Telecom Regulators

Converging Trends?

Officials in developing countries with legal and political systems of continental European origin often argue that the model of independent regulatory agencies for utilities is appropriate only for Anglo-Saxon countries. Yet countries in continental Europe have also adopted this model. Comparing the telecommunications regulatory agencies in the United Kingdom, the United States, France, Germany, and Spain, this Note finds divergence in some respects but striking convergence in overall approach. This approach might not be right for all developing countries, but it cannot be rejected on the grounds that it works in Anglo-Saxon countries only.

The United States liberalized long-distance telecommunications markets in the 1960s. The United Kingdom followed suit in the 1980s. The other countries of the European Union (EU) undertook liberalization (of both local and long-distance service) in the late 1990s. The shift to competition in all these countries was prompted in part by changes in technology but more fundamentally by the realization that users, and the economy in general, would benefit greatly from a broader range of services, of higher quality and at lower prices, in a competitive environment.

The governments of the five countries examined in this Note—two from the Anglo-Saxon and three from Continental European legal and political traditions—answered these questions by taking major regulatory functions away from ministries and entrusting them to autonomous agencies.

Converging responsibilities

The five countries' regulatory agencies have similar responsibilities. All have mission statements that emphasize promoting competition.

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And all have duties relating to the same set of regulatory functions, such as granting licenses, implementing tariff rules, determining the conditions of interconnection, administering universal service obligations, monitoring and enforcing operators' compliance with regulations, and resolving disputes (table 1).

While similar, the responsibilities of the five regulators are not identical. For example, the French and U.K. regulators have only advisory power in granting licenses to operators; the minister responsible for telecommunications formally grants the licenses. In contrast, the German, Spanish, and U.S. regulators have final decisionmaking power in granting licenses, at least in some cases (in Spain the minister issues the licenses when the award process is competitive). Similarly, in setting tariffs, the French and Spanish regulators have only an advisory role, while the German, U.K., and U.S. regulators have decisionmaking power. Because of the political sensitivity of telecommunications tariffs and the close and often complex relationships between the executive and the main incumbent operator—particularly when the state retains some ownership, as in France and Germany—operators are likely to perceive greater risk when the government retains decisionmaking power in such important functions as granting licenses and setting tariffs.

Other differences in roles relate to universal service obligations. The U.K. and U.S. regulators,
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<th>Accountability, autonomy, and competency of regulatory processes</th>
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<td><strong>France</strong></td>
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<td>What is the decisionmaking body?</td>
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<td>Who appoints the regulators?</td>
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2. By law, the decision chamber that covers licensing for limited frequencies and universal service obligations is headed by the president of the regulatory agency, assisted by the two vice presidents. The other decision chambers, established according to regulations set by the Ministry of Economy and Technology, are made up of high-level staff of the regulatory agency appointed with the ministry's consent. Source: World Bank compilation based on information provided by the five regulatory agencies.
unlike their French, German, and Spanish counterparts, determine the scope of these obligations. And while the German, Spanish, U.K., and U.S. regulators are responsible for calculating the costs of universal service obligations, allocating those costs among operators, and designating the universal service providers, the French regulator performs the first two functions but not the last, because the law designates France Telecom as the universal service provider. Many policy experts agree that political authorities can generally tackle the important social policy issue of defining the scope of universal service obligations with more legitimacy than can unelected regulators, as is the case in the United Kingdom and the United States. But enabling the regulator to designate the universal service providers, especially on a competitive basis, is a better option than designating the incumbent ex ante as the sole such provider, as was done in France.

Finally, all five national regulatory agencies focus on communications, or even more narrowly on telecommunications, though the U.S. public utility commissions at the state level typically operate across infrastructure sectors. But a growing number of commentators argue that while sector-specific expertise needs to be maintained, expanding the scope of the agencies to cover other infrastructure sectors would speed the adoption of best practices, increase autonomy, and economize on scarce human resources.

Converging procedures
Of course, entrusting decisionmaking powers to regulatory agencies offers advantages only to the extent that the agencies are adequately protected against political and industry pressures and are well equipped to shoulder their responsibilities. All five countries have taken measures to protect the regulatory process from political and industry capture and to ensure high technical capacity (table 2). In doing so, France, Germany, Spain, and the United Kingdom have all gone further than required by EU law, which mandates separation between regulatory and operational functions, but not between regulatory and political functions.

Germany and the United Kingdom have introduced fewer safeguard measures than the other three countries. The U.K. model has demonstrated, over the years, that it worked reasonably well. Nevertheless, commentators are arguing, for example, that Oftel should be headed by a commission rather than an individual to better protect its autonomy. Experience with the German regulator is much shorter, and concerns arising from the relative scarcity of formal safeguards are therefore more acute.

All five countries have adopted similar disclosure and appeal mechanisms to counterbalance the regulators’ autonomy. All the regulators are required to publish regulatory decisions and the justifications for them and to allow concerned parties to present their views before reaching a decision. All regulators must also report to parliament, and in some cases to the government, on their activities. Procedures for appealing regulatory decisions before the courts are in place.

Regulators tend, in practice, to go far beyond what the law requires to ensure transparency, on the presumption that this makes undue government intervention more visible and therefore less likely, and to further reduce the risk of regulatory mistakes.

Conclusion
Prompted by the complexities of telecommunications issues, the size of the commercial interests at stake, and the political sensitivity of telecommunications prices and policies, France, Germany, and Spain have followed the lead of the United Kingdom and the United States in setting up specialized, independent regulatory entities. The regulatory models of the five countries differ in some ways, but more striking is their convergence. Changes advocated in the United Kingdom and the United States would bring those countries’ models even closer to the other three.