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**Paper on**

**The New Regulatory Regime -  
The Institutional Design of Telecommunications Regulation  
at the National Level**

by

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## **Abstract**

Some political scientists have been exploring the emergence of the regulatory state (Majone) and argue that regulatory structures are 'institutionally downloaded' (Schneider). Drawing on this debate, this paper argues for a more differentiated view and analyses the developmental path towards new regulatory regimes in the utilities in more depth. States can opt for a variety of institutional designs such as ministries, administrative agencies, competition authorities, self-regulation, or regulatory agencies. Using diffusion theory and historical institutionalism in reference to cases of telecommunications regulation, explanations are offered for why both the Office of Telecommunications (OFTEL) in Britain and the Regulatory Authority for Telecommunications and Posts (RegTP) in Germany institutionalized in accord with the regulatory agency model. Comparing the institutional design in a two-level analysis demonstrates that the two regulators show convergence on a macro-organizational level (overall designing structure), but divergence on a micro-organizational level (internal administrative procedures).

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## 1. Introduction

In recent years European Community member states have seen extensive changes in their utility and network industries. Instead of providing common goods, i.e. a network infrastructure or a service accessible to all, by themselves, states have opted for the liberalisation of sectors and the privatisation of network industries. Former state monopolies have been transformed into competitive markets with a shift from public to private actor provision. This development has mainly taken place in areas where the state had hitherto heavily invested in the infrastructure (Grande and Eberlein 1999) as in the cases of public utilities like telecommunications, energy, or transport (König and Benz 1997; Héritier 1998).

Up to now, the research interest of political scientists has mainly been concerned with the emergence of the 'regulatory state' (Majone 1997), e.g. with focus on regulative policies (Mayntz 1983; Czada, Lütz, and Mette 1999), changes of state functions (Grande 1993), or social regulatory and public interest issues (Wilson 1984, Héritier, 1998).

One aspect which has not yet been well researched is the institutional design of state regulatory structures. The liberalisation of utilities, with a shift from public to private actor provision, causes an administrative reform of state structures and the transformation of traditional administrations. A shift from centralised provision to the public regulation of market provision confronts the state with new tasks and competencies. States have to develop new administrative structures to 'steer' the process of liberalisation and privatisation. This development results in the emergence of new 'regulatory regimes'.<sup>1</sup>

This contribution aims to analyse this process using the case of telecommunications regulation in Britain and Germany.<sup>2</sup> The focus is on the core institution providing the day-to-day regulatory functions at the national level, and not on the whole regulatory regime in the multilevel governance system. It aims to describe and explain why particular institutional solutions were chosen.

It starts out with the picture of regulatory designs in Britain's and Germany's utilities sectors. In Britain's central utility sectors, such as telecommunications, electricity, or rail, one coherent regulatory agency model was chosen, and regulators were established for telecommunications (OFTEL – Office of Telecommunications), energy (OFGEM – Office of Gas and Electricity Markets), or rail (RR – rail regulator and SRA – Strategic Rail Authority). By contrast, there is no cross-sector coherence in Germany. There are a range of regulatory designs. Whereas an administrative agency was set up in the rail sector with the Eisenbahnbundesamt (EBA), in the case of electricity, a self-regulatory model was institutionalised (the associations' agreement). The only sector-specific regulatory agency presently in Germany was created for

<sup>1</sup> The term "regulatory regime" is often used for different purposes: e.g. Thatcher utilizes the term to describe the group of utility regulators, founded on basis of the so called "OF-type" model, in the gas, energy, rail, or telecommunications sectors (Thatcher 1997). Hall, Scott and Hood, with a focus on Telecommunications regulation in Britain from 1982 up to 1992, explored a regulatory regime as a "ménage à trois" between ministry (DTI), the regulator, OFTEL, and the former incumbent, British Telecom (BT) (Hall, Scott, and Hood 2000: 17, 25ff.). In this paper, the regulatory regime is defined as a system of state actors in a multi-level government system, which share regulatory competencies in order to steer markets.

<sup>2</sup> Further research on "The European Regime: Private Actors Providing Public Service" aims to offer cross-country as well as cross-sectoral answers not just in the case of telecommunications, but also for rail and energy (gas and electricity).

Telecommunications regulation (the Regulierungsbehörde für Telekommunikation und Post; RegTP).

This article aims to describe the designing process of the institutional designs in telecommunications regulation in Britain and Germany and to give initial explanations as to why the regulatory agency model was chosen.

Diffusion theory and historical institutionalism are linked to explain the designing process as well as the institutional design. In contrast to earlier research on the topic (see e.g. Grande: 1999; Schneider, 2001 (i.E.)), a two-level approach<sup>3</sup> on a *macro-organisational level* (framework and overall structure) and a *micro-organisational level* (internal administrative procedures) is to achieve deeper insight into the new national regulatory regime.

After introductory remarks on the role of the state in utility regulation, general explanations combining diffusion theory and historical institutionalism are outlined to guide the research on new regulatory regimes. The institutional path for setting up regulatory structures in telecommunications in Great Britain and Germany is then described and explained. Finally, concluding remarks are made regarding how the theoretical explanations fit with the empirical findings.

## 2. Utility Regulation and Institutional Design

The transformation from the positive to the regulatory state (Majone 1997), forced by developments like globalisation, technical developments, or European pressures, is closely linked to institutional reform movements.<sup>4</sup> To enhance the state capacity for regulation requires the introduction of new administrative bodies with new administrative competencies. Administrations that formerly steered state monopolies have to be transformed into new structures.

In dealing with utility regulation, the overall development is described with catchwords like liberalisation (Werle 1999), privatisation (Hulsink 1999), or regulatory reform (OECD 1997). However, for the changes in utility regulation, three interrelated processes are combined: liberalisation, privatization, and regulation, all of which include a dimension of institutional change. While liberalisation leads to the opening of markets for new entrants, privatisation changes the structure of former state monopolistic entities from the status of public to private law in order to open them up to private investment. Regulatory reforms separate state functions and create new institutional solutions to maintain state influence in liberalised and privatised sectors.

In the following, we examine more closely the new challenges for the state in utility regulation.

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<sup>3</sup> A two-level approach refers to the problem of the "levelling of research" (Knill and Lenschow 2001). Most approaches on comparative administration focus only on macro-structural aspects. Peters points out that analyses on a micro level are all so important for understanding variations in bureaucratic performance, but they "occur at too low a level of generality" (Peters, 1988, 3rd ed). Here, it is argued that only in comparing regulatory designs on a macro and a micro-organisational level can valuable differentiation between regulatory approaches be made. Other research, such as Halligan's analysis of administrative diffusion (see Chapter 2.2.), shares this view and focuses on administrative changes in broad directions, specific concepts, and precise detail (Halligan 1996: 307).

<sup>4</sup> This trend is also discussed under the heading of New Public Management (NPM) (Hood 1991).

## 2.1 Challenges for the State in Utility Regulation

With the end of public monopolies in network and utility industries, the competencies of the state are changing. Instead of providing common goods defined as network infrastructure and network services, the new task is to supervise and monitor utility sectors. In the "regulatory state", state functions are shifted from "rowing to steering" (Osborne and Gabler 1992). States are keeping options open for intervening in liberalised sectors. On the basis of politically-defined goals of service provision such as accessibility, security, continuity, and affordability, the state still has a hand in utility sectors (Héritier 1998: 3; Müller and Sturm 1999: 514ff.). The main challenge for states undergoing a transformation in the provision of public goods from monopolies to competition-based systems is to balance the interests between the already existing companies and the new entrants, and to do so on basis of the defined law.

In the case of utility regulation, the state has to open markets to competition, regulate networks, and prevent market failures ("market making"). A core goal is to disempower former incumbents and create space for new entrants to the market. Furthermore, the state has to ensure social and redistributive goals ("market correction").

To cope with these demands, the key feature of utility regulation is continuous case-to-case intervention in single private companies (Noll 1985a). To facilitate such intervention, utility regulation includes four steering functions: economic, social, technical, and administrative (see e.g. OECD 1997: 9ff.; Grande 1994: 148ff.). With economic regulation, the state defines "conditions under which firms may enter and exit the market, competitive practices, the size of economic units, or the price firms can charge" (Eisner, Worsham, and Ringquist 2000: 5). The goal is market creation. A variety of new steering instruments like price cap regulation, distribution of licences, or net competition and third party access have to be introduced and developed. Social regulation "forces corporations to accept greater responsibility for the safety and health of workers and consumers" and deals with "negative by-products" (op cit.). Attention is paid to market correction with universal service and public service goals. Technical regulations include issues such as the maintenance of frequency management, net safety, numbering, and the standardisation of utility networks. Additionally, administrative regulations focus on administrative principles and formalities, as well as decision-making procedures. These functions are used to 'collect information and intervene in individual economic decisions' (OECD 1997: 11).

These functions can be found in every regulated sector. However, the institutional design of the key regulator depends on the definition of these functions and on how they are distributed between institutions within the regulatory regime. After making introductory comments on the challenges that utility regulation presents to the state, the following chapter gives some general insights in how institutions emerge and change their design.

## 2.2 Institutional Change and Design Theory

A starting point for the analysis of institutional changes in the regulatory structures is the institutional design theory.<sup>5</sup> In general, "design is the creation of an actionable form to promote

<sup>5</sup> For an overview at the theory of institutional design see Goodin: 1996; Weimer: 1995; Olsen, 1997.

valued outcomes in a particular context" (Bobrow and Dryzek 1987: 200). The central concern of this theory is on the shaping of institutions and the causes for institutional change, because it is often assumed that designing processes are random and guided by the principle of "anything goes" (Klages 1998: 51).

In general, institutional changes might be caused by accident, evolution, or intention (Goodin 1996: 24). Whereas in the case of accidental design, organisational changes just happen as "purely [a] matter of contingency", evolutionary design processes cause change via path-dependent selection processes and the choice of "some variants for survival" (Goodin 1996: 24ff.). Intentional changes are actions planned by individuals or groups to reach new institutional outcomes. Processes of institutional design are influenced by all three elements.

Pointing to the actors involved in the designing process, theorists argue that the designs are shaped by bargaining processes between a multiplicity of actors, such as politicians, bureaucrats, or interest groups (Moe 1990). Institutional design "arise out of politics, and its design reflects the interests, strategies, and compromises of those who exercise political power"; that is why the administrative outcome is often a sub-optimal polity solution (Moe 1989: 267).

For the analysis of new utility regulatory designs, institutional design theory gives us three insights. First, it highlights the need to analyse the designing process as well as the design of institutions (Pettit 1996: 54). Secondly, it reveals that there is neither a single design nor a single designer, and that the analysis should be focussed on the "discursive design process" of different actors and their impact on the design (Dryzek 1990). Thirdly, design theories argue that the design is not purely contingent.<sup>6</sup> There are not just history-driven developments. The design is also shaped by external influences.

### **2.3 Theoretical Model: Diffusion Theory and Historical Institutionalism**

From possible explanations for regulatory change (Dyson 1992; Levy and Spiller 1996), in the following, diffusion theory and historical institutionalism are presented as two core theories to explain the process of shaping the institutional design of regulatory structures. These theories are utilized to show that institutional designs can be shaped both by diffusion as well as path dependency. Furthermore, we claim that these two developments vary between the macro-organisational and the micro-organisational level of regulatory institutions.

First, diffusion theory is introduced as a theoretical approach to explain the institutional design. Diffusion theory – in other contexts referred to as "policy transfer", "policy imitation", or "policy learning" - deals with "the borrowing of a policy from one political system for the use in another" (Wolman 1992: 27). Diffusion is of growing importance, particularly in state and administrative reform. The main reason is that in times of change it is seen as particularly useful to learn from the experience of countries which have already successfully developed solutions to similar problems. Diffusion mainly takes place when "policies are seen to address problems perceived in

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<sup>6</sup> Goodin writes that to explain the emergence of administrative outcomes, "we must refer essentially to intentions and the interaction among intentions. [...] Outcomes may be the product of evolutionary forces, but the selection mechanisms that guide that evolution might be intentionally altered. Design and redesign [...] still have some scope [...]." (Goodin 1996: 28f.).

the country and to coincide with dominant or emerging ideas about the appropriate shape of policy" (Wolman 1992: 44). Policies, as well as administrative elements of polities, are copied from one country to another. Diffusion does not only take place among countries within an international system, but three further diffusion mechanisms can be revealed (Halligan 1996: 291ff.):

- interactive effects among state institutions in a federal system,
- federal effects to which the states respond, and
- the impact of international organisations such as the OECD or the European Union.

When we introduce the distinction between the macro- and micro-organisational level, we claim that the impact of diffusion might differ when analysing institutions and institutional change. It is argued that diffusion does not only explain the transfer of broad and general trends, but that it includes specific ideas and concepts "in fairly precise detail" (Halligan, 1996: 290; 307f.). Diffusion can take place on a macro as well as on a micro-organisational level. However, it is pointed out that "in many cases a specific policy idea [...] may be borrowed, but the specific design or structure through which this occurs in the original country may not be [identical]." (Wolman 1992: 41). An institutional design can be transferred; however, to implement it at home requires detailed adaptation. Since emulation in detail is rare, it is likely that overall concepts are set up; but on the micro-organisational level old concepts may persist.

A second theory which helps to explain how the institutional design of regulatory structures is shaped is historical institutionalism. Besides rational choice and sociological institutionalism (Hall and Taylor 1996), this theory is one variant of the "new institutionalism" (March and Olsen 1989). In "historical institutionalism" institutions are defined as "formal or informal procedures, routines, norms and conventions embedded in the organisational structure of the polity or political outcome" (Hall and Taylor 1996: 6). When referring to the topic of utility regulation, a more narrow and formal definition is utilized. When focussing on institutions we refer to organisations, i.e. on public administrations with ministries and agencies or self-regulatory organisations of by private actors supervised by the state.

The central concern of historical institutionalism is to stress the importance of historical processes when analysing the structure and change of institutions. In the case of institutional reforms, both state and administrative traditions have shaped values and interests that "will be among the principal influences on how the state and its component parts function" (Loughlin and Peters 1997: 43). There are path dependencies which cause long-term effects on the future development of the institutional design. Path dependency often results in reform movements not developing the same outcome. Instead, solutions are shaped by "contextual features of a given situation often inherited from the past" (Hall and Taylor 1996: 9). As Loughlin and Peters argue, "[t]he historical context, and in particular the state tradition in which a reform occurs, to a large extent determines the outcome of the reform" (Loughlin and Peters 1997).

## **2.4 Linking Diffusion Theory and Historical Institutionalism**

First, we argue that diffusion theory and historical institutionalism are linked to explain the development path towards regulatory institutions by exploring critical junctures. On the surface,

the two approaches seem to contradict each other. Path dependent institutional changes exclude external influences caused by diffusions. However, in reality “policy ideas from abroad compete with other alternatives in [...] the ‘policy primeval soup’”(Wolman 1992: 43). Here, diffusion theory can be linked with historical institutionalism in analysing situations where established patterns are changing (Thelen and Steinmo 1992: 27). To explore “critical junctures”, defined “as a period of significant change (...) which is hypothesised to produce distinct legacies” (Collier and Collier 1991: 29), helps to analyse radical breaks with the past that cause changes and caused the development of new institutional designs. Analysing such turning points helps to find explanations for why “historical developments move onto a new path” (Hall and Taylor 1996: 10).

Secondly, we point out that the fact that these junctures and new paths are caused by diffusion does not mean that the old path has been fully exhausted. It can be expected that segments of the old path still exist. As the article will show, the design of regulatory institutions is shaped by path dependency as well as diffusion, it argues that there are different developments on a macro-organisational and a micro-organisational level. In using a comparative approach, with case studies exploring the change of new institutional designs, it demonstrates that institutions show convergence on a macro-organisational level, due to diffusion processes and the establishment of new institutional designs. However, on the micro-organisational level divergence still exists, because of the consistent, path dependent use of national administrative instruments.

### 3. Five Institutional Designs of Utility Regulation

At the national level, for the utility sector that provides services such as telecommunications, rail, electricity or gas, the process of liberalisation requires that new regulatory regimes be put into place. For these regimes, institutional solutions have to be set up which are responsible for the day-to-day business of national, sector-specific regulation. Five institutional designs for utility regulation are distinguished, which range from formal state-centrist organised regulation to informal self-organised arrangements (Czada, Lütz, and Mette 1999: 13).<sup>7</sup>

In addition to this key institution, in the sectoral regulatory regime there are a variety of other bodies concerned with regulatory issues. In a multi-level governance system, regulatory competencies are distributed among different levels. There are supranational institutions, such as the World Trade Organisation (WTO) or the International Telecommunications Union (ITU), which are mainly involved in defining overall principles on issues like liberalisation and standardisation.<sup>8</sup> At the European level, the European Commission and the European Court of Justice have not only paved the way for liberalisation and regulatory reform (Schmidt 1998), they have also supervised the implementation of European directives and are developing the regulatory framework to further increase European integration.<sup>9</sup> At national level, ministries supervise the

<sup>7</sup> For further overviews see Baldwin and Cave 1999; Grande and Eberlein 1999. Future research intends to develop a framework which draws a clear distinction between the macro-organisational and micro-organisational level and which sets up criteria such as independence, regulatory discretion, steering capacity, functions (rule-building, monitoring, enforcement), etc. to systematically compare the designs. See for further criteria see Coen and Doyle 1999.

<sup>8</sup> For more details see Tegge 1994; Genschel 1995.

<sup>9</sup> The analysis of institutional design at the European level is not dealt with in this paper. It is covered by authors such as Coen and Doyle 1999; Kreher 1997; Dehousse 1997.



regulatory institution,<sup>10</sup> and parliamentary committees and advisory boards of the regulated institutions might be involved in the regulatory decision-making process. Furthermore, regulatory institutions are in close contact with competition authorities on issues of competition policy.

In the following, the five institutional designs that served as the central alternatives for the British and German cases are introduced.

### 3.1 Ministries

In the most centralised hierarchical organisational form of the state headed by a minister, ministries are highly politicised bodies. They are responsible for supporting the government in policy planning and strategic issues. In so far as they remain federal responsibilities, executive administrative tasks are delegated to subordinated agencies.<sup>11</sup> In general, ministries are not directly involved in regulatory issues.<sup>12</sup> The main reasons are the continuous danger of ministerial interference, the goal of keeping regulatory issues out of party politics, the ministry's lack of expertise, and the need for efficiency in flexible regulatory decision-making (Baldwin and Cave 1999: 68f.).

Therefore, ministries are usually not the key regulatory institution used in utility regulation. Their task is only to supervise and guide subordinated units as a "parent department". However, depending on the institutional design and the functions shared by the regulatory institution, ministries might be heavily involved in utility regulation. Thus self-regulatory solutions often do not have the capacity for a full range of economic, social, technical, and administrative regulatory functions. Since private regulators are only specialised on a limited number of competencies, ministries might have to step in to provide functions. Additionally, the ministry takes over representation functions for the self-regulator. In the case of administrative and regulatory agencies, the ministry is often involved not only in strategic policy issues and the framing of regulations, but also in influencing the day-to-day decisions of agencies.

### 3.2 Administrative Agencies

Administrative agencies have been traditionally used as an administrative solution to set up executive units that deliver services for the government. These services are transferred to them by ministries, which is why administrative agencies remain in a hierarchical relationship to ministries which closely supervise them.<sup>13</sup>

Although there are agencies which have advisory functions to the ministries or peripheral agencies not linked to the main ministerial aims, we shall focus on administrative agencies which execute statutory functions derived from the core goals of their parent ministry.

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<sup>10</sup> In contrast to the unitary state, in federal-intertwined systems even ministries on lower levels are concerned with the supervision of regulatory issues.

<sup>11</sup> See Chapter 3.2.

<sup>12</sup> However, in the first half of this century, ministries had central regulatory functions Prosser 1997: 35.

<sup>13</sup> For a detailed overview of the institutional design of British and German agencies see Böllhoff 1998.

Administrative agencies can take over regulatory functions; but when they do so they mainly take over social and technical regulatory ones. As far as economic regulation and the enhancing of competition are concerned, administrative agencies might not have the capacity to regulate a sector independently, e.g. there are no instruments for ex-ante regulation. Therefore, traditional administrative agencies supervise rather than regulate.

### **3.3 Competition Authorities**

The function of competition authorities is to protect competition via ex-post regulation. The main objectives are to prevent anti-competitive behaviour (cases of structural export and import cartels) and merger control (Baake and Perschau 1996: 149ff.). Apart from these classical competencies, competition authorities are involved in regulatory issues. In anti-competitive or discriminatory practice, competencies are separated between competition authorities and the sector-specific regulators. This might cause difficulties, because it is a complex task to clearly distinguish between competencies.

However, competition authorities can even become utility regulators. Competition authorities are seen as independent bodies with limited political interference and high regulatory capacities. Instead of creating new sector-specific regulatory bodies, these tasks could be carried out by the competition authority. A merger of competition and regulatory supervision might create "synergy effects" and coherent administrative regulatory procedures instead of the continuous fragmentation between two institutions. Regulation among the competition authorities could lead to "leaner regulation" and to phasing out regulation earlier (Knieps 1997: 18f.).

### **3.4 Self-Regulatory Institutions**

With self-regulatory institutions, the regulated actors, not the state, are the core players of the regulatory process. The actors make decisions jointly on how to organise the regulatory process and on how to implement decisions (Héritier 1998a: 18). The state is not directly involved in the day-to-day regulatory process. Instead of the institutionalisation of a regulatory body, market players define a regulatory framework which agrees upon the ministry responsible for the sector. However, self-regulation does not mean that the state is out of the regulatory game. Ministries have to supervise the functioning of the self-regulatory institution, and they might be involved in social, technical, and economic regulatory issues.

The main arguments in favour of self regulation are that they keep central governments small, produce rules more quickly, are more flexible in amending rules, and have an institution independent of political interference (Baldwin and Cave 1999: 64f.). Additionally, the direct involvement of private actors in designing, supervising, and changing their own regulatory model increases the acceptance of the regulatory approach (Mayntz 1983: 71). Ayres and Braithwaite point out that regulatory designs are innovative that include "a mix of self-regulatory and governmental regulation – a mix that will cover the gaps left by one approach with the strength of another approach" (Ayres and Braithwaite 1992: 132).

However, there are misgivings about self-regulatory systems on account of their lack of rules, lack of regulatory functions, and transparent decision-making; furthermore, that the interests of actors not directly involved in the decision-making process might not be taken into account is also a problem (Baldwin and Cave 1999: 65). Here, state institutions such as ministries and competition authorities are often still involved, as described above.<sup>14</sup>

### 3.5 Regulatory Agency Models

The implementation of the model of sector-specific regulatory agencies, known as 'NRA' (new regulatory agencies) (Eyre and Sitter 1999), has become a fashion which has "multiplied in numbers through the last half-century" (Baldwin and Cave 1999: 69). Regulatory agencies are bodies supervised by a ministry, to whom functions of market creation and market correction are delegated. Their main regulatory approach is proactive and ex-ante. Regulatory agencies do not act in a purely executive capacity. They combine legislative, executive and judicial functions, i.e. they define and interpret rules, monitor and supervise them, and even introduce sanctions if necessary (Baldwin and Cave 1999: 70). The key arguments for introducing regulatory agencies are their – assumed – independence from both public and private interests and their continuity in making decisions beyond party politics and elections. Additionally, regulatory agencies can build up the expertise to decide on complex and technical matters and make decisions based on a great deal of knowledge (see Majone 1996: 15, 49).

Regulatory agencies are criticised on various grounds: they lack legitimacy; they are susceptible to political intervention in spite of formal independence; their functions are divided between competition and regulation; and they are known for bureaucratic and slow decision-making instead of "lean regulation" (Knieps 1997).

### 3.6 Links Between the Five Models – Considerations with Respect to Britain and Germany

The fact that there are five different institutional designs makes it clear that there is no one best solution. There is not simply one answer and no "optimal design" which defines which model has to be institutionalised (Goodin 1996: 34ff.). In the following, it will be shown to what extent any of the five models described applies for utility regulatory issues in the British and German cases.

Ministries are closely related to party politics and politicization, and they were not originally designed for regulating utilities. However, they influence regulatory decision-making. This includes – as in the German case - "general directives" (allgemeine Weisungen), as well as informal daily involvement in regulatory issues that have political implications.<sup>15</sup>

Although the ministry model is not appropriate for day-to-day utility regulation, there is the 'back-up' option of stepping in on special regulatory issues. In Britain, decision-making on licence agreements in telecommunications regulation show that the Department of Trade and Industry (DTI) and OFTEL share competencies, i.e. the ministry is involved in day-to-day

<sup>14</sup> See for more details on ministries see Chapter 3.1 and 3.3.

<sup>15</sup> For the German and British case see Welz 1988; Greer 1994.

regulatory procedures. By contrast, in the case of German electricity regulation, instead of a regulatory agency, a self-regulatory approach based on an associations' agreements (AA) was chosen. Here, the German Federal Ministry of Economics (BMWi) not only influences the development of these agreements (e.g. on the contents or the interest groups who negotiate the agreements), in addition the BMWi has to represent the "self-regulator" in electricity at the European level; ministries might take over some regulatory functions.

While administrative agencies are based on a traditional, hierarchical model, they can be set up for utility regulation. Originally only developed to execute administrative tasks, they can extend their competencies under certain conditions. While administrative agencies are most fit to focus on non-political executive functions such as technical regulatory issues, they also have to develop new administrative decision-making procedures to steer markets; but do not have ex-ante regulatory competence. An administrative agency may be transformed step by step into a regulatory agency, as can be seen in the case of the RegTP.<sup>16</sup>

A contrasting case is the "Radio Communications Agency" (RCA), which sticks to the agency model. In the case of telecommunications in Britain, besides OFTEL, the RCA was set up for technical regulatory issues (Knieps 1997: 7). Administrative agencies may be involved in utility regulation, too.

In the case of German rail regulation, the Federal Rail Authority (Eisenbahnbundesamt, EBA) was established as an independent higher federal administrative agency. The agency is predominantly involved in issues on technical regulation. Hence, the EBA's core competencies do not lie in economical regulatory issues; the result is that there is little competition within the rail sector.<sup>17</sup> However, there are proposals to extend the competencies of the EBA transforming it from a supervisory to a regulatory authority, for example, on net access and price regulation.<sup>18</sup>

Competition authorities are responsible for ex-post market-making regulation. For utility regulation, ex-post regulation had to be combined with competencies on ex-ante regulatory issues. As this may be too demanding, this particular solution has not yet been introduced in either Great Britain or Germany.

In Germany the main body is the Federal Cartel Office, while in Britain there is a more fragmented system with three institutions: the Office of Fair Trading (OFT), the Secretary of State, and the Competition Commission (former Monopolies and Mergers Commission) (see Wilks 1999a). In Germany there are discussions about increasing the competencies of the Cartel Office, especially in the sectors of rail and energy.<sup>19</sup> In contrast, in Britain there are no debates about enhancing the competencies of competition authorities on sector-specific regulation. Since a decision was made not to transfer regulatory competencies from the Post Office to the OFT,<sup>20</sup>

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<sup>16</sup> See Chapter 4.2.

<sup>17</sup> In the case of the EBA, issues on discriminatory practices (e.g. on third-party access to the still vertically integrated rail net, owned by the Deutsche Bahn AG), are decided upon by the EBA only upon application for approval. The EBA is not actively involved in enhancing net competition, and there are only vague formal procedures or institutional structures on how these decisions are made (Interview EBA, March 2000).

<sup>18</sup> See e.g. DPA 1.3.2000: „Bundesverkehrsminister Klimmt will den Wettbewerb im deutschen Bahnverkehr mit einer Regulierungsbehörde ankurbeln“; SZ 7.3.2001: „Koalition will offenbar Regulierungsbehörde für die Schiene“.

<sup>19</sup> For the discussions in Germany see e.g. Knieps 1997: 18f.; Ortwein 1998: 209.

<sup>20</sup> See Chapter 4.1.

with the 1998 Competition Act the competencies of the sector-specific regulator were increased and the power of the OFT reduced (Interview OFT, February 2001).<sup>21</sup>

Self-regulatory institutions are flexible bodies where the regulated actors, and not the state, are deeply involved. However, because of their formally limited decision-making capacity and lack of enforcement power, competencies are often shared with state bodies.

Up to now in German electricity and gas regulation, with the associations' agreements (AA) a self-regulatory model was opted for. While the AA is politically supported by former incumbents, net owners, and the Federal Ministry of Economics (BMWi), others, such as new entrants to the market, the European Commission, and consumer councils, criticise the AA for being discriminatory and lacking transparency. Calls for the establishment of a regulatory agency for energy are increasing.<sup>22</sup>

Regulatory agencies are an innovative model in both the British and the German administrative tradition. As newly established administrative bodies, which emerged from former administrative bodies, they may develop new administrative regulatory styles of "light regulation".

Whereas Britain was the first European country to set up regulatory agencies and to establish them for almost all utility sectors (see Hogwood 1990; Thatcher 1998), in Germany, so far only one utility regulator has been established with the Regulatory Authority for Telecommunications and Posts (Regulierungsbehörde für Telekommunikation und Post, RegTP) (Ulmen and Gump 1997; Müller-Terpitz 1997). However, as was outlined above, there are ongoing debates in the rail and electricity sector about establishing regulatory bodies, too.

To sum up, in the British and German contexts, the five models can be divided into two general groupings: traditional models with a long administrative tradition and new, innovative models. From a macro-organisational perspective, with respect to administrative traditions the regulatory agency model is the only innovative model in both countries, which might have led to a new design.<sup>23</sup> The other four models have a longer tradition and have been used to fulfil state functions before. However, for these traditional models, analysis on the micro-organisational level could explore whether there are still traditional designs or new structures established, for example, via patching up or the transposition of new institutional solutions (Genschel 1995).

The following chapter describes and explains the establishment of the institutional design at both a micro-organisational and macro-organisational level in both British and German telecommunications regulation.

<sup>21</sup> OFTEL shares competencies with the Office of Fair Trading (OFT) in the area of competition policies ("concurrency rules". see Riley 2000), however, it is de facto the only institution to make decisions in telecommunications cases.

<sup>22</sup> New entrants to the market founded the initiative "pro-competition" to lobby for fair competition and discrimination, free access to the net, and "real competition" in the electricity sector (<http://www.pro-wettbewerb.de>). They argue that the associations agreement (AA) does not define clear rules for net access, and they therefore lobby for setting up a sector-specific regulatory institution with competencies for regulating prices and sanctioning. Additionally, the FEDV (Free Energy Supply Association) is in favour of a regulatory agency, too. See e.g. FR, 28.5.2000: "Verbraucherlobby fordert Regulierungsbehörde"; FTD 14.3.2001: „Brüssel will Regulierer für Deutschland“.

<sup>23</sup> For more details see Chapter 4.

#### **4. The Case of Telecommunications Regulation in Great Britain and Germany**

Originally, telecommunications services were only a national issue and they were provided by private or public monopolies. Operative and regulative functions – net, equipment and service were linked together in the post, telegraph, and telecommunications utilities (PTT). The net and services were vertically integrated and in the hands of a state monopoly (in Germany, the Deutsche Post; in Britain, the Post Office). These monopolies worked in close co-operation with producers of the equipment which had the status of private monopolies. The strong link between political, administrative, and private actors were "highly closed games" (Thatcher 1998: 123) and there was strong state-intervention: tariffs were defined as "political prices" on the basis of social and macro-economic criteria. However, a variety of factors, such as technical developments, the opening of the US and Japanese telecommunications markets, paradigm changes in state economic policies, and the general financial constraints of nation states, brought about a transformation in the telecommunications sector, leading it to adopt market principles (Mette 1999: 184ff.)

With regard to regulatory reform, the key change was the transformation from the PTT to new regulatory agencies (NRA) (Eyre and Sitter 1999). Britain, as well as Germany, have chosen the regulatory agency model. However, regulatory reform in Britain and Germany has not been parallel, but sequential. Whereas Britain, as the European "forerunner", introduced its telecommunications' regulator OFTEL, in 1984, Germany was a "late-comer", only establishing its RegTP in 1998.

The question which has to be answered is, why the regulatory agency model was adopted instead of one of the other four designs outlined in chapter three. A comparative approach focuses on the institutional structure at both a macro-organisational and a micro-organisational level.

##### **4.1 Great Britain as a "forerunner" – Designing Process and Design of OFTEL**

Unlike all the other member states of the European Union, Britain began an extensive programme of liberalisation, privatization, and regulation in its telecommunications sector in the early 1980s. This was caused by the political structures: a unitary state, the strong position of the prime minister, and non-coalition governments. Administrative structures are mainly characterised by flexibility and informal procedures. Therefore, British administrative decision-making processes are traditionally described as an "art", with a high degree of discretion for the public service and a low supervision capacity by the courts (Ridley 1996).

Before regulatory reforms were initiated in the 80s, the British PTT model included the Post Office, and was defined as a public corporation with postal as well as telecommunications services. General policy decisions were taken over by the Ministry for Post and Telecommunications, which was not an independent ministry, but part of the Department of Trade and Industry (DTI) (Thatcher 1999: 94ff.).

The transformation of the telecommunications sector started with the Telecommunications Act of 1981, whereby the Post Office was split into two public corporations, the Post Office and British

Telecom. The separation prepared the ground for the second Telecommunications Act in 1984, where British Telecom was privatised and an independent regulatory body, the Office of Telecommunications (OFTEL), was created as a non-ministerial department within the ambit of the DTI. OFTEL was the first network and utility regulatory body in Britain (DTI 1982).

While the privatisation programme provoked controversy among unions and politicians, the design of the telecommunications regulator was not regarded as contestable issue (Moon, Richardson, and Smart 1986). A model was developed on the basis of a civil service proposal from the Department of Industry (DTI). The designing process for the regulatory agency was described as "hasty", and a design concept was "cobbled together in its formative stages mostly by hard-pressed civil servants under severe deadlines" (Foster 1992: 46).

At that stage, Britain did not have regulatory bodies for utility regulation. Either a traditional model had to be chosen, or a new model to be introduced. The models of ministry, competition authority, and regulatory agency were under close consideration.

Because of the close link to politics, with the threat of constant politicisation, the design of a ministry was rejected (Prosser 1997: 46). In contrast, there were debates about transferring the regulatory function to the Office of Fair Trading (OFT): "[A]nalogy suggested that the job should be done by the Director of Fair Trading, who was in fact pressed to take it on. However, he decided that he had enough to do, so a specialist look-alike was invented, the Director General of Telecommunications" (quoted in Prosser 1997: 46). The British competition authority was used to set up a new model, a sector-specific regulatory agency model.

OFT is considered to be a core model, which was transformed from a general ex-post regulator to a sector-specific regulator for the case of telecommunications (see Prosser 1997a: 46; Foster 1992: 124).<sup>24</sup> Others describe the regulatory-agency model as an example of "neglecting earlier history" (Helm 1994: 22) and view it as indicating a clear break with the previous regulatory regime (Thatcher 1998: 121).

The argument presented here is that after the OFT refused to take the job, the American influence was the core reason for opting for the regulatory agency model. Policy was frequently transferred between the United States and Great Britain in the 1980s (Wolman 1992). Since the United States telecommunications policy influenced the debate on how to liberalise and privatise the sector, it also guided the design of the regulatory body. Because of its long tradition of sector-specific regulatory bodies, the US Federal Communications Commission (FCC), established in 1934, was as a model for the British regulatory agency (Thatcher 1999a: 95).

To sum up, on the macro-organisational level the decision to opt for the regulatory-agency model was mainly influenced by the American sector-specific regulatory agency model; after national options such as the take over by the OFT were refused because of capacity problems. However, OFTEL has close links to the British model of the OFT. This can be shown when analysing the micro-organisational level with the institutional design of internal administrative structures.

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<sup>24</sup> A further reasons for opting for the OFT model was that the history of the OFT showed an institution "not threatening to ministers" (Hall, Scott, and Hood 2000: 21).

To gain independence from the ministry, the model of a single Director General of Telecommunications (DGT) was diffused from the Director General of Fair Trading. Using this model, core regulatory functions were handed over to the DGT "as individuals and not to their office" (Thatcher 1998: 125f.). Regarding decisions, it is "left to the regulator to determine what their particular interpretation is" (Helm 1994: 27). Although the personalisation and individual decision-making was later strongly criticised, it is a uniquely British feature and part of the above-described state and administrative tradition.<sup>25</sup>

The internal administrative decision procedures of OFTEL reflect the strong position of the DGT. As OFTEL was established, it was separated into functional branches, each headed by a director, who had to report to the DGT as the key decision maker. This structure was "partly inherited from the DTI and partly copied from the OFT" (Hall, Scott, and Hood 2000: 44).

In general, OFTEL is open to the introduction of new administrative practices under the headline of managerialism. Micro-organisational institutional change is mainly left to the DGT, and depending on a new DGT coming into office, the institutional design changed. Reforms lead to transforming traditional department structures into fashioned project structures, compliance procedures, and management plans.<sup>26</sup> As a consequence there are flexible regulatory decision-making procedures.

Summing up, on basis of the preliminary findings it can be concluded that on a macro-organisational level the institutional design of the British Telecommunications regulator was mainly shaped by American influences, while on a micro-organisational level the design has been dominated by the British administrative tradition.

#### **4.2 Germany as a "late comer" – Designing Process and Design of RegTP**

For a long time, Germany – like the majority of European states – was a strong opponent to reforms in its telecommunications sector such as those carried out in the United States and Britain. Western Europe "adhered to the 'old' PTT model well into the 1980's" (Grande 1994: 143).

However, parallel with the reform initiatives of the European Commission,<sup>27</sup> Germany started own initiatives to liberalise, privatise and regulate the telecommunications sector.<sup>28</sup> The reform process was not only enhanced by this interaction between policy making at the European level and that at the level of the member states (Thatcher 1995: 265). Furthermore, the British regulatory reform showed that telecommunications services were able to be provided without monopolies (Schmidt 1998: 138). Additionally, the British government supported a European

<sup>25</sup> The dominance of British administrative traditions on the micro-organisational level is further highlighted when comparing the American and the British decision-making structure. While the FCC has a multi-person regulatory commission structure, in contrast, for OFTEL, with the DGT a design with individual decision-making procedures was set up (Hall, Scott, and Hood 2000: 44).

<sup>26</sup> For details on the period from 1993 to 1997, with Don Cruickshank as DGT see Hall, Scott, and Hood 2000: 44.

<sup>27</sup> The European telecommunications policies were mainly inspired by the single-market programme, which is described as "deregulatory in nature" (Bulmer 1992: 60).

<sup>28</sup> The Witte report was the main impetus for the German debate on telecommunications reform; see Werle 1999.



style of telecommunications reform; and it had an interest in "exporting" its own style of liberalisation (Thatcher 1995: 245).

In Germany, radical reforms of the public sector are rare. The political system with its particular institutional structure, such as the number of veto points in the intertwined federal system, coalition governments, or the corporatist structure with a strong orientation towards consensus, prevents such developments. Therefore, in Germany the model of the regulatory state emerged slowly. Instead of an ad hoc reform of the public sector, reforms show predominantly incremental developments what Ellwein describes as "adaptive administration" (Ellwein 1994).

While the reform of the German telecommunications sectors appears radical, the process was slow and adaptive. The transformation from PTT to NRA took place in three steps (see e.g. Mette 1999; Grande 1999): With the Post Reform 1 (1989/1990), three separate operational units for telecommunications, postal service, and post banking were established as public corporations. The Ministry for Postals and Telecommunications (BMPT) was responsible for steering competencies for the sector, including ownership and regulation.

In 1994, with the Post Reform 2, the intention was to separate ownership from regulatory competencies. While the competencies were left with the BMPT, a new administrative agency, the Agency for Postals and Telecommunications (BAPT), was institutionalised for ownership. The three public corporations were transformed into stock companies, one of which was the Deutsche Telekom AG (DTAG). With the Post Reform 3 in 1994, the decision was made to open telecommunications to full competition by 1 January 1998. With the new Telecommunications law (TKG), sector-specific regulation was set up with a new telecommunications regulator, the Regulatory Authority for Telecommunications and Posts (RegTP), an institution under the supervision of the Federal Ministry of Economics (BMWFi). The BMPT was disbanded and became part of the BMWFi, and the responsibility for the ownership was transferred to the treasury (Bundesministerium für Finanzen, BMF). However, some civil servants of the BMPT moved to the newly created RegTP. Additionally, the BAPT was incorporated in the RegTP.

Up to that stage, Germany did not have regulatory bodies for utility regulation. The case of the RegTP shows that on the macro-organisational level, instead of a traditional model, a new institutional design was introduced. During the process of designing the RegTP, the models of administrative agency, competition authority, and regulatory agency were carefully scrutinized.

While the proposal for the German telecommunications law was formulated in the former BMPT, there were extensive discussions on which model to be opted for in the parliamentary committee for posts and telecommunications.<sup>29</sup> The Green Party favoured an institution under public law (Anstalt des öffentlichen Rechts) as a special, more independent form of an administrative agency. However, for this institutional design a change in the basic law would have been necessary (Ulmen and Gump 1997: 398).

The monopoly commission, an advisory body to the BMWFi, suggested transposing the regulatory functions to the Cartel Office (see Ortwein 1998: 207f.). However, although this proposal was strongly supported by the Cartel Office itself (Wolf 2000), it was rejected by the BMWFi, mainly

<sup>29</sup> For a more detailed analysis of the actors involved and the decision-making processes; see Thorein 1997, esp. p. 295; 301ff.

because, in 1994, with the BAPT, a body had been set up which had taken over central technical regulatory functions.

Having roughly described the development of the design, the question is why the "regulatory agency" model was chosen. First, it is important to state that the RegTP is named a "regulatory agency", but has the status of an administrative agency (see TKG, § 66,1). Therefore, from an administrative point-of-view, the setting fits well with the German administrative tradition. What is new is the title given to the administrative agency. As will be seen when analysing the micro-organisational level, additional steering instruments have been established.

European Law is responsible for redefining the German telecommunications regulator as a "regulatory agency". Although the policy formulation was described as an interactive process between national and European levels (Thatcher 1995: 264), the strong "proactive course of action" of the European Commission has to be highlighted (Eliassen and Sjøvaag 1999: 23). Although the member states have organisational sovereignty ('Organisationshoheit') when implementing European Law on the national level (Schwarze 1996: 148ff), in some cases the European legislation gives clear directions on how to comply in the member states. In the case of telecommunications, the European Commission specified that a regulatory body for telecommunications had to be set up. The 1987 Green book on telecommunications reform (COM(87)290) proposed separating of operational and regulatory competencies. Later directives, which put this in concrete form, such as the Council directive on open network provision (90/388/EEC), or the directive on open network provision to voice telephony (95/C122/04), gave more detailed instructions on which institutional designs should be set up on national level. While the directive in 1990 proposed founding an "independent institution from service providers", the 1995 directive demanded the institutionalisation of national regulatory agencies.<sup>30</sup> While the European Commission defined overall standards which pushed member states to set up the regulatory agency model, for the micro-organisational administrative designs, the Commission "did not specify the institutional arrangements" and therefore allowed "institutional subsidiarity" (Thatcher 1995: 265).

Additionally, besides European Law, the British had an impact on the macro-organisational structure. Britain utility regulatory agencies "have been pioneers of change and have served as an example (...) in other European countries" (Thatcher 1998: 121). In Germany, for example the monopoly commission proposed the institutionalisation of a telecommunications regulator using the model of OFTEL (Ortwein 1998: 270).

With respect to the micro-organisational level (internal administrative structures), the central component of jury-like decision chambers was set up in order to attain independence from the ministry. In these chambers, the decisions of the RegTP are made on basis of the TKG.<sup>31</sup> The institutional design of this chamber system was diffused from the German Federal Cartel Office, which uses a comparable system. However, in addition to the decision chambers, the RegTP has a variety of traditional departments responsible for technical regulatory issues, which have now

<sup>30</sup> For a more detailed analysis see Mette 1999: 231ff.

<sup>31</sup> The RegTP has five decision chambers, which are chaired by a president and two vice presidents, and which are responsible for decisions on specific regulatory tasks, such as licensing management or price regulation. For an detailed analysis of the decision-making chambers and their independence see Oertel 2000.

been taken over from the BAPT. In so far as the RegTP combines traditional administrative departments and jury-like decision chambers, it is a unique institution.<sup>32</sup>

In conclusion, it has been shown that on the macro-organisational level the institutional design of the German sector-specific regulatory agency in telecommunications was mainly shaped by European and British influences, while the design on a micro-organisational level has been dominated by traditional German administrative solutions.

### 4.3 Comparison of Great Britain and Germany

A comparison of the regulatory agencies in Britain and Germany shows convergence on the macro-organisational level because they both opted for the same design; it also shows convergence of the designing process, which was predominantly shaped by external influences in both countries. With focus on the overall design (macro-organisational level), in both countries a sector-specific regulatory agency model was set up.<sup>33</sup>

The designing process shows convergence in so far as no traditional design was used, but a new model was put in place instead. While there was a strong American influence in Britain, the German decision was influenced by Europe and especially by the British experience.

The analysis of British and German regulatory agencies at the micro-organisational level shows convergence in the designing process, but divergence in the institutional design.<sup>34</sup> Convergence in the designing process could be revealed in so far as administrative designs have mainly been shaped by national administrative traditions on the micro level.

However, this has led to divergence in the institutional designs. In both regulatory agencies, to reach independence, different institutional structures have been developed. In Britain, a powerful DGT was put in place, linked to the British administrative tradition of individual and discretionary decision-making. In contrast, in Germany the model of decision chambers was employed because of the law-based administrative tradition. Additionally, while Britain has been open for administrative reforms and experiments, Germany has stuck to traditional department structures, taken over from the BAPT.

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<sup>32</sup> While administrative agencies merely include departments, the cartel office only has a chamber system.

<sup>33</sup> This view is shared by Schneider (Schneider, 2001 (i.E.)); however, see FN 35.

<sup>34</sup> Schneider argues that "structural convergence does not mean that there is no variation in detail", and "convergence does not mean homogenisation". (Schneider, 2001 (i.E.): 18, 28). However, Schneider only analyses developments on a macro level and he argues that "divergence is of minor importance". He points out that "[c]ompared to the enormous institutional shift from public monopoly to private competition, the concrete differences in [...] new regulatory procedures [...] are trivial", and "the variation in outcomes a matter of inches" (Schneider, 2001 (i.E.): 18). This paper argues that the analysis of micro level procedures is of importance because it shows the divergence between administrative patterns. Further research on the relation of institutional design and decision-making procedures might be less trivial than assumed.

## **5. Concluding Remarks - Linking the Theoretical Model and Empirical Findings**

This article has explored the designing process and the institutional design of telecommunications regulation at the national level in Britain and Germany. After having introduced some general explanations for the challenges of utility regulation, in a general explanation diffusion theory and historical institutionalism were linked to account for the design and the designing process of regulatory institutions. Five existing institutional designs for utility regulation were outlined which could be set up in Britain and Germany as utility regulators. In a more practical section, in two case studies, preliminary findings for the British and German case on telecommunications regulation were presented and the reasons for choosing examined.

In this concluding chapter, the findings of the case study have to be related to the model developed in chapter two. Analysing the implementation paths in Britain and Germany on both a macro and micro-organisational level, the process cannot be interpreted as a path-dependent development. In contrast, the British and the German cases revealed that the shaping of the overall design of regulatory institutions (macro-organisational level) was influenced by a diffusion process. Designs were transferred from countries with a longer experience in utility regulation to countries with less sector-specific knowledge of these new demands. As a consequence of the liberalisation and privatisation of telecommunications, both Britain and Germany faced the challenge of introducing new regulatory institutions. While Britain learned from the US-model, Germany copied the British example, and both introduced a sector-specific regulatory agency model. There is undoubtedly an "institutional download" and a "global chain reaction" to institutional designs on a macro-organisational level (Schneider, 2000 (i.E.): 8, 20).

However, this argument of macro-organisational international diffusion becomes more relative, taking in consideration that – looking into the British case – the regulatory agency model was only the second-best option. Only after the OFT had refused to take over sector-specific regulatory functions in telecommunications, international models were diffused. Additionally, opting for international diffusion is often not an autonomous decision. The German case reveals that European pressure forced a regulator to be set up. Both the British and the German case show that diffusion was caused less by voluntary emulation than by imposition and constraints.

Referring to the micro-organisational level, this diffusion process does not exclude the general claim of historical institutionalism, namely, that there are path dependencies which shape the institutional design. Analysing the British and German regulatory design on the micro level, it has been shown that traditional institutional structures still exist. In Germany, the RegTP mainly took over the competencies and the departmental structure of the earlier existing BAPT. Additionally, in establishing the model of decision chambers for social and economic regulatory issues, it was diffused from the Federal Cartel Office. In Britain, the internal structure of OFTEL was largely designed from scratch, using predominantly the OFT as a model, e.g. in reference to the Director General.

Therefore, the overall finding of this comparison of the regulatory agencies in telecommunications in Britain and Germany reveals that the institutional design is shaped by both diffusion and by path dependency. The analysis has shown that diffusion among countries took place on the macro-organisational level. However, on the micro-organisational level the design

has been shaped by sector-specific path dependency. Additionally, on the micro level well-established designs were diffused from institutions on the basis of administrative traditions within the countries, which demonstrate interactive effects among units in a federal system. While in general the concerns are with what best fits the optimal design, in a second step these ideal types are amended as the questions are addressed regarding what has worked well in the past and what we now know.

With the focus on the comparison between the British and German telecommunications cases, the overall finding is that in both countries, at the macro-organisational level with the regulatory agency model it was opted for convergent institutional designs; however, there has been divergence on the micro-organisational level in the regulatory agencies' internal administrative procedures.

However, why are there different processes of change on the two organisational levels? Here, two considerations might provide preliminary answers: First, since the diffused concepts might not be defined in depth, the details of implementation are left to each country. General institutional designing concepts can be transferred; but in order to implement them, domestically detailed adaptation is necessary. General concepts are diffused, but on micro-organisational level country-specific administrative traditions might survive without contradicting the macro-level design. Second, as the empirical account has shown, a variety of actors are involved in designing institutions. However, there is 'bureaucratic politics' dominated by civil servants. If politicians make an effort in debates on institutional designs, they are mainly interested in overall design principles, but not in nitty-gritty micro-organisational details. Here, civil servants have strong vested interests. Even if it is not possible to prevent change at the macro-organisational level, they might still strive for preserving stability on the micro-organisational level.

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