A future pan-European regulator for telecommunications?:
Agenda-setting in a system of multi-level governance.

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Abstract

Policy-making in the EU is increasingly a multi-level process in which transnational actors and supranational institutions play a significant role. Member states, though still very influential, no longer have full control of the policy process, and the agenda-setting process is a notable manifestation of this. This is illustrated in this paper by the debate about setting up a pan-European regulator and increasing supranational regulation in the telecommunications sector. Despite strong opposition from member states, the European Commission and Parliament have exploited their resources to put the issue on the agenda, and increasing competition and sectoral globalisation have led to pressure from industry interests. Whilst member state opposition is an indication of the imbalance between the agenda-setting and implementation capabilities in the EU, it is argued that agenda-setting within the EU institutional system is not insignificant. Much uncertainty surrounds increased European regulation of telecommunications, but it is argued that a process of policy learning within the EU multi-level system is taking place which, whilst not necessarily leading to an independent European regulator, may lead to increased supranational regulation.

1. Introduction

The European Union (EU) is a complex and unique policy-making system which impacts on a wide range of policy sectors. It is unsatisfactory to conceptualise to EU as an intergovernmental organisation: a policy-making system is developing beyond the nation state. However, this is not a rerun of the state and the EU is best conceptualised as a new polity (Cram, 1997) or a system of multi-level governance (Marks et al, 1996). Within this system of governance a complex and open system of agenda-setting has evolved (Peters, 1994). This paper focuses on the process of setting the agenda for a pan-European regulator. Although the establishment of a pan-European regulator is unlikely in the foreseeable future, despite member state opposition, it has become a salient political issue.

The institutional system of the EU offers many possibilities for agenda-setting. Formally, the Commission is the focal point of the agenda-setting process with its power to make policy proposals. The Commission, however, is not simply a monolithic organisation and has been described as a ‘multi organisation’ (Cram, 1994) in which a variety of issues may be raised in its component parts. Differences of interests and different priorities have been observed in different directorates, for example, in the 1980s the industry directorate favoured European based industry whilst the competition directorate favoured more competitively based industrial policies (Middlemas, 1995). Other institutions, such as the European Council and the Council
of Ministers, can also initiate agenda items that come from the member states. The European Parliament also has a system of committees which reflect the structure of the Commission and may alert the Commission and the Council to issues of importance. A complex process of agenda-setting has arisen which 'is now a shared and contested competence among the four European institutions rather than monopolised by one actor' (Marks et al, 1996, p.358). This complex institutional system offers socio-economic interests multiple points of access: to the Council via member states, to different Commissioners and bureaucrats in the Commission, and to the European Parliament and its expert committees. Because of the changeable institutional system 'the structure of interest groups has yet to become stabilised into well-defined networks, with the consequence that there are a large number of European and national groups contending for influence over policy decisions' (Peters, 1994, p.17). The system is highly changeable and unstable and gives many opportunities for a wide range of interests, leading to rapidly changing policy agendas. Although the agenda-setting system impacts on decision-making (Marks et al, 1996), this complex and open system of agenda-setting has been seen as the 'antithesis of the implementation process' creating an imbalance in the policy-making process (Peters, 1994, p.24).

Whilst the agenda-setting process is shaped by the institutional framework of the EU it is insufficient only to focus on institutional structures to understand the agenda-setting process. Technical and economic forces have also led to pressures for certain issues to come on the agenda. The agreement of the SEA, for example, has been seen to be driven by transnational business interests and the rationale for a European policy response to global competition (Sandholtz and Zysman, 1989; Cowles, 1995). In telecommunications, a highly globalised sector, technical change and sectoral globalisation has enabled the Commission to become a central actor in the development of a liberalised single telecommunications market (Humphreys and Simpson, 1996). Also the EU system of agenda-setting can be seen as a process of 'policy learning' by key actors (Sabatier, 1988; Peters, 1994, p.22). In the context of technical and economic change, ideas are exchanged and developed amongst actors and, over several years, coalitions favouring new policy solutions can develop and have a decisive impact on the policy process.

In this paper it is shown how the EU's complex and changing institutional system has enabled a variety of proposals for a pan-European regulator and stronger European level regulation to come on the agenda. Institutional resources such as the Commission's role in policy initiative and the European Parliament's role in the co-decision making procedure have given the initiative saliency. At the same time the techno-economic structure of the sector has given the issue a rationale and led increasing support from sectoral interests. Increasing liberalisation, market integration in Europe and sectoral globalisation have driven the issue. However, in a rapidly changing sector there is uncertainty about the best way to regulate the sector, particularly at the supranational level. The agenda-setting process reflects a process of policy learning taking place within the EU institutional system. In section 2 the techno-economic rationale for increased European regulation is outlined together with the main models under consideration. In section 3 it is shown that, despite member
state resistance, the issue has gained saliency by the Commission and European Parliament exploiting their supranational institutional resources. Section 4 shows how increasing liberalisation and globalisation have given rise to sectoral interests pressing for increased European regulation. However, there is little consensus at present indicating uncertainty and that a process of policy learning is taking place. In section 5 the main uncertainties are outlined and it is argued that the process of policy learning may lead to some form of increased supranational regulation of telecommunications.
2. The rationale for a pan-European regulator

In recent years, extensive liberalisation and internationalisation has transformed the telecommunications sector from national monopoly organisation. This has brought demands for new regulatory structures which can foster competition. Broadly there are two forms of regulation. First, economic regulation which is "a response to market failure defined as the absence of competition and characterised by higher prices and fewer goods than would occur in a competitive market" (Francis, 1993, p.5). Responding to market failure may be by means of 'anti-trust' policy in which regulators aim to promote competition (Swann, 1989, p.4). Although there have been some who have recommended complete deregulation the process of change in recent years has been more accurately described as regulatory reform as regulatory regimes have been changed to encourage competition (Swann, 1989, pp.11-13). Second, social regulation relates to the control of market externalities such as the environment, health and safety, consumer protection and discrimination against certain social groups (Swann, 1989, pp.5-6).

In telecommunications the rationale for regulation is intensified by the network based nature of the sector. The network has been a monopoly and remains a near monopoly with the traditional providers dominant. Regulation of network access and interconnection of networks is therefore required for the promotion of competition and new market entrants. As markets are likely to be dominated by one or a small number of incumbents wishing to retain their domination, new regulation is required "to create conditions of competitive equity" (Swann, 1989, p.12).

Regulatory independence is also seen as important for the promotion of competition. Independence is important in order to give assurance to the public that regulation is not subject to direct political interference from the government (Francis, 1993, pp.61-62). Whilst there may be problems of accountability and regulatory capture, from an industrial perspective, there is a consensus that regulation by independent experts will produce a better result (Melody, 1997, pp.22-24). The development of independent regulators is important because regulation and service provision have historically been undertaken in the same organisation. The process of structural change in the sector has involved the separation of regulation from service provision and the creation of an autonomous company. Regulation may then be carried out in the government ministry or in a regulator independent of the ministry.

Experience of competition in countries such as the US, UK and New Zealand, has also led to a rationale for the regulation of the industry. In the US, where liberalisation has been developing for many years, stronger regulation has been seen as necessary to enable further liberalisation. The 1996 Telecommunications Act, which aims for full liberalisation, sees the necessity of stronger regulation in the future (Melody, 1997, p.498). In the UK, the regulator has been required to be strengthened to promote competition. In the early years of liberalisation, the dominant operator suffered little real competition and OFTEL was described as "weak and irrelevant" (Palmer and Tunstall, 1990, p.278). In the 1990s OFTEL has become more active, for example, with the development a sophisticated interconnection regime
(Communications International, October 1997), and by the mid 1990s many new operators have become commercially active (YET, 1997). In New Zealand a self regulatory 'hands off' approach has been pursued, but after ten years of liberalisation, telecommunications in New Zealand has not become very competitive (Communicationsweek International, 14/7/97).

There are also a series of other issues which require a regulator. The licensing of operators covers the conditions and procedures for the granting of licences. For satisfactory liberalisation the granting of licences should only be restricted on a limited number of grounds such as environmental protection or certain public service features. The network based nature of the industry also gives rise to a number of technical issues, such as frequency allocation and numbering, which require control by a central authority. Although this paper focuses primarily on competition, public service is also an important issue of regulation. The telecommunications industry has a history as a monopoly public service provider for which there remain strong political pressures to maintain. Universal service, therefore, in particular its coverage and the rules for financing it need to be defined. Services to be covered such as the extent of regional coverage and emergency services, have often been defined. There is also controversy over the funding and coverage of universal service as many new operators argued that these could be covered by the market (Communicationsweek International, 11/8/97).

At European level there have been calls to strengthen economic regulation by, for example, a European Cartel Office (Wilks and McGowan, 1995). In telecommunications one of the drives for European level regulation is that national regulators are incapable of adequately regulating a transnationalised industry (Sun and Pelkmans, 1995). Since the late 1980s liberalisation directives have been adopted by the Commission and the Council but the record on implementation at national level has not been satisfactory and the Commission has repeatedly shown concerns (Sun and Pelkmans, 1995). In the early 1990s, for example, countries such as Greece, Belgium and Spain were reported to have not fully implemented the directive on the liberalisation of advanced services. In the mid 1990s, in relation to full liberalisation, many different interconnection regimes have been developed and there have been complaints that the Commission's interconnection directive is vague and leaves too much scope for interpretation (Communications International, March 1996; Telecoms Markets, 23/5/96). In 1997 the Commission reported on several areas in which some member states had not enacted law in order to achieve full liberalisation by 1998 (CEC, 1997a, 1997b). The Commission initiated infringement proceedings against Belgium, Greece, Luxembourg, Germany, Portugal, Italy and Denmark (Agence Europe, 7/11/97). In Germany, for example, the Commission noted that Deutsche Telekom had not published terms and conditions for interconnection. This reflects the difficulties new entrants have had in Germany in reaching satisfactory network interconnection agreements with Deutsche Telekom. The Commission has argued that the interconnection prices demanded by Deutsche Telekom were not cost orientated as required by the full competition and the interconnection directives. After the onset of full liberalisation in Europe in 1998 there have been unresolved disputes
in many countries over licensing, number portability and interconnection (*Public Network Europe*, September 1998).

Experience from the US and UK also suggests that a specialised European regulator may be required. In the development of competition in the US, for example, the Federal Communications Commission (FCC) has gradually taken over control of competition issues from the state authorities (Worthy and Kariyawasam, 1998, p.5). The US FCC is also much more strongly staffed than the European Commission staff working on telecommunications issues in DGIV and DGXIII (Kiessling and Blondeel, 1998). DGIV has also been seen to be slow in response and experience in Britain suggests that a highly specialised staff is required for the development of effective regulation (*Communications International*, March, 1996). The creation of an independent European regulator is also seen as important as the Commission is too constrained by member states and in many EU countries fully independent regulators have not yet been established (Worthy and Kariyawasam, 1998, pp.3-4).

A particularly important driver is the nature of the sector which is becoming highly globalised creating a rationale for a common regulatory framework across many countries. It is particularly the IT revolution which has facilitated globalisation with the development of high capacity global networks able to supply sophisticated global services. This has given rise to the growth of global user demand which began to increase in the early 1970s as industry and business users required international data transmission services. In the 1980s and 1990s the increasing internationalisation of production and the integration of financial markets greatly increased demand for advanced services (Strange, 1996, p.103). The impact on regulation is due to the cross-border effect where cross-national differences in regulatory regimes mean international services cost much more than national services (Sun and Pelkmans, 1995). The global nature of the industry and the development of a ‘Common Information Area’ provide a rationale for the strengthening of European level regulation and the foundation of a pan-European regulator:

The founding of such an authority seems logical in that a single set of networks would require a single regulator. The role of such an authority would be to aid standardisation, to regulate the activities of enterprises within the sector and generally form a global perspective on the needs of the CIA (Turner, 1995, p.506).

As Europe develops a borderless and liberalised telecommunications market, the question thus arises whether a ‘balkanised’ regulatory environment is appropriate (*Public Network Europe*, September 1998).

Given the globalising nature of the sector there is a demand for, and aspiration to supply, pan-European services. Cross-national differences in the regulatory regime, however, act as a deterrent for the supply of pan-European services. As a source at a telecommunications company said:
you can't go and knock on anyone's door and say "please can I have a pan-European licence". You have to go to each of the NRA's and get your licence, and then put all of these together to build a pan-European Network and offer pan-European services (Public Network Europe, September 1998, pp.29-30).

The lack of a common regulatory framework therefore can create a major bureaucratic obstacle in the provision of pan-European services.

There are several possibilities for increased pan-European regulation outlined in a report by NERA (1997). The most limited proposals do not involve the creation of new institutions but increase the role of existing institutions, particularly the Commission. Proposals include firstly, the Commission having the role of coordination of national regulatory authorities (NRAs). Secondly, the limited creation of new institutions such as bringing together the existing EU telecommunications committees and the other wider pan European bodies. Thirdly, a body could be created which coordinates NRAs and carries out specific mandates of the Commission. Fourthly, a new body could have day-to-day management of technical issues but under the control of the Commission. Fifthly, an independent regulator with powers to specify the regulatory framework could be created, but this would require a treaty amendment.

3. EU institutions and agenda-setting

There are a variety of ways in which supranational institutions have brought greater European regulation onto the agenda. The importance of the supranational institutions in agenda-setting is demonstrated by the strength of opposition at national level. All member states and the national regulatory authorities (NRAs) have stated their opposition to a pan-European regulator (NERA, 1997). OFTEL, for example, has repeatedly argued that the comparison with the US is not appropriate and that, despite the development of pan-European networks, the provision of services is very different in different countries (Communications International, September 1995; International Regulatory Update, 20/4/98). In author's interviews, ministry officials from the UK, Germany and France all strongly expressed opposition arguing that directives are implemented at national level and that all important issues such as interconnection are local and that it is important to get the national independent regulators working properly. This concurs with the results of the NERA survey in 1996 which noted that regulators and policy makers were mostly against the creation of a new European regulatory body, arguing that it would create a new layer of regulatory bureaucracy and that, if this body were given any real powers at the expense of the NRAs, it would also contravene the principle of subsidiarity (NERA, 1997, p.21). Nevertheless, given the rationale for European regulation, it can be argued that member state opposition is due more to the politics of subsidiarity and the NRA's jealously guarding their autonomy and attitudes may change when external pressures increase.

1 Author's interviews: Communications and Information Industries Directorate, Department of Trade and Industry, London, 4/12/96; Ministry of Post and Telecommunications, Bonn, 23/4/97; Ministry of Information Technology and Post, Directorate of Posts and Telecommunications, Paris, 12/6/97.
The Commission has played a central role in setting the agenda for a supranational regulation. It was particularly the problems of implementation of the services directive of 1990 and the creation of independent regulators that led to the idea of a European regulator to be considered by Brussels. There are, however, a variety of views from within the Commission indicating, not only the its heterogenous nature, but also that a process of policy learning is taking place. The Commission's White Paper on *Growth, Competitiveness and Employment*, which noted the crucial importance of IT and telecommunications, led the European Council in 1993 to request a group of `prominent persons' to produce a report for June 1994 European Council (Humphreys and Simpson, 1996, pp.112-113; Cram, 1997, pp.93-95). The industry Commissioner, Martin Bangemann, was given a broad brief to consider the European policy implications of the developing information society. Telecommunications, as well as computer systems, were considered and a pan-European regulator and other telecommunications issues such as the liberalisation of infrastructure were included in the policy recommendations of the 1994 `Bangemann Report' (CEC, 1994).

In the following years several proposals were made by Bangemann which showed caution as well as initiative. In 1995 Bangemann commissioned a report on a possible European regulator by the NERA economic consultants (*Telecom Markets*, 1/8/96, 12/9/96). In 1996 a regulator of frequencies and numbering was on the agenda of the Commission's Information Society Forum. Maintaining activism, but more cautiously, in 1997 Bangemann suggested setting up an informal group of national regulators as a `confidence building' exercise (*Agence Europe*, 24/2/97). Later in 1997 Bangemann was more proactive in calling for a `European Communications Act' which would include a single European regulator for the converging telecommunications and media industries (IRU, 20/10/97).

Views in the Commission, are however, not consistent, showing that the Commission is a 'multi-organisation' and indicating the uncertainty about a pan-European regulator. Since 1995 the Competition Commissioner, Karel van Miert, has been less ambitious than Bangemann, but nevertheless has accepted that a separate body for the control of technical issues such as frequency allocation and numbering may be a reasonable idea. His main concern, however, has been with application of existing EC competition law and the development of directives for full liberalisation in 1998 and he wanted to avoid being embroiled in a controversial issue which may delay liberalisation legislation (*Telecoms Markets*, 14/3/96). Despite greater caution, van Miert supports greater coordination of the NRA's and would support a committee of national regulators (*Communicationsweek International*, 12/8/96).

The telecommunications directorate has also used its competence to propose directives for full liberalisation to put greater European regulation on the agenda. The interconnection directive, first proposed in 1995, included a binding cross-border dispute resolution procedure between national regulatory authorities and coordinated by the Commission (CEC, 1995). This was rejected by the member states but within the Commission's Information Society Forum there was support for stronger European
regulation and the Commission including a requirement for a European regulator in the interconnection directive draft submitted to the European Parliament in late 1996 (Communicationsweek International, 23/9/96). The Commission's strategy was to attain greater legitimacy for the issue by first gaining the support of the Parliament and avoiding direct confrontation with the Council (Communicationsweek International, 23/9/96).

The European Parliament, with its recently acquired power in legislation with the co-decision making procedure, also put greater European regulation on the agenda. In early 1995, in relation to the directive on the mutual recognition of licences (which was driven by the need to harmonise and ease the process of issuing licences to companies operating in more than one country), the parliament proposed a pan-European regulator (Agence Europe, 10/3/95, 22/3/95). In 1996, in the first and second readings of the interconnection directive, the parliament strongly supported greater supranational regulation. Pan-European regulation and cross-border dispute resolution were two of the key issues which led the parliament, under the co-decision making procedure, to force the interconnection directive into conciliation with the Council in early 1997 (Communicationsweek International, 17/2/97). The European Parliament also demanded the establishment of a pan-European regulator in the second reading of the licensing directive (Agence Europe, 24/2/97). Although the parliament had to concede much to the member states in the interconnection conciliation, they managed to keep the issue on the agenda with a formal review of a European regulator by the Commission two years after the adoption of the directive (Agence Europe, 6/6/97; CEC, 1997c). Despite the uncertainty of a pan-European regulator, by use of its institutional resources the European Parliament has kept the issue on the agenda. The European Parliament is not only driven by the technical and economic rationale; it could gain by furthering European integration, and possibly exercising some control over the regulator (Telecom Markets, 1/8/96).

4. New market entry, globalisation and agenda-setting

In addition to the EU institutions new market entrants have actively lobbied for a pan-European regulator. Many new operators have complained of different access regimes and difficulties in some member states and that the directives are too vague and leave much scope for interpretation (Communicationsweek International, 6/10/97). The inadequacy of the NRAs in promoting competition and new market entry is clearly a driving force putting a pan-European regulator on the agenda. The NERA report notes that the strongest support from industry comes from new market entrants and some users (NERA, 1997). Strong support came from new entrants for a European regulator to have greater control over implementation of EU directives and the interconnection regime.

New market entrants and pan-European regulation

The aspiration to gain new markets was the main motivation from industry and one of the earliest involvements of new entrant industry interests was in 1994 in the
formulation of the Bangemann report. The members of the group included IT and telecommunications manufacturers such as Olivetti, ICL, IBM, Philips and Siemens. Incumbent telecommunications operators were notable by their absence from this report. Incumbents such as Deutsche Telekom, more guarded about liberalisation, have been less enthusiastic about a pan-European regulator (DT, 1996). But as incumbent operators have become subject to more competition, many support greater coordination of NRA’s if not a European regulator. BT, the operator subject to competition for the longest period and seeking new markets in other European countries, has, however, supported a pan-European regulator. In 1993 it was vocal in complaining about the ‘lamentable’ slowness in some countries in implementing the 1990s services directive (Telecom Markets, 4/2/93). In early 1995, once a pan-European regulator had been raised by the Commission, it gave strong support (Telecom Markets, 30/3/95).

Whilst BT has shifted its focus to more realistic possibilities, such as increasing NRA independence and pursuing competition issues through national courts (Telecom Markets, 14/3/96; Communicationsweek International, 10/3/97), other industry interests have pressurised for a European regulator. The European Cable TV association (Association of Private European Cable Operators set up in 1994) and many cable TV companies were reported to be in favour (Telecom Markets, 14/3/96; Telecommunications, June 1997). In 1996 new service providers such as Olivetti argued that ‘if you want a genuine pan-European market, you must have a pan-European regulator’ (Communicationsweek International, 12/8/96). The pressure led to the setting up of a committee within the Commission’s Information Society Forum, to examine pan-European regulation. Strong support from new entrants such as Nokia, Alcatel, and more competitively minded incumbent providers such as Tele Danmark led to the Commission including a requirement for a European regulator in the interconnection directive draft in late 1996 (Communicationsweek International, 23/9/96).

In 1997 again similar industry interests have striven for a more effective regulatory regime for market entry. Many complained of different access regimes and difficulties in some member states and that the directives are too vague and leave much scope for interpretation (Communicationsweek International, 6/10/97). Feelings were strong enough amongst new entrants that two of them, Unisource and Airtouch, took what was described as the ‘unprecedented’ step of organising a seminar in Brussels including industry, Commission and European Parliament representatives (Communicationsweek International, 6/10/97). There was still uncertainty over a European regulator but there was more of a consensus that the Commission should be more active in enforcing legislation at national level.

Globalisation and pan-European regulation

2 Author’s interview: European Telecommunications Network Operators Association (ETNO), Brussels, 4/2/97.
New market entry, whilst important, is not a sufficient reason for the support of pan-European regulator. It has been observed that there is greater support from the larger new market entrants (NERA, 1997), which suggests that sectoral globalisation may also play an important role. In particular, there is evidence that the more transnationalised operators may have pressurised for a regulator more than others. As noted above BT was supportive of a pan-European regulator in 1995 and still supports strengthening European regulation, though not necessarily by the creation of a new institution. As well as being a former monopolist subject to competition for a long period, BT is also one of the most internationalised of incumbent operators. BT has extensive international investments which started in the 1980s (Pogorel, 1994, p.320) and by the mid 1990s has invested heavily in most west European countries, in the US, Russia and several Asian countries (Noam and Singhal, 1996). By the mid 1990s, Unisource, an international alliance strongly represented in Europe, has also supported a European regulator: `as a company founded for the pan-European market, we have always in principle been in favour of a pan-European regulator' (Public Network Europe, September 1998, p.30). In addition, Alcatel, a highly internationalised equipment manufacturer also providing some telecommunications services, is supportive of stronger European regulation.

Many highly globalised users are also in favour of strong European regulation. Volvo, for example, was represented on the Bangemann report in 1994 and the International Telecommunications User Group (INTUG) reports that many other users support a pan-European regulator. Users do have some concerns about increasing regulatory bureaucracy but these are outweighed by their aspiration to have internationally consistent regulatory regimes and to reduce cross-border surcharges to the minimum (Communicationsweek International, 19/1/98, p.19).

Interview data also suggest that some of the less internationalised new entrants, although supportive of a European regulator, have not lobbied for it. The European Cable Communications Association and the UK Cable Communications Association, for example, report that, whilst supporting the broad principle, they have done no lobbying to achieve that end. Most cable operators work at a local level and are not as extensively transnationalised as some of the larger telecommunications companies. Whilst they want better implementation of European directives, it makes more sense for them to pursue better regulation at the national level. Similarly smaller companies such as Otelo and Viag Interkom in Germany, whilst being broadly in favour of a European regulator, are concerned above all with the newly developing competitive regulatory regime in Germany.

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3 Author's interview: International Telecommunications Users Group, Namur, 13/6/97.

4 Author's interviews: European Cable Communications Association, Brussels, 6/2/97; Cable Communications Association, London, 15/1/97.

5 Author's interview: Otelo, Düsseldorf, 9/5/97; Viag Interkom, Munich, 14/5/97.
This argument that globalisation has a significant impact is supported by comparison with a less globalised sector, the electricity supply industry. In the electricity industry, though there is increasing internationalisation of investment, networks and industry are much more limited to the national level. In the electricity sector, given the diversity of industry structures and regulatory regimes at national level, there is a clear rationale for some kind of EU regulation for the successful development of an internal energy market (McGowan, 1993, pp.74-77). The Commission has, however, been very cautious about the idea of a European regulatory authority not wanting to upset sensitive national feelings on this issue (McGowan, 1993, p.83) and there has been no support from transnational industry interests.

However, whilst globalisation and market integration in Europe clearly have an impact on the drive for a European regulator, there is counter evidence which suggests the uncertainty and formative nature of the issue. Some pan-European operators are less sure about a pan-European regulator than Unisource (Public Network Operator, 1998). WorldCom, for example, is establishing itself in many European countries and building pan-European networks (Communications International, October 1997). It considers that regulatory problems are almost always at the local level and that a European regulator would be too distant to be workable (Communicationsweek International, 19/1/98). This suggests that there are many factors creating a level of uncertainty about the issue.

5. Policy learning and decision-making in the EU

There is a clear contrast between the pressure on the one hand from transnational industry interests and supranational institutions for increased European regulation, and on the other hand the opposition of member states and NRA’s. Whilst this may appear to be the irrational (and perhaps ultimately futile) protection of national autonomy, the saliency of the issue is a reflection of the open EU institutional system which has been described as an `agenda-setter's paradise' (Peters, 1994, p.21). The level of uncertainty of the issue and the different models being proposed indicates that a relatively transparent process of `policy learning' is taking place in the EU institutional system. A European regulator is relatively easy to understand and the clear similarities with the US have contributed to making the issue salient. There are, however, many uncertainties that suggest the policy learning will continue for several years, but this may lead to greater European regulation but it is not clear what.

The extent of regulatory change in recent years in the EU contributes to the uncertainty. In the majority of EU countries independent regulators have recently been created and they need time to become established. Some actors in the DGXIII in the Commission want to wait until the NRAs are established and for pressure from the NRAs themselves for regulation at a higher level: for example, a DGXIII official has remarked that `Our policy at the moment is just to wait until the industry and the NRAs decide by themselves which competencies could best be dealt with at a higher level'
At present almost all disputes have been within national borders, if cross-border disputes arise, NRAs may see a role for an institution or an arbitration mechanism at the European level. The Commission, however, is not simply sitting back: it has initiated a programme of assessment of the NRA’s in order to give advice on how their performance may be improved (Communicationsweek International, 6/10/97).

Changing markets and technology also lead to uncertainty. As noted above the converging telecommunications and media industries has led to some calls, for example, from Bangemann, for a combined `super regulator'. If competition develops sufficiently and technology continues to diversify, others actors, such as in the Commission and government officials in Finland argue that a sector-specific regulator will not be required (Public Network Europe, January 1998). Some of the industry interests more sceptical about a regulator consider that as competition develops negotiations on interconnection within industry may be sufficient (Communicationsweek International, 7/10/96). Sectoral globalisation, whilst contributing to the integration of European markets, may also mean that the EU level is no longer the appropriate level for increased regulation. There is a rationale, for example, for a new regulatory institute to cover the whole of Europe rather than only the EU (NERA, 1997). The World Trade Organisation agreement in telecommunications in 1997, included broad statements about regulatory issues such as interconnection and has been described as an 'embryo' world regulator (Telecom Markets, 27/2/97; Fredebeul-Krein and Freytag, 1997). Increasing globalisation has also led Bangemann to propose a 'World Charter' for the regulation of telecommunications and IT (Communicationsweek International, 16/2/98).

Despite the uncertainty of the issue there is some evidence of the Commission making progress towards greater European regulation. Although the Commission’s influence on the development of national interconnection has been limited it has become increasingly involved in the development of interconnection costing. It had support from industry consultants and new entrants who were critical not only of the vagueness of the interconnection directive, particularly its failure to adopt a specific costing methodology, but also the ability of governments and the Commission to enforce competition by 1998 (Communicationsweek International, 22/5/95, 4/9/95; Telecom Markets, 23/5/96). In the run up to full competition in 1998 the Competition Commissioner and DGIV have been able to influence national debates on interconnection tariffs by specifying tariff guidelines and threats to use EC law. In 1996 a Commission Communication on the application of competition rules stressed the importance of cost-orientated interconnection tariffs and the obligation to interconnect and that action may be taken on the basis of article 86 on the abuse of dominant position (CEC, 1996). The Commission was clearly sympathetic to new entrants and to promote access for new entrants in 1997 it developed recommendations for interconnection tariffs which were published in late 1997 (CEC, 1998a).

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6 Author’s interview: Directorate General XIII, Telecommunications, IT and Industries, European Commission, Brussels, 7/2/97.
In Germany there is evidence that the Commission's recommendations have influenced the debate in interconnection. There have been long running disputes between new entrants and Deutsche Telekom on issues such as high volume discounts given by Deutsche Telekom in 1996 and the difficulty of reaching satisfactory interconnection agreements and new entrants have pressed their case in Brussels and Bonn (*Agence Europe*, 6/11/96). In 1997 it was known for several months before they were published that the Commission's recommendations on interconnection costing would be more favourable to new entrants than incumbents and would put pressure on member states to implement new entrant friendly regimes. In late 1997 this influenced the national debate in Germany where there was a long running dispute between Deutsche Telekom and new entrants. The telecommunications minister stepped in to end the deadlock and enforced a rate close to that specified by the Commission and demanded by new entrants (*Telecoms Markets*, 23/10/97). Although the Commission's recommendations do not have the legal force of a directive, and there is a certain ambivalence about the position of the telecommunications Minister vis-à-vis Deutsche Telekom and new entrants, it suggests the Commission's proposals have had an influence. In 1998 the Commission's position was strengthened as interconnection charges in the EU fell closer to those it recommended and felt confident enough to amend its recommendations downwards (*Agence Europe*, 31/7/98; CEC, 1998c).

6. Conclusion

Imbalance has been argued to be one of the key features of the EU institutional system (Peters, 1994). One end of the imbalanced spectrum is the agenda-setting process which is open and creative involving a multiple of actors and institutional processes. At the other end of the spectrum there are extreme difficulties in implementation which can reduce to the ‘lowest common denominator’ accepted by the member states. The case study presented in this paper, a possible pan-European regulator for telecommunications, provides evidence of an open and creative agenda-setting process. It has been shown that a variety of actors within European institutions and industry have been able to exploit the EU’s supranational institutional system and promulgate a variety of possibilities for greater pan-European regulation.

The Commission and European parliament have exploited their institutional resources to give the issue greater saliency. The competence, for example, of the Commission to propose legislation has been important. This has been seen directly with Commissioner Bangemann making calls for a pan-European regulator. More indirectly, the Commission has exploited its competence in other matters to raise a pan-European regulator on the agenda. In 1994 in the Commission's report on the global information society a pan-European regulator was recommended. Later legislation on other matters was also used to put the matter on the agenda: supranational cross-border dispute resolution and a pan-European regulator were included (though rejected by the member states), for example, in the interconnection directive which was part of the 1998 full liberalisation package. The European
Parliament has also used its increased role in the co-decision making procedure to put a pan-European regulator in the agenda. In the conciliation procedure with the Council in 1997 on the interconnection directive a pan-European regulator was agreed to be part of the 1999 review of telecommunications. Supranational institutional resources are not the only reason why the issue has developed a saliency. The changing industry has also led some industry interests to lobby European institutions for a pan-European regulator. New market entry, market integration in Europe and globalisation, though each are not sufficient reasons for industry to call for a pan-European regulator, are important contextual factors.

Strong member state opposition can be invoked as clear evidence of the ‘imbalance’ of the EU institutional system. Whilst clearly legislation and implementation provide policy outputs and require more time than agenda-setting, agenda-setting does have an impact on policy change. It has been argued that agenda-setting in the EU institutional system is a fertile arena for policy learning. There are some nascent trends that this process has already strengthened supranational regulation. The Commission’s recommendations on interconnection pricing, for example, are beginning to influence the develop interconnection regimes at national level. Clearly there are still many uncertainties and the outcome is unclear, but the process of agenda-setting and policy learning in the multi-level EU system may lead to some form of strengthening of European level regulation in future years.
References


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