

PERVASIVENESS AND EFFICACY IN REGULATORY GOVERNANCE: NEO-LIBERALISM AS IDEOLOGY AND PRACTICE IN EUROPEAN TELECOMMUNICATIONS REORGANISATION

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ABSTRACT

Telecommunications provides one of the most well-developed examples of the growth of neo-liberalism. The sector is interesting since the contrast between its pre neo-liberal and post neo-liberal characteristics is particularly stark. This paper explores the impacts of neo-liberalism in European telecommunications, placing particular focus on the EU institutional context. It considers the consequences of neo-liberalism as ideology, on the one hand, and practice, on the other. It finds that, ideologically, neo-liberalism has become deeply pervasive in European telecommunications and for its advocates can be regarded as a highly successful project spanning almost 30 years. In terms of practice, the paper argues that the pursuit of neo-liberalism has been less successful. In particular, competition has proven complex and difficult to create and there are concerns over the ability of the neo-liberal model to provide sufficient investment to deliver new Next Generation Networks. However, these deficiencies tend to be under-played due to the ideological and rhetorical success of the neo-liberal project in telecommunications.

INTRODUCTION

For the best part of 30 years, the telecommunications sector in Europe has been the subject of a radical reorganisation in structural and operational terms, a still ongoing process. Regarding governance, little short of a wholesale transformation has occurred largely along the lines of neo-liberalism. Change in European telecommunications has called forth an extensive body of academic work, which has focused on key institutional and market-based developments at the national and European levels. Telecommunications thus provides one of the best sectoral examples to reflect on the consequences of the ‘neo-liberal project’ in Europe, many of which, indeed, have already been established, at least to some extent, in the academic literature. This paper aims to provide a contribution to this complex and under-addressed undertaking through exploring neo-liberalism in European telecommunications in terms of its pervasiveness and efficacy. In this respect two key elements of neo-liberalism are dissected: its ideological prowess, on the one hand, and its manifestation as practice, on the other. In doing so, the paper argues that, in ideological terms, proponents of neo-liberalism – hailing mostly from governmental and business quarters – have been outstandingly successful in securing the dissemination and adoption of neo-liberalism as a ‘view of the world’ for telecommunications. Neo-liberalism in telecommunications is rarely questioned (though see Simpson and Wilkinson 2002). However, it is in the practice of neo-liberalism, where the paper finds three key concerns around efficacy, despite undoubted improvement in service quality from the days of the state run telecommunications utilities of the 1970s.

Firstly, ‘disciplinary neo-liberalism’ has developed as an elaborately managed system necessitating a complex and pluri-dimensional regulatory network across Europe the costs of which are under-emphasised due, in part, to the desire by academics to explore and understand its novelty. Second, the success of neo-liberalism as an ideological view of the world has masked how difficult it has proven to be to create competition, of even the most embryonic kind, in certain telecommunications markets. Allied to this, there is considerable evidence of resistance from the nation state to complete privatisation of the telecommunications incumbent. Third, the preoccupation with markets and competition – inevitable given the ideological success of neo-liberalism – has resulted in de-emphasis of public interest issues in telecommunications, often relegating them to rhetorical tokenism, that is, the message that the market will deliver in the public interest. This is a particularly pressing issue given the convergence of communications technologies and services on broadband so-called Next Generation Networks (NGNs).

The paper is organised as follows. The following section charts, very briefly, the emergence of neo-liberalism as a doctrine and set of practices in European telecommunications from approximately the late 1970s, focusing on the European Union and its Member States. Particular emphasis is placed on explaining the role which neo-liberalism played in the internationalisation of the sector which drew the EU in as both an important policy context and institutional actor in the development of neo-liberal telecommunications. Thereafter, the paper moves to an exploration of the consequences of the adoption of the neo-liberal model for telecommunications in Europe: the paper’s third section considers the core features of ‘neo-liberalised’ telecommunications in the EU. Here, it shows how the neo-liberal model has been evolutionary in nature, has been operationalised by a range of public and private actors, and has become almost unquestioned in its pervasiveness. Telecommunications provides one of the strongest examples of the development of

the neo-liberal 'regulatory' state. The penultimate section of the paper trains its focus on the performance of neo-liberally ordered European telecommunications. Here, the paper concerns itself with the extent to which neo-liberalism has been able to realise its *raison d'être*: free market competition. As a corollary, the paper explores the institutional demands of the neo-liberal telecommunications system. It also highlights the relative position of public interest issues, placing some emphasis on the extent to which adequate future investment in NGNs can be secured through the market mechanism exclusively. The final section of the paper offers some brief conclusions on the significance of neo-liberal era in European telecommunications.

THE EMERGENCE OF NEO-LIBERALISM IN EUROPEAN TELECOMMUNICATIONS

Organised as state run monopolies domestically, with cartel-like interface agreements between the national service providers for the exchange of telecommunications traffic internationally, the telecommunications sectors of EU states were, for much of the 20th century, the antithesis of neo-liberalism. Bundled in with postal services, telecommunication was provided by a series of Postal, Telegraph and Telephone (PTT) administrations. The provision of telecommunications services – voice telephony for most users – occurred across a fixed-link infrastructure of exchanges and cables. In economic terms, the market was deemed to be close to uncontestable. The network infrastructure was expensive and time-consuming to construct. Considerable investment was necessary before any revenue could be generated to recover start up costs. There was no sound economic logic to construct competitive fixed networks over the same territory in these circumstances. These economics were further underlined by the social dimension of telecommunication. As the system developed, its social purpose as a communication tool became clearer and the goal of providing as many people as possible with the ability to access telecommunications was established as a policy imperative, particularly after 1945. There were also direct economic benefits to be accrued from a widely established and effectively functioning telecommunications system. This socio-economic model for telecommunication chimed with the established post-war political systems of western Europe, where the dominant, though by no means unchallenged, thinking was that the state should intervene strongly to provide economic and social goods: the era of the corporate state was in full swing. In other words, the organisation and functioning of the telecommunications sector was underpinned by this particular ideological 'view of the world'. This outline of the telecommunications systems in Europe bears little or no resemblance to the current position. Since approximately the late 1970s, the corporate state model of telecommunications in Europe has been replaced gradually by the 'regulatory' state model (Seidman and Gilmour 1986; Moran 2003).

Politics aside, by the early 1970s approximately, telecommunications was a sector awakening from a period of relative 'technological slumber'. The subsequent changes altered markedly the well-established economic characteristics of the sector and placed new demands on those wishing to develop it. New switching and transmission technologies greatly improved the functionality, but also increased research and development and production costs, of the telecommunications network. The application of computer technology to telecommunications allowed terminals to communicate with each other across a network. This afforded a huge potential expansion in the number of telecommunications services that could be provided to users: new value added services (VAS) now could incorporate combinations of voice, numerical and other data, text and video. The start up costs of becoming a provider of

such services was nowhere near as prohibitive as for 'traditional' voice telephony and, in any event, after decades of investment, a fixed network (albeit in need of modernisation) was in place, to a considerable extent.

Whilst the techno-economic nature of telecommunications was undergoing significant change through the 1970s and 1980s, a set of changes of a much greater magnitude entirely began to take hold in the international political economy. Emerging to prominence first in the US during the time of the Reagan administration, economic neo-liberalism spread initially across Europe - first having been adopted in the UK - and, thereafter, throughout much of the global economy. The core proposition of neo-liberalism is a profound faith in the efficacy of competition through market forces. Aside from the commercial success or otherwise accrued by the protagonists in competitive markets, in essence neo-liberals argue that efficiently functioning markets will yield three core, inter-related broader long-term benefits: lower market prices; better quality of goods and services; and speedier, more dynamic technological progress. Very importantly, the neo-liberalism of the late 1970s and beyond was 'internationalist' in expression: it went hand-in-hand with a much vaunted late 20th century globalisation of the economy, underpinning and assisting its development in the process. As Huffschmid (2005: 3) argues neo-liberalism emerged as a 'complex social and political strategy responding to the increasing complexity and difficulties of capitalist development since the mid-1970s, expressed as a body of economic doctrine, placing competition and the market as the driving forces of economic and social development'. Here neo-liberalism developed 'under the ideological umbrella of necessary adjustments to the all encompassing process of globalisation'.

The intertwined agendas of neo-liberalism and globalisation held profound consequences for those states which would adopt them in chosen sectors of the economy. Domestically, where absent or only weakly evident, competition needed to be created among industrial players. Beyond this, in the international scenario, barriers to trade, on the one hand, and inward foreign direct investment of various kinds, on the other, needed to be very much reduced if not dismantled entirely. The crucial corollary was that the status and role of the corporate state in sectors in which it was active could no longer be maintained.

To its advocates in the political realm in Europe, the telecommunications sector presented itself as a tailor made case for the introduction of neo-liberal reform, arguably fortuitously assisted by the aforementioned techno-economic developments occurring in the sector. The realisation of this ideological project in practice required a radical overhaul of the fundamental structure and functional characteristics of what was a highly specific sector domestically and internationally. The UK was the first of the EU Member States to make the decision to adopt a neo-liberal model for the telecommunications sector (Morgan and Webber 1986). However, to create changes as radical as this required the instigation of a set of core practices, whose pervasiveness more widely in the neo-liberal global political economy has led them to be described as 'disciplinary neo-liberalism' (Gill 2001, cited in Story 2006). First, direct state ownership of the telecommunications incumbent, the PTT, was reduced, though significantly in many European national cases, not completely relinquished. Second, the new service possibilities in telecommunications, based on opportunities afforded by technological change, were delivered through a competitively ordered market structure. Here, new markets for a plethora of value-added services, as well as mobile communications, were created. Third, market competition was created in the longest established telecommunications market: voice telephony. The (partly)

privatised incumbent was licensed alongside new commercial competitors to provide services to consumers. In complement, as the process of neo-liberalisation of telecommunications became more deeply embedded, a series of sub-markets around voice telephony were established on some sort of competitive basis. Fourth, the act of governing the evolution of the telecommunications sector, formerly undertaken by the corporate state, was ceded through legislation to a series of newly created National Regulatory Authorities (NRAs) (Thatcher 2002). These publicly funded, operationally independent bodies became what has been described more widely as the 'citadels of regulatory capitalism' (Levi-Faur, Jordana and Gilardi 2005), responsible, in our case, for undertaking a range of tasks associated with disciplinary neo-liberalism in telecommunications.

A major feature of the re-ordering of European telecommunications along neo-liberal lines has been the role played by the EU. As a once deeply national-centric sector of the economy began to become internationalised in outlook, the possibility of developing some form of coordination in telecommunications internationally across the EU became live. At the EU institutional level, the European Commission proved keen to respond to the lobbying of interests initially made up of forerunner liberaliser Member States, multinational telecommunications business users and new and incumbent telecommunications service providers. However, the Commission was far from simply reactive and soon became the key European level institutional 'champion' of a neo-liberal telecommunications agenda for the EU. The EU was projected as a logical policy choice for the changing telecommunications sector. It could be used by Member States to liberalise and harmonise the parameters of domestic telecommunications among the EU partners in precise ways and to a mutually acceptable timetable. Creating a European wide market in telecommunications, as part of the much wider Single European Market initiative (European Commission 1985), would provide the context to allow the commercial exploitation of a burgeoning sector within a relatively familiar European market space. It could also provide a suitable 'training ground' to exploit global telecommunications markets should the neo-liberal agenda be more widely adopted, as became increasingly the expectation. The EU would, as a consequence, deliver the promises of neo-liberalism (lower consumer prices, better service quality and faster innovation). Finally, it was argued that the internationalised neo-liberalisation of telecommunications through the EU could provide a context to protect, but also to deliver, those elements of the public service tradition of telecommunications still held to be of value in the new era.

Thus, from the late 1980s onwards, EU Member States began to utilise the EU route to transform their telecommunications sectors. It is important to note that the process did not occur identically in all Member States, nor has it been free of controversy and disagreement. For example, the UK had already liberalised comprehensively its telecommunications sector by the time the European Commission first produced a neo-liberal policy blueprint for telecommunications in the form of a green paper in 1987 (European Commission 1987). Nevertheless, through the 1990s and into this decade, the system of EU telecommunications governance has become an important and deeply embedded part of the EU policy canon. It has developed within a framework of legislation, mostly in the form of directives, requiring transposition and implementation at the national level (Humphreys and Simpson 2005). This has, inevitably, provided considerable scope for variation at the national level. The next section explores in detail the shape and core features of the neo-liberal telecommunications model as it has developed since the late 1980s.

THE SHAPE OF THE NEO-LIBERAL TELECOMMUNICATIONS SYSTEM IN THE EU

Telecommunication is big business. One estimate puts the revenue it generated in 2006 at Euro 289 billion (European Commission 2007a: 21). In political-economic terms, the sector now also provides one of the most prominent examples of *the* core consequence of neo-liberalism: the replacement of the corporate state by the 'regulatory' state. The regulatory state in Europe has been recognised as a phenomenon in which the EU's presence is highly significant (Majone 1996). A key feature of the European regulatory state in telecommunications has been its constant evolutionary nature. A series of temporary points of policy equilibrium can be recognised (Simpson 2008) the period before which an often intense process of policy negotiation, based on a comprehensive review of the 'state of play' in the sector, has often taken place.

The first major equilibrium point in the neo-liberalisation of telecommunications at EU level occurred around 1990 with the agreement by Member States to open their markets for telecommunications terminal equipment (European Commission 1988) and value-added services (European Commission 1990) to EU-wide competition. This period was characterised by a short flurry of political controversy surrounding the successful attempt made by the European Commission to pass the necessary directives without securing the approval of the Council of Ministers. The Commission here gave the strongest possible signal of the extent to which it intended to be an instigator of the neo-liberal agenda in telecommunications. However, it also became aware of the need to ensure that the future development of EU telecommunications policy proceeded as consensually as possible. The important denouement reached was that the directives were passed as per the originally instigated (Article 86) procedure but, alongside this, a framework directive on Open Network Provision was also created (European Parliament and Council 1990) which would allow for further harmonising legislation related to its core subject matter to be passed, not least legislation concerning the protection of public service aspects of telecommunications (see Humphreys and Simpson 2005).

The second major policy landmark in the liberalisation of EU telecommunications occurred in 1993-4 period. Here, in the light of a review and consultation launched in 1992 (European Commission 1992) EU Member States took what was at the time the highly significant decision to liberalise all telecommunications services (European Council of Ministers 1993) and infrastructures (European Council of Ministers 1994) by 1998. At this juncture, it became clear that Member States had signalled their commitment to the wholesale adoption of the neo-liberal agenda in telecommunications. To create the framework for the pursuit of this to occur required the passage of a plethora of liberalisation and harmonisation legislation, which duly occurred in the intervening years. However, though the requisite legislation was in place by the beginning of 1998, this was merely the beginning of the functioning neo-liberal telecommunications sector.

In fact, even before the operationalisation of what became known as the '1998 framework', the EU, through the European Commission, had begun to explore how the regulation of all electronic communications might evolve. This debate, launched in 1997 through the by now typical route of a Green Paper followed by a consultation process, was premised on the view that ongoing technological convergence between IT, telecommunications and broadcasting, yielding new international hybrid markets, might require extension of the international neo-liberal regulatory framework which

had been developing at EU level to all of electronic communications (European Commission 1997). The somewhat fractious debate which the Green Paper stimulated (see Michalis 1999) led eventually, in 1999, to the Review of Electronic Communications (European Commission 1999) whose primary focus was on further refinement of the already agreed telecommunications regulatory framework. This produced agreement, in 2002, on the Electronic Communications Regulatory Framework (ECRF), which became fully operational in July 2003. One of the ECRF's goals was to rationalise: its measures applied to all electronic communications infrastructure markets and the markets for services associated with them. It also rationalised the 1998 telecommunications regulatory framework by reducing the number of legal measures framing it from 20 to 7. However, the ECRF also provides evidence of two of the hallmarks of the neo-liberal regulatory state in action. First, it placed particular focus on the pursuit of competition in those areas of telecommunications which were proving stubbornly resistant to it. In the process and as a consequence, the European Commission produced a detailed list of 18 markets in telecommunications which required ex-ante sector specific regulation. Second, the new framework provided evidence of the kind of detailed institutional framework required to deliver the neo-liberal telecommunications sector in Europe at the EU level. Here, the existing EU level committee structure which had developed since the late 1980s was augmented to create the Communications Committee in which Member State representatives, both technical and political, make key decisions on the performance of the framework. New committees were also created to cover the increasingly important areas of spectrum policy and data protection. Finally, the European Regulators Group, composed of the Heads of Member States' NRAs, was created to advise the European Commission on core regulatory aspects of the ECRF.

The negotiations leading to the creation of the ECRF also illustrated the continuing importance of the European Commission as a supranational institutional actor in the neo-liberal European telecommunications governance system. The Commission, again showing itself to be the European level champion of the neo-liberalism, pressed Member States hard to be allowed to attain a veto over regulatory decisions made at the national level which might not in its judgment be in line with the development of the Single European Market in telecommunications. On this occasion, it was successful in obtaining the right to veto designations by NRAs of the existence of Significant Market Power (SMP) in any telecommunications market, which would thus call forth ex ante regulation to thwart any potential abuse of this position by an incumbent. However, the Commission failed to secure a veto right on the decisions made by NRAs regarding regulatory remedies specified to improve an unsatisfactory competitive situation in any market (Michalis 2004).

The agreement of the ECRF, though highly significant, can only be regarded as another juncture in the development of the regulatory state, and the neo-liberal project, in telecommunications in the EU. In 2006, the European Commission launched yet another review exercise, serving to reinforce the almost constant process of refinement of the regulatory parameters set out to govern neo-liberally ordered telecommunications (European Commission 2006). This review is at the time of writing uncompleted, though in its final stages. Currently, Member States have been asked to consider the further modification of the ECRF through three pieces of proposed legislation. A single directive would jointly amend the 2002 directive on a common regulatory regulatory framework for electronic communications networks and services, the 2002 directive on access to, and interconnection of, electronic communications networks and services, and the 2002 directive on authorisation of

electronic communications networks and services (European Commission 2007b). A second directive has been proposed which would amend the 2002 directive on universal service, the 2002 directive on data protection and privacy, as well as the 2006 regulation on consumer protection cooperation (European Commission 2007c). Finally, and most controversially, the Commission has proposed a regulation which would create a European Electronic Communications Markets Authority (European Commission 2007d).

The EECMA is significant since, if adopted by Member states, it would create for the first time a supranational authority for telecommunications, operationally independent of the EU's institutions, though established in EU law and accountable to the European Parliament. EECMA would have a wide ranging regulatory remit, broadly along the lines of enforcing the neo-liberal project across the EU. EECMA would be composed of representatives of the EU's now 25 telecommunications NRAs. Though for the most part functioning in an advisory capacity, it would be required to develop a close working relationship with the European Commission, already envisaged by the latter as a partnership. This would mark a significant reinforcement of the neo-liberal project in telecommunications at the EU level, since it would give the European Commission, its proposer, the kind of supranational regulatory backup which it has recently expressed frustration about the lack of at EU level. However, what precise form EECMA takes, or even whether it is created at all, is currently in the balance due to the considerable degree of opposition to it which has emerged from NRAs, the European Regulators Group and a number of Member States (see Simpson 2008, forthcoming).

The ongoing refinements to the EU's neo-liberal telecommunications model aside, it is also important to note that Member States, through the EU as their representative, have played a key role in the global institutionalisation of the neo-liberal telecommunications model in the World Trade Organization. Formed in 1995 as a result of the conclusion of the Uruguay Round of negotiations, the WTO is the prime example of an organisation created to advance the adoption of the neo-liberal model. In keeping with the fundamentals of neo-liberalism, the *raison d'être* of the WTO is the creation of global competition through trade. However, the WTO has also addressed a range of measures which are related to the facilitation of trade, notably inward investment and intellectual property protection. In telecommunications, a major breakthrough occurred with the signing in 1997 of the Agreement on Basic Telecommunications, as a result of which 69 of the world's states agreed to open up their telecommunications services markets to international trade competition. Equally significantly, a large number of these signatories, also adopted what became known as the Reference Paper on Telecommunications. Here, a set of principles assistive to the creation of free market competition were adopted by 57 states, such as the setting up of independent regulatory authorities, non-discriminatory licensing and interconnection. It is important to note that the EU Member States, alongside the USA, were the prime-movers in pushing for the ABT and the Reference Paper (Young 2002). From an EU perspective, the resulting agreements were very much in line with the decisions made by its Member States regarding telecommunications liberalisation noted above. The EU was successful, therefore, in securing the uploading of its policy preferences to the global trade level in telecommunications, and in the process it has become one of the arch proponents of neo-liberalism in telecommunications at the global level (Simpson and Wilkinson 2002).

THE EFFICACY OF THE NEO-LIBERAL MODEL IN TELECOMMUNICATIONS: IDEOLOGY

The changes wrought by the neo-liberal project in European telecommunications are striking in that they have caused both significant change to the way in which the sector is organised at the domestic level, as well as opening what was one of the most national-centric of sectors to shared internationalised governance in Europe through the EU. In ideological terms, the spread of neo-liberalism as a view of the way telecommunications should be organised is by now for the most part unquestioned nationally and at the EU institutional level. Whilst it took some time for neo-liberalism to be accepted across the EU, by the mid-1990s all Member States had decided that a competitively ordered telecommunications sector, whilst holding some risks regarding exposure to scenarios of commercial competition, held more attendant opportunities. From the perspective of ideology, it would be difficult to argue against the contention that the pursuit of competition in telecommunications has been adopted as the 'right thing to do' compared to the state owned and administered public monopolies of the 1970s.

In ideological essence, neo-liberalism is as much about antipathy towards the direct interventionist role that might be played by the state as it is about championing competition and market forces. In this sense, neo-liberalism has triumphed over corporate state interventionism in the telecommunications sector. It has been argued more broadly by Levi-Faur, Jordana and Gilardi (2005: 3-4) that a newly created global regulatory order 'is much less politicized and contentious, and is proceeding much faster' than previous phases of capitalism. Evidence of this could be found in the clearest terms in the landmark 1994 Bangemann Report, *Europe and the Global Information Society*, which set out in uncompromising terms the blueprint for neo-liberal telecommunications in the EU (Bangemann Report 1994). That neo-liberalism has become deeply locked-in as the dominant ideological perspective on telecommunications is evidenced in the recent policy rhetoric of the European Commission and others in and around the current review of telecommunications. For example it has been argued, somewhat naively, by a French Socialist Member of the European Parliament that refinements of the ECRF aimed at making the EU telecommunications market more competitive 'would be entirely for the benefit of consumers' (Trautmann 2006: 1). In rejecting calls made by telecommunications incumbents to be given exclusive control over Next Generation Networks in return for a major financial commitment on their part to build them, the EU Information Society and Media Commissioner, Viviane Reding, has epitomised the classic neo-liberal position by arguing that so doing would 'stifle the competition that has promoted innovation, choice and low prices these past years' (Reding 2008a: 5). Similarly, when considering the large equality gap in penetration rates for broadband services 'where more than 30% points separate the leading and the last placed Member States', Reding contends that 'the single most important factor explaining this gap is lack of effective competition on the market because access regulation has not been effectively implemented' (Reding 2008b: 2).

However, in democratic terms, the slew of new regulatory agencies that have epitomised the regulatory capitalism which neo-liberalism has birthed have neither been part of party political manifestos nor consequently have they been 'brought to electorates for discussion and reflection' (Levi-Faur, Jordana and Gilardi 2005: 4). In practical terms, the cost of regulatory capitalism in telecommunications has been insufficiently addressed. The European Commission has made a strong and politically opportune case for the financial benefits to be accrued from the creation of the

EECMA (European Commission 2007). However, a recently reported estimate by the Dutch government claims that the administrative costs of regulation, across the board, are as much as 2.5% of GDP (European Voice 2005: 1). In a clear indication of the ideological zeal with which the neo-liberal model has been proselytised by the Commission, Reding, in a speech to the European Competitive Telecommunications Association has argued that 'I count on your continuing support. It will be needed. Because we have to keep on explaining, keep on reminding of the benefits that competition brings...This is in the interests of Europe's economy. And of Europe's citizens' (Reding 2007: 7).

THE EFFICACY OF THE NEO-LIBERAL MODEL IN TELECOMMUNICATIONS: PRACTICE

Despite the huge political and financial investment made in it, the creation of competition in telecommunications across the EU – the essence of neo-liberalism – has proven difficult. As noted above, the European Commission has become a key international institutional actor for the promotion of competitive markets in telecommunications. It has also, however, played a major role in monitoring the development of competition through the main phases of EU telecommunications policy since the late 1980s. This process has illuminated a number of features of functioning neo-liberalism across the EU in telecommunications.

First, competition has proven slow to develop in a number of national markets. Member States have often proven slow liberalisers, for example. Regarding the transposition of legislation, early on the Commission upbraided France regarding its imposition of a licensing condition which required companies to make a financial contribution to research and training in its telecommunications sector as well as a delay in introducing legislation about licensing procedures. It also launched infringement proceedings against Spain in 1997 for failing to allow unrestricted establishment of new telecommunications infrastructures by competitors to the incumbent, though Spain soon thereafter became an exemplary transposer of harmonisation directives related to the 1998 Framework. In the late 1990s too, Italy was a major cause for concern for the Commission over its transposition of agreed measures. Other countries to have been cited for poor transposition of certain measures agreed as part of the 1998 regulatory package were Belgium, Greece, Ireland Luxembourg and Portugal (Humphreys and Simpson 2005: 69-71).

Regarding the transposition of the ECRF by the agreed deadline of July 2003, the Commission went as far as to commence infringement proceedings at the European Court of Justice against Belgium, Germany, Greece, France, Luxembourg, the Netherlands (EC press release IP/03/1750, at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1750).

The European Commission in its 2004 report on the implementation of the ECRF noted that necessary legislation was still missing from the statute books of Spain, France, Cyprus, Latvia, Lithuania, Poland, Slovenia and Slovakia. In this report also, whilst noting the development of competition in a number of areas, the Commission also pointed out that incumbents market share of local call markets was high in certain cases. The Commission also complained about the independence of certain NRAs, as well as the length of time taken to deal with regulatory appeals (European Commission 2004). In terms of implementation of the agreed legislation, there were complaints from new entrant companies regarding interconnection agreements in Austria, Belgium, France and Germany in the late 1990s. The Commission noted differences in accounting practices, pricing and interconnection tariffs throughout EU

Member states (Humphreys and Simpson 2005: 79). In 2002, in the local call market the former incumbents still held on average 90% of the market (European Commission 2002: 4-5).

Second, the creation of a uniform neo-liberalised model of telecommunications at the international (EU) level has been difficult to realise. In fact, telecommunications provides evidence that different kinds of neo-liberal model have developed in sectors where globalisation has provided at least part of the rationale for developments. The 'domestication effect' is a strong feature of (neo)liberalised telecommunications. For example, though Member States have established NRAs, the precise institutional design of these agencies has been adapted to domestic conditions. NRAs had also tended to play more or less influential roles in regulatory decision making which went on at EU level. The degree of independence of NRAs from government has also varied since the latter was not a criterion of EU policy (see Humphreys and Simpson 2005: 73-78). The Commission has developed a system for collecting regulatory data from Member states, often through commissioning consultants to undertake studies to derive regulatory benchmarks and systems of best practice. In complement, it has employed the 'naming and shaming' tactic in its series of implementation reports on the regulatory framework (Humphreys and Simpson 2005: 88).

Third, the neo-liberal system of telecommunications in Europe has required an elaborate set of rules which have constantly been modified in an effort to realise functioning competition. Often telecommunications firms, especially incumbents, have been able to disguise costs, due to the problem of information asymmetry between them and the regulatory authority. The regulatory workload from this has been highly significant, despite efforts made by the EU to streamline the system through time. For example, the creation of the ECRF in 2002 was accompanied by a significant expansion in the number of designated markets in telecommunications subject to ex ante regulation to as many as 18. These markets all required regular detailed reviews by NRAs and the European Commission. The change made to the definition of Significant Market Power through lowering the market threshold, for ex-ante regulation, to the level of general competition policy was also accompanied by a more detailed range of criteria which had to be examined in deciding whether or not SMP existed, involving more work for regulators. The ECRF also required NRAs to undertake work more speedily to settle regulatory disputes arising in their jurisdiction. The European Commission voiced its displeasure at the speed at which decisions were being made citing the Netherlands, Austria, Portugal, the UK, Finland and France as culprits (European Commission 2002). This list comprises a very wide range of EU Member States, both initial policy leaders and relative laggards in telecommunications liberalisation. Increased bureaucracy also was created for NRAs with the requirement placed upon them by the ECRF under its Framework directive to report any regulatory decisions made in this regard to the Commission for its scrutiny, placing additional regulatory pressure on the latter too. The so called article 7 procedure on notifications had by the end of 2007 resulted in as many as 700 ex ante measures having been notified to the Commission (Reding 2007: 3).

Fourth, in complement, neo-liberalism has produced a complex system of regulatory actors. Here, a two level pluralilateral regulatory network can be characterised composed of the European Commission, NRAs, governmental representatives and telecommunications companies (Humphreys and Simpson 2008). From the outset, a series of technocratic EU regulatory committees were created to establish and implement the disciplines of neo-liberalism in telecommunications. A High Level Regulators Group was created as early as 1992 as a policy forum for EU

ministerial representation in telecommunications. The ONP and Licensing committees were created to deal with the complex and specialised matters arising in these areas. This series of committees served to create a regulatory network of people keen to solve technical problems and exchange best practice with each other. Outside the EU, the NRAs in 1997 established the Independent Regulators Group which was a problem solving and learning forum which has actually come to be a source of irritation to the Commission. In its communications review of 1999, the European Commission proposed the creation of the Communications Committee aimed at streamlining the existing comitology around the ONP and Licensing committees. However, despite this the agreement of the ECRF in 2002 produced an increase in the number of regulatory committees at EU level from 3 to 5 with the creation of the European Regulators Group, the Radio Spectrum Policy Group, the Communications Committee, the Radio Spectrum Committee and the Working Party on the Protection of Individuals with regard to the Processing of Personal Data.

Fifth, the EU telecommunications governance system has been characterised by the aspirations of the European Commission to move to a situation where as much ex ante sector specific regulation is withdrawn from telecommunications as possible. At times, this has taken on the air of trying to use the move towards utilising general competition law as a justification for the success of the neo-liberal project in itself. In the 2002 review of telecommunications, for example, as noted above, the Commission was successful in persuading Member States to lower the threshold level beyond which Significant Market Power (SMP), and thus the onset of ex ante regulation, is designated.

In the current review of the ECRF, the European Commission has been criticised strongly by the ERG for proposing a radical reduction in the number of telecommunications markets, from 18 to 7, that would be covered by ex ante regulation. The political motive for the move is to demonstrate that neo-liberalism is working strongly. However, Viviane Reding, EU Commissioner for Information Society and Media, has noted that the new proposed rules would still require NRAs to examine all markets closely, which may well require regulatory intervention in the markets that would be removed from the Commission's list (Reding 2007). Despite much concerted effort, it is clear that the position of the (former PTT) telecommunications incumbent is still stubbornly strong in the sector across Europe, illustrating the difficulty of creating neo-liberal competition in spite of the kind of severe economic engineering through regulation which has characterised the sector. There is also a residual national political element to this. The recent dispute between Germany and the European Commission over the former's desire to grant a regulatory holiday to Deutsche Telekom in return for its commitment to invest in NGNs shows the selectivity with which elements of the neo-liberal model are approached, as well as, when deemed necessary, the direct interventionist presence of state.

The current review of the ECRF gives an important flavour of the state of the neo-liberal project in telecommunications. The Commission still complains of delayed and inconsistent remedies and a generally fragmented approach to regulation (Reding 2007: 2-3). Viviane Reding has argued that it 'would be an illusion that...single market shortcomings will just go away by themselves. They are embedded in the regulatory structure we have today (ibid: 4). The Commission has argued in strident terms that 'Implementation of the EU rules via 27 separate national regulatory systems has resulted in two major drawbacks: the artificial segmentation of markets on national basis and a fundamental lack of consistency in the way the EU rules are applied' (European Commission 2007e: 7).

The issue of the extent to which the neo-liberal model in telecommunications can deliver so-called Next Generation Networks is currently one of the most important debates in European telecommunications policy. Even its advocates have noted a comparative lack of investment in Europe compared to the USA and Asia, where deficiencies in the current regulatory model are seen as problematic (Trautmann 2006). In a related way, Viviane Reding has recently noted that as much as 89.5% of control of direct access to customers is in the hands of the former incumbents (Reding 2007a: 2; European Commission 2008) providing little or no competition here and raising a significant question mark over which organisations might provide NGN investments, if not the incumbents. In fact, even in the most competitive countries in this regard, a hardly impressive just over 20% of subscribers utilise an alternative to the incumbent for network access whilst the figure is at or close to zero in five EU states, among which are Finland and Greece (Reding 2007c: 2). Reding has also neatly highlighted what is likely to be the Commission's approach to the creation of NGNs where the very difficult task of getting "appropriate" regulation that safeguards competition whilst creating new incentives for investment' (Reding 2007b: 2) will be undertaken. The Commission has acknowledged that those countries with highest broadband penetration rates are those which have been able to create readily alternative infrastructure competition with telecommunications, such as that available through the cable TV sector. Another route has been through the provision of strict i.e. heavily regulated, unbundling requirements in telecommunications (European Commission 2007a: 14). In Europe, major engineering work to replace copper cables will have to be undertaken. As noted above, the Commission is deeply opposed to the granting of regulatory holidays to incumbents in return for commitments from them to invest in NGNs (European Commission 2006).

There is considerable doubt about this most neo-liberal solutions to the current core investment problem of telecommunications. Even Viviane Reding has acknowledged that the point-to-point fibre deployment which allows unbundled access 'is rarely being deployed by market investors' but is, on the contrary being utilised more often 'in open access schemes initiated by municipalities' (Reding 2008: 5) suggesting that a different model than neo-liberalism might be developed to deliver NGNs in the future. Whilst dismissing their widespread utility, Reding has however argued that 'industry and regulators should consider well these models because they represent a legitimate concern by local representatives who want to have a future-oriented and open network in their city' (ibid). Whilst the EU has since 2000 increased significantly the level of competition in Member States through local loop unbundling facilitated by a Regulation (European Parliament and Council 2000) this merely reflects the neo-liberal model's obsession with creating competition as an end product. It is as yet by no means clear that the pattern of competition that has taken such a time to engineer across the EU in telecommunication will deliver timely and extensive network investment of the kind deemed to be currently urgent.

It may well be worth re-considering certain elements of the telecommunications sector – in this case the core infrastructure – as a public good. Within this, those elements of the telecommunications which have proven to be contestable in market terms could be allowed to flourish whilst the others might be delivered through the public sector, perhaps in conjunction with one or more regulated private entities in the public interest.

CONCLUSION

The neo-liberal project in telecommunications in Europe, over approximately the last 30 years, has been hugely influential. Neo-liberalism as a political ideology has been adopted for the most part without serious questioning and practised at the national and the EU levels, couched within the wider agenda of globalisation. In terms of its pervasiveness, as a blueprint for the running of the telecommunications sector, neo-liberalism can only be regarded as having been outstandingly successful. However, as this paper has shown, though often trumpeted as an exemplar of the unqualified success of the general neo-liberal model, in practice the picture is more complex. Often the dogmatic ideological antipathy of neo-liberalism towards the state, and the public sector more broadly, has created blindspots not only to its practical costs but also its limitations. Regarding the former, the onset of neo-liberalism has required the creation of a large and intricate system of regulation. It has been argued that the 'reluctance of the Commission to go one step further in the promotion of public services stands in strong contrast to the resolve which the same institution displays with regard to liberalisation and further market opening' (Huffs Schmid et al. 2005: 67).

It is clear that telecommunication exemplifies complex 21st century regulatory capitalism as much as the basic functioning characteristics of neo-liberalism. Much of the interventionism of the old corporate state in telecommunications has been reincarnated as the 'regulatory' state in telecommunications. One of its core features is that decisions are moved from the political to the technical, yet the process of doing this is ideological in itself. The elaborate apparatus of the European regulatory state in telecommunications - involving epistemic communities of regulators with different kinds of expertise, government officials and private sector players - requires a level of resourcing which has only yet been given cursory treatment by scholars but which is undoubtedly substantial. It is clearly the case that a very large amount of socio-economic engineering, through regulation, has been necessary to create competition of even a minimally acceptable kind across the markets of the telecommunications sector. Even with this, the stubborn persistence of competition bottlenecks is more than a little suggestive of the uncontestability of certain markets. The core question for Europe's telecommunications policymakers must be: is the effort necessary to achieve rudimentary competition worth the rewards? In the current ideological paradigm, epitomised in the EU's current review and re-working of the ECRF, the answer appears to be a resounding 'yes'.

There is no doubt that during the neo-liberal paradigm in telecommunications a transformation in the nature of telecommunications services has occurred. Similarly, the cost of core basic telecommunications services has fallen dramatically. However, it should be borne in mind that the period in question has witnessed significant technological change, as a result of which basic services could be expected to become cheaper. The thrust of neo-liberal competition, where it exists, may have spurred on the creation of new services and price reductions more than would an alternative model of organisation, though this would be an argument which in practical terms is almost impossible to falsify, given the pervasiveness of the commitment to neo-liberalism across the EU which has taken hold since the mid to late 1980s. That aside, for example, though mobile roaming charges were reduced significantly after Commission action in 2006-07, given the length of time taken to affect this, the situation can be regarded as a failure of neo-liberal telecommunications regulation rather than the success heralded by the Commission. It cannot be denied that prices for telecommunications services have fallen. The European Commission has calculated that in 2006 'consumers in the EU15 spent around 27% less for the same

telecoms services than 10 years ago – in real terms this represents a 40% decrease’ (European Commission 2007a: 12). Nonetheless, the Commission, after nearly 30 years of neo-liberalism, has also recently acknowledged that ‘while a number of markets have already become effectively competitive, the overall picture is of market failures (especially dominance) across most markets’ (European Commission 2007: 24). Given the areas where neo-liberalism has failed to deliver (alongside those areas where it has been successful) it may be important to ‘abandon the a priori assumption of the general superiority of the market’ (Hufschmid et al. 2007: 235). This, however, appears unlikely to occur to any significant extent in the foreseeable future.

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