation was reached across governments of different political hues over two decades.

As in any partnership, there were disagreements and debates between the Commission and governments. However, those that did take place over the substance of EC legislative proposals were limited: they were not concerned with the central principles of EC regulation, but rather the speed of change and the extent of EC liberalisation and re-regulation. Moreover, conflicts were not between the Commission on the one side and national governments on the other side; instead, there were divisions among member states, based on the content of EC regulation, 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 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]. However, it is important not to confuse conflicts over the constitutional allocation of powers between the different organs of the EC with acceptance 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 substance of the contested directives.

Analysis of EC decision making reveals six key features that underlay the partnership between national governments and the Commission: the participation of national governments; incrementalism; advance sign-posting and signaling of changes; frequent compromises; balance and linkages between different elements of regulation; national power and discretion after directives were passed.

National governments were central actors in the expansion of EC regulation. For most of the process, they acted in cooperation with the Commission. They invited the Commission to put forward proposals. They were consulted on Commission ideas and action, both informally and through SOG-T. Most legislation was passed by the Council; even Article 86[90] Directives were accepted by it (in substantive terms) before the Commission issued them. 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.

EC regulation expanded incrementally, through a series of relatively limited steps. The process resembled Lindblom's model of incremental policy making (Lindblom 1959, 1979). Initially, very modest non-binding norms were put forward, followed by limited legislative changes. The pace of change increased in the 1990s, but nevertheless, it consisted of rapid but limited steps, each building on previous ones.

The end result of the incremental changes, however, was the development of a wide-ranging EC's regulatory framework. The Commission did not put forward a grand 'masterplan' to liberalise the entire sector and create a wide-reaching EC regulatory framework, which could have attracted greater opposition. Rather, the incremental process aided member states and the Commission to advance when there was sufficient consensus; it also allowed disagreements to be limited to specific proposals.

Incremental reform was accompanied by sign-posting and delays before EC legislation came into force. Ideas of possible changes were floated and discussed, and no directives were passed for several years. Green Papers were issued, with consultation periods; thereafter, legislative proposals were issued and again subject to consultation and debate. Even when legislation was finally passed, its provisions often came into force several years later. The length of the process meant that actors, especially incumbent PTOs, could prepare for change and that when disagreements arose, compromises could be found.

Indeed, the expansion of EC action involved frequent compromises and a balance between different aspects of regulation. The timing and scope of measures were modified to obtain consensus. Temporary derogations were given to countries which faced particular difficulties and which had raised vociferous objections- for instance, the 'southern' states in liberalisation of voice telephony and the infrastructure. Regulation in the 1980s was balanced by EC expenditure on research and development and aid for under-developed regions. Liberalisation was linked to the establishment of EC re-regulation. Moreover, in the 1990s, liberalisation of the core of telecommunications (voice telephony and the infrastructure) was balanced by general competition decisions that permitted incumbent PTOs to form alliances and internationalise, despite their dominant positions in their domestic markets. Thus 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 were permitted to find allies and to 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. Many directives were very general. Passing binding detailed rules at the EC level was subject to a comitology procedure involving national representatives. 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 matters such as prices, licensing and universal service. Moreover, member states had considerable freedom over key organisational aspects of telecommunications, such as the ownership and structure of PTOs and the institutional features and procedures of NRAs.

The central finding of the analysis is that national governments and the Commission acted together in expanding EC regulation. Rather than conflict between the Commission and national governments, the key features of regulatory decision making at the EC level were cooperation and partnership between them. Thus claims that telecommunications shows the power of the Commission over member states which it used to impose its will on reluctant governments in a highly conflictual relationship are challenged with respect to the substantive content of EC regulation.

Wider implications can be drawn from the case of telecommunications. These apply strongly if the sector is regarded as an exemplar case for the development of EC regulation and maximalist Commission power. They offer a critique, or at least amendment, of the two opposing views of the neo-functionalist view of the Commission as a powerful, supra-national political entrepreneur, pursuing its preferences in the face of opposition from national governments (cf. Schmidt 1998, Sandholtz and Zysman 1989, Sandholtz and Stone Sweet 1998) and inter-governmentalist arguments that it is merely a servant of member states (Moracsvik 1998, 1999).

First, there is an important distinction to be drawn between the institutional allocation of powers and substantive policies. This distinction is particularly significant since most inter-governmentalist studies concern Treaties that determine the powers of different EC bodies (cf. Moracsvik 1998, 1999), whereas neo-functionalist works tend to offer wider coverage by including more 'day to day' policy making and regulation (cf. Sandholtz and Stone Sweet 1998). In telecommunications, there were sharp disagreements between the Commission and national governments over the institutional allocation of powers, but much greater agreement between them on substantive matters. The findings are eminently explicable: the issues at stake over the allocation of powers are broader than sectoral action and less amenable to compromise. 'Institutionalist' analyses suggest that such questions of institutional design and the allocation of powers are likely to generate intense conflict since outcomes rapidly become embedded and then affect further developments in policy and the power, interests and coalitions of actors (Hall 1986; Thelen and Steinmo 1992). In the case of Article 86[90], national governments were worried about the wider application of the Article, including its use in sectors other than telecommunications. In contrast, in substantive policy matters, the Commission and national governments were able to operate as a partnership to develop an extensive EC regulatory framework, finding common interests and reaching acceptable compromises when in disagreement.

A second general conclusion is that analysing the relationship between the Commission and national governments in terms of which is the master of the other is misleading and misses key aspects of the process of developing substantive EC policy. The Commission had its own preferences and direction. At the same time, it did not take initiatives on its own nor impose its views on substantive policy on national governments. Instead, both national governments and the Commission were partners- both were active and willing participants in discussing ideas, establishing proposals, and then passing measures. There was rapid and frequent interaction between them, with one responding to the other or, more often, the two working together through their officials. Their partnership involved a mixture of consensus and conflict (like almost all partnerships), but consensus was much greater than conflict, and disagreements over substantive policies were resolved over time. The Commission did not proceed to legislate against the wishes of national governments; on the contrary, it sought their agreement and waited until it had obtained large-scale consensus through compromises or with the passage of time. Moreover, their partnership involved active roles for both, not only in passing legislation, but also afterwards, through the scope left for national actors in implementation. Even in telecommunications, the apparent extreme case of Commission power and extensive

EC legislation that outlawed traditional national structures, the EC's regulatory framework was developed through a partnership between the Commission and national governments.

The importance of time is a third general conclusion from studying EC telecommunications policy. Analysing substantial time periods is essential for understanding how and why EC regulation grows. Partnerships between the Commission and national governments take time to grow and to produce results. In telecommunications, the extension of the EC's role took place incrementally over more than twenty years. As Lindblom suggests (Lindblom 1959, 1979), incremental change is more likely to occur and be successful than attempts at comprehensive reform. The gradual development of EC regulation reduced conflicts between the Commission and national governments: it aided compromises over limited issues; there was no grand masterplan that could have crystallised opposition; it offered time for member states (and their PTOs) to adjust and prepare for change. The expansion of EC regulation is a long-term phenomenon, often taking place incrementally; this applies to many substantive policy areas, from telecommunications to other fields such as social policy, the environment or airline regulation (Cram 1997; McCormick 1999; case studies in Sandholtz and Stone Sweet 1998). At a particular moment of time, such regulation may seem blocked and/or subject to strong conflicts between Commission and member states (for instance, telecommunications before the 1980s or electricity in the mid-1990s- cf. Schmidt 1996, 1997); however, the study of two decades allows conflicts and apparent blockages to EC action to be put into perspective as EC action gradually expands and develops. Incremental change means that to understand the growth of substantive EC policies, only a long-term analysis can reveal the underlying features of the relationships between the Commission and national governments and the fruits of their partnership.

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