

**Multi-level Governance and Global Market Liberalization: The
Interdependence of National, European and Multilateral
Telecommunications Policies**

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Abstract

In 1998, most EU member states fully liberalized their telecommunications markets, thereby abandoning the long-established monopolies of their national postal administrations over services and network infrastructure. The creation of competition, however, was not only the result of various national policy programs, it was also heavily influenced and structurally determined by the European Union's liberalization initiative aimed at the establishment of a common market for telecommunications services and equipment. Since the mid-1990s, the World Trade Organization (WTO) developed into an important multilateral player in telecommunications policies and has ever since been pushing for global market access for the telecommunications industry.

This paper argues that, as a result of parallel activities at the national level, the EU and the WTO, a multi-level governance system in telecommunications policies has emerged which is characterized by an increasing interdependence of actors and their policy programs.

1. Introduction: The different levels of governance in global telecommunications market liberalization

Since the late 1980s, telecommunications markets around the world have undergone significant changes. The two main important trends which have caused these changes have been the liberalization of many national telecommunications markets, and an increasing technological convergence of formerly separated communication systems for voice telephony, data transmission and broadcasting. The liberalization of national telecommunications markets is apparently a global phenomenon as it is still an ongoing process. From the 188 member states of the *International Telecommunication Union (ITU)*, 156 have separated the provision of postal and telecommunications services, while 147 have concluded the separation of regulation and operation of telecommunications. In 105 countries the incumbent operator is still state owned, while 67 countries have partially privatized and only 16 countries have completely privatized it. Only a minority of 38 ITU member states has fully liberalized basic telecommunications services (Bogdan-Martin 1999).

Public policies have enabled and promoted these changes not only at the level of the nation-state, but also by initiatives within supranational and international organizations. At first view, telecommunications policies were aimed at different goals dependent on the level of governance. Nation-states, for instance, have been mostly engaged in the dissolution of national telecommunications monopolies and the establishment of new regulatory regimes for the introduction of competition. At the supranational and multilateral level, i.e. especially within the European Union (EU)¹ and the World Trade Organization (WTO), efforts have been made primarily to reduce barriers to cross-border trade in telecommunications services and information technology products. Closer

¹ The term "European Union" and the respective abbreviation "EU" is generally used in this paper to describe measures taken at the supranational level, even though most activities which are of importance in this analysis occurred under the common commercial policy belonging to the competencies of the European Community in accordance with the Articles 133 and 300 of the EC treaty (TEC).

inspection, however, reveals that the opening of national telecommunications markets to full infrastructure and service competition in EU member states was largely influenced by related activities initiated by the European Commission and the Council of the European Union and it was also linked with two agreements on the provision of market access for telecommunications services and equipment negotiated under the roof of the WTO. Both the EU and the WTO have defined obligations to their member states which not only consider basic principles for market liberalization and market access, but which also establish a framework for sector specific regulatory regimes at the nation-state level.

The purpose of this paper is to analyze the extent to which telecommunications policies of actors at the national, the supranational, and the multilateral level have become interdependent. In this context, the term “interdependency” refers on the one hand to a situation in which actors at the national and the European level have conceptualized the rules for the liberalization of EU member states’ telecommunications markets within the context of a global market opening initiative. On the other hand, this interdependency exists because the WTO’s market access strategies largely depend on the willingness of participating countries and organizations to open their markets to international competition.

Given the fact that both the EU and its member states have the status of WTO members, and taking into account that competencies in certain parts of the EU’s common trade policy are shared among them, this paper will argue that a multi-level governance system has emerged at least in those areas in which these interdependencies largely determine the scope and intensity of telecommunications market liberalization. Moreover, as a consequence of the assignment of powers in the EU’s common commercial policy, major characteristics of the European multi-level negotiating system have been transferred to the multilateral level, where multilateral negotiations are now accompanied by a parallel intensive collaboration between the European Commission and the Council of the European Union. This multi-level governance systems is, however, limited to certain elements of public

telecommunications policies. It applies to measures related with market liberalization and sector regulation, but not to various policies aimed at promoting the development, or use of, telecommunications devices and services that exist at the national and the EU level, but not within the context of the WTO.

Therefore, the paper will describe the regulatory framework established at all three levels of governance which are aimed at market liberalization and market access in telecommunications service and equipment. The focus of this description will be on binding obligations for sector specific regulation at the nation-state level that have been defined by various agreements at the EU and WTO levels (chapter 2). In an attempt to systemize the interdependencies which originate from the activities of the different actors, chapter three will present basic features of the multi-level governance system which has emerged in the context of the negotiations on global telecommunications liberalization.

2. Market liberalization and market access in telecommunications

The conceptualization of telecommunications market liberalization at the level of the EU and its member states, as well as the definition of binding rules for market access in telecommunications at the multilateral level, have occurred almost simultaneously. Starting in the mid-1980s, and following the examples of the United States, Great Britain, and Japan, most EU member states and the EU itself have prepared for the liberalization of member states' telecommunications markets for both services and equipment. At the multilateral level, GATT member states have been confronted with telecommunications for the first time in the context of the *General Agreement on Trade in Service (GATS)*, which was negotiated during the so-called Uruguay Round between 1986 and 1993 (Drake/Noam 1997: 800f.). Trade liberalization for telecommunications equipment began in 1996 when 28 WTO member states (including all EU countries) agreed on the *Information Technology Agreement (ITA)*, which provided for the elimination of tariffs on most information technology products by January 1, 2000.

In view of the existence of different legal frameworks for the liberalization of telecommunications services and equipment, the subsequent description will analyze each field separately. In regard to measures taken at the national level, this presentation will refer to the example of Germany.

2.1 The liberalization of telecommunications equipment markets

In the era of state monopolies over telecommunications infrastructure and services, equipment manufacturers used to have extraordinarily stable relations with the respective national public network provider, which procured – as it was the case in Germany – almost one hundred percent of network equipment and terminals from the national industry. Under such conditions, neither the public postal administration nor the equipment industry had any interest in opening national markets to competition. This situation changed, however, when technological progress (especially the digitalization of communication networks) on the one hand led to a considerable increase of R&D expenditures within the manufacturing industry, which became more and more dependent on international markets to re-finance development costs. Public postal administrations, on the other hand, began to consider their traditionally close relations with the national industry, that had to a large extent eliminated competition among the equipment manufacturers, an obstacle to innovation. Furthermore, they expected to gain from lower prices for communication infrastructure equipment due to competition in a liberalized market.

In principle, national telecommunications monopolies did not restrict competition for all equipment products. In Germany, as it was the case in most other European countries, the postal administration's monopoly existed only for terminal equipment. However, under the conditions of public monopolies in telecommunications, postal administrations had an interest in protecting "their" manufacturing industry by restricting the procurement of equipment to firms which they considered national. Consequently, when the European Commission initiated the establishment of a common market for telecommunications

equipment, it focused on the liberalization of the terminal market segment and the application of the principle of mutual recognition of standards and licensing procedures. The liberalization of the equipment market was achieved through the implementation of the “Commission Directive on competition in the markets in telecommunications terminal equipment”² in all EU member states by 1990. EU legislation that was aimed at the establishment of harmonized procedures for the certification, testing, and inspection of telecommunications equipment³ followed in 1991 and specified essential requirements for terminal equipment in order to guarantee a free cross-border trade of such products.

At the multilateral level, market liberalization for information technology products (including telecommunications equipment) occurred not only within the framework of the introduction of competition in several telecommunications markets, but also with respect to technological developments and the importance of information and communication technologies (ICTs) for growth and economic performance of advanced industrialized countries. Taking into consideration that OECD member states represent 92 percent of the world IT-market, of which the G7 countries⁴ alone have a combined share of 86 percent, it becomes obvious that multilateral trade liberalization in the area of ICTs was clearly in the best interest of the leading industrialized countries (OECD 2000b: 59). Moreover, it has been estimated that the elimination of tariffs for ICT products will lead to a reduction of costs in trans-border trade of about \$50 to \$100 billion per year. Tariff elimination for ICT products is thus most beneficial for the leading multinational telecommunications equipment companies, such as Alcatel, Siemens, Ericsson, Lucent, Nortel, Hitachi and Fujitsu which all originate from G7 countries (ITC 1999).

At the first WTO Ministerial Conference in Singapore (December 1996), 29 participants (the EU counting as 15) agreed on a “Declaration on Trade in

² Commission Directive 88/301/EEC of May 16, 1988, OJ L 131, 27.05.1988.

³ Commission Directive 91/263/EEC of April 29, 1991, OJ L 128, 23.05.1991.

⁴ The following countries belong to the Group of Seven: Canada, France, Germany, Great Britain, Italy, Japan, and the United States.

Information Technology Products” which provided for the phase-out of all tariffs, duties or charges by the year 2000. The agreement went into effect in March 1997 after the number of participating countries increased to a number representing at least 90 percent of the total world trade in information and communication technology products. In the meantime, 54 countries signed the ITA representing roughly 93 percent of the total world trade, worth about \$600 billion a year. Trade liberalization under the ITA takes place on the basis of the basic GATT principle of most-favored-nation treatment, which guarantees market access also to non-participating WTO members. Market access commitments of individual signatory countries are defined by a list of products for which tariffs have been eliminated. In November 2000, the participating countries agreed to broaden their liberalization activities to non-tariff barriers to trade in ICT products, such as testing and certification requirements as well as import licenses. The initiative to consider such requirements has originated especially from IT industry representatives.⁵

The European Commission, which represents all its member states in the “Committee of Participants on the Expansion of Trade in Information Technology Products” (ITA Committee), submitted its list of specified products with no major exemptions in each of the covered categories (i.e. Computers, Telecommunications Equipment, Semiconductors, Software).

With the adoption of a respective regulation by the Council of the European Union, the tariff elimination became directly applicable in all member states.⁶ All in all, initiatives aimed at liberalizing the telecommunications equipment sector occurred at all three levels of governance and have finally led to the creation of a common market for such products within the EU and to a widely-liberalized market sector within the WTO context. National activities, as the example of

⁵ „ITA Committee approves work programme on non-tariff measures“, WTO press release 198, November 17, 2000.

⁶ Council Regulation No. 2559/2000 of 16 November 2000 amending Annex I to Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

Germany shows, were largely limited to the implementation of supranational and multilateral law (cf. table 1).

2.2 Market access, market liberalization and sector specific regulations in telecommunications services

As previously mentioned, public policy initiatives aimed at the liberalization of the telecommunications markets in Europe have occurred more or less simultaneously at the national and the European level since the mid-1980s. Before 1992, however, the major strategy was to establish a common market for telecommunications services and equipment by providing access to national markets; neither the EU Commission nor the member states (with the exemption of Great Britain) questioned the existence of public monopolies over the network infrastructure and voice communication services (European Commission 1987). The EU's first directive "on open competition in the markets for telecommunications services" did not only explicitly exclude voice telephony, but also emphasized the right of the member states to "maintain special or exclusive rights for the provision and operation of public telecommunications networks".⁷

At the national level, as the example of Germany shows, the First Postal Reform ("Poststrukturgesetz"), which was enacted in 1989, led to the separation of the postal and telecommunications administrations as well as to the separation of regulatory and managerial functions within the public network provider. Since the law also implemented the EU directives on the liberalization of value-added services and terminal equipment, the national initiative fully complied with European regulations.

⁷ Commission Directive 90/388/EEC of 28 June 1990 on open competition in the markets for telecommunications services, OJ L 192, 24.07.1990. The same holds true for the "Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP)", OJ L 192, 27.07.1990. The directive did not concern the liberalization of the network infrastructure in general, however, it introduced the ONP principle into European legislation, which became the central principle for the liberalization of EU member states' telecommunication markets. The directive was implemented in German law by amending § 9 of the German Telecommunications Directive ("Telekommunikationsverordnung") in 1991 (Schwintowski 1998: 22).

The EU's approach toward market liberalization in telecommunications has broadened significantly since 1993/94 when the Council issued two resolutions, which not only paved the way for the liberalization of voice telephony and the network infrastructure, but also determined the major principles of the regulatory framework for the introduction of competition. These principles concerned the *interconnection* of public and private networks, the definition of *universal services*, requirements for the establishment of *national regulatory authorities*, and conditions for the granting of *licenses*.⁸ Additionally, a competitive environment was regarded to be essential for the development of emerging technologies for the transmission of voice and data, such as mobile and satellite communications.

In order to liberalize the member states' telecommunications markets, the EU made extensive use of the so-called *Open Network Provision (ONP)*, which was already introduced in 1990 and later applied to all kinds of communication services and networks (i.e. *leased lines*, Council Directive 92/44/EEC; *packet-switched data services*, Council Recommendation 92/382/EEC; *ISDN*, Council Recommendation 92/383/EEC). The most important ONP directive certainly concerned "the application of open network provision to voice telephony"⁹. This directive requires that EU member states have to ensure that any service provider, which obtains a dominant position in the public communications market, has to grant access to the network on a transparent and non-discriminatory basis as well as to reasonable prices. All in all, the 1995 ONP directive laid the foundation for the complete liberalization of telecommunications infrastructure and services by January 1, 1998. As a result, any telecommunications operator from EU member states as well as from a third country has the right to interconnect with public networks at cost-related charges

⁸ Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market, OJ C 213, 06.08.1993; Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector, OJ C 048, 16.02.1994.

⁹ Council Directive 95/62/EC of 13 December 1995 on the application of open network provision (ONP) to voice telephony, OJ L 321, 30.12.1995.

and to offer telecommunications services across the EU (Holmes/Kempton/McGowan 1996: 759).

At the multilateral level, negotiations on market access in telecommunications services, which took place under the General Agreement on Trade in Services (GATS), occurred to a large extent in accordance with the EU's liberalization principles. In 1997, 69 WTO member states signed the *WTO Basic Agreement on Telecommunications Services*, which went into force on February 5, 1998, shortly after the introduction of competition in EU's telecommunications service markets. The agreement was incorporated into the WTO scheme as the *Fourth Protocol to the General Agreement on Trade in Services* (Drake/Noam 1997; OECD 1999b; Senti 2001; Spinanger 1997; Spinks/Logghe 1999; Tarjanne 1999; von Schorlemer 2000; WTO 1998).

Apart from the fact that both the EU's regulatory framework as well as the *Reference Paper on Regulatory Principles*, which is part of the GATS protocol, refer to the same principles, the EU's application of these principles certainly determines a more extensive approach toward market liberalization:

- *Interconnection*: the reference paper requires that major suppliers have to ensure interconnection at any technically feasible point in the network. Interconnection has to be provided under non-discriminatory terms, condition and rates in view of all network types which are included in the respective country list. As mentioned before, according to the EU's ONP framework direction, any network operator, which obtains a dominant position in the public communication market, has to grant access to the network on a transparent and non-discriminatory basis as well as to reasonable prices. Moreover, any provider of a public network has to offer an interconnection agreement upon request of another operator with public network facilities.
- *Universal Services*: in accordance with the reference paper, any participating country has the right to define universal service obligations as long as they are administered in a transparent, non-discriminatory, and competitively

neutral manner. Within the EU, universal service has been defined as the right of any user to have a telephone connected to the network and access to a prompt installation and repair service as well as progressive access to services such as itemized invoicing or high-capacity circuits¹⁰.

- *National Regulatory Authorities*: both the reference paper and the EU's ONP framework directive require the establishment of an independent regulatory body that is functionally and legally separated from all suppliers of telecommunication services. These rules still allow for keeping ministries in the role of regulators as long as they do not have direct relationships with a service provider (as Japan and Korea did). However, all EU member states and the large majority of OECD countries have established independent regulatory bodies and thus separated regulatory and policy functions in telecommunications (OECD 2000a: 8-12).
- *Licenses*: the reference paper provides only for the public availability of license criteria and for the notification of reasons in case of a denial of a license. The EU established a common framework for authorizations and licenses in the field of telecommunication services.¹¹ According to this directive, member states have to notify the Commission about all requirements for the granting of a license. Moreover, member states can limit the number of licenses only if a quantitative restriction is necessary to protect scarce resources.

At the national level, all EU member states were required to implement EU legislation on telecommunications market liberalization well before January 1998. Four member countries (Greece, Ireland, Portugal, and Spain) were allowed to restrict competition for a limited period of time. In Germany, the EU's regulatory framework was transferred into national law by the

¹⁰ Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector, OJ C 48, 16.02.1994.

¹¹ Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licenses in the field of telecommunications services, OJ L 117, 07.05.1997.

Telecommunications Law (“Telekommunikationsgesetz”) of 1996. In view of multilateral obligations, the German parliament ratified the Fourth Protocol to the GATS in 1997 without any changes to national law. This underlines that the already implemented European regulations fully covered all obligations which emerged under the GATS protocol (cf. table 2).

In this context, it is worth mentioning that any amendment to the German Telecommunication Law, if required by the GATS protocol, would have involved the German states (“Bundesländer”) in the process of negotiating and implementing multilateral law. According to the Articles 23 and 87f. of the German constitution, the German states have the right to participate in European legislation if they would be also engaged in any amendment of the respective national law. This would have required the participation of the upper house (“Bundesrat”) both in the preparation of the national negotiating position within the EU context as well as in the ratification of the protocol (cf. Kaiser 1997, 1998, 2000).

3. The emergence of a multi-level governance system in global telecommunications

The analytical concept of multi-level governance has so far been applied mostly to the European Union in order to describe the emergence of a highly complex, integrated negotiating system of various differently-connected policy arenas. Such policy arenas exist at different levels of policy negotiations: *within the EU's institutional framework*, involving different actors at the supranational level; as *international arenas*, involving various national actors at the supranational level; as *intra-national arenas*, involving national actors for the formulation of their positions for European policy making; and as *national arenas*, in which supranational actors can become directly involved (Grande 2000: 14-15; cf. also Jachtenfuchs/Kohler-Koch 1996, Hix 1998 and Scharpf 1994: 131-155).

Considering the activities aimed at telecommunications market liberalization and market access, which were undergone at the national, the European and the multilateral level, a fifth policy arena can be identified. This arena involves representatives from the national and the supranational level, who closely collaborate at the multilateral level during respective negotiations within the WTO framework. This phenomenon is, however, not limited to the telecommunications sector; it exists in different variations in all fields which fall under the EU's common commercial policy. Consequently, the main characteristic of the European multi-level governance system, the non-hierarchical arrangement of actors in policy formulation and decision-making, has been transferred to the multilateral level, and thus determines the outcome of purely-intergovernmental negotiations in a global organization. From an institutional perspective, this multi-level governance system reaches from the level of the nation-state to the multilateral level. In a functional perspective, since WTO rules are made by consensus, the results of multilateral negotiations largely depend on decision-making procedures and policy goals that have been defined under the condition of shared sovereignty between the EU and its member states in European trade policy.

3.1 The institutional dimension of multi-level governance

In view of foreign trade relations, the EU's common commercial policy – as defined by Articles 133 and 300 of the EC treaty – differentiates between trade in goods, such as telecommunications equipment, which falls under the exclusive competence of the EU, and trade in services as well as foreign investments and trade-related intellectual property rights (TRIPS), for which policy powers are shared between the EU and its member states. This model of power assignment plays an important role in multilateral trade negotiations, since the WTO – in contrast to its predecessor the *General Agreement on Tariffs and Trade (GATT)* – not only covers trade in goods but also services, intellectual property rights and investments. In view of the WTO, the European Court of Justice confirmed this assignment of powers in commercial policy and ruled that exclusive

competencies of the EU in the field of services do exist only as long as they are provided in cross-border trade.¹²

However, in telecommunications, as in most other kind of services, companies generally provide services through subsidiaries, at least in the most important foreign markets. Consequently, in the European Union, a multilateral agreement on provisions for market access in telecommunications services can exist only in the form of a “mixed treaty” to which both the EU and its member states are parties (Ott 1997: 211-219). For the WTO, as well as for third countries, the construction of mixed treaties guarantees that no “lack of competencies” will emerge when the European Union and its member states agree to a multilateral agreement. For the EU itself, mixed treaties require intensive co-operation between the European Commission and representatives from the member states during all phases of the negotiation process.

The procedures within the European Union differ significantly depending on whether multilateral negotiations fall under the exclusive authority of the EU or whether they regard issues of mixed competence. According to Article 133 of the EC treaty, before multilateral negotiations can begin, the European Commission must propose its agenda to the Council, which in turn determines the Union’s negotiation mandate by qualified majority voting in case of exclusive EU authority and by unanimous decision in case of mixed competencies.¹³ The same decision-making rule applies to the conclusion of an agreement. On the basis of the Council’s mandate, the European Commission is authorized to negotiate at the multilateral level even in cases of mixed competencies. However, the mandate requires that the Commission engage in consultations with the Council on a regular basis, while the Council can issue supplementary directives to the Commission at any time during the negotiations.

¹² Opinion 1/94, European Court Reports I 5267 (November 15, 1994).

¹³ With the new Treaty of Nice, the EU has opened some areas of trade in services and trade-related intellectual property rights to qualified majority voting. However, various exemptions still exist especially in view of cultural and audio-visual services as well as concerning mixed treaties in general. The treaty still requires ratification by member states’ parliaments before entering into force

In order to guarantee flexible reactions to new proposals in the process of multilateral negotiations, the Council has established a committee (the Article 133 committee), which is comprised of national officials who remain in constant contact with the Commission during all negotiation. As representatives of the member states' governments, these officials have not only to consider the various interests of the member states, but also the different policy goals of several national ministries. Decision-making in the Article 133 committee takes place on the basis of consensus, even though formal voting procedures are a rarity (Woolcock 2000: 378-387).

3.2 The functional dimension of multi-level governance

If multilateral trade negotiations address areas of mixed competency within the EU – as it is the case in telecommunications services and related investment measures – the Commission must act under the constraints of a “double consensus” in the pre-negotiation phase, as well as in the phase of conclusion of an agreement. Unanimous decision-making is required not only to decide on the negotiation mandate at the EU level, but also for the agreement on the respective treaty at the WTO level. Moreover, the national parliaments of the member states have to ratify such agreements before the Council can accept them for the European Union. Even during negotiations, the Commission seeks consensus with the Article 133 committee, since the consideration of member states' interests is a prerequisite for ratification by the member states and the Council. In contrast to the situation in many other EU policies, the European Commission has neither a monopoly in agenda-setting, nor can it act against the interests of only a single member state, as it may occur if the Council will make a decision by qualified majority vote. Furthermore, since the European Parliament is mostly excluded from the negotiation process of mixed treaties, coalition-building between Parliament and Commission is not a valid option. In view of multilateral negotiations the institutional setting – as it has been defined by the EC treaty –

(Pleuger 2001: 3; Wessels 2001: 9). Furthermore, it is worth mentioning that even if qualified majority voting applies, most decisions in the Council are made by consensus (Senti 2000: 208). *

requires that the Commission successfully interact with the EU member states and third countries, as both sides have a veto-option provided by the obligation of unanimous decision.

Under these conditions, it would have been likely that individual EU member states use their veto position to impose certain exemptions from the overall market liberalization framework as it was discussed at the WTO level. Looking at the results of the multilateral agreement on basic telecommunications services, it can be stated that only a small number of EU member states restricted their commitments and they did so only in rare cases. France and Belgium, for example, refused to grant access to public television cable networks, whereas France, Italy and Spain limited foreign equity ownership of their incumbent operators. Greece, Portugal and Spain also insisted on a special treatment during a transitional period which was in line with European law (Drake/Noam 1997: 802-804).

The fact that only few restrictions to global market liberalization in telecommunications services have been pushed through by a minority of member states raises the question as to why individual member states did not take advantage of institutionalized veto-options in order to protect their national markets at least against third-country competition. In the case of the multilateral agreement on basic telecommunications services, the answer is very much in line with the theory on multi-level governance in the European Union. Unanimous or even qualified-majority voting do not necessarily reduce the capacity for political action, and effective solutions can be reached even in spite of high consensus requirements if the actual constellations of interests among the participants are harmonious or at least overlapping (Scharpf 1996: 19).

The case of the liberalization of telecommunications markets shows that European initiatives were not only linked with national activities, but were also closely associated with respective negotiations at the multilateral level as well as in major third countries. When the Council of the European Union issued a

resolution on the future regulatory framework for telecommunications in 1995, member states' representatives made very clear that "the main points of the regulatory framework defined in this resolution [...] must be used as a basis for negotiations in the context of the World Trade Organization"¹⁴. Accordingly, when the European Commission proposed Community legislation in telecommunications, it defined the steps and phases of market liberalization in EU member states "in advance of agreement on the global opening of markets under the GATS"¹⁵. In a way, the policy coordination across different levels of governance has clearly simplified the implementation of harmonized standards for market liberalization and market access in telecommunications. The common aim at all three levels of governance has not only been to achieve regulatory convergence, but also "a new convergence of trade issues, domestic regulatory issues and competition issues"¹⁶.

4. Conclusions

The liberalization of telecommunications markets is a remarkable example of the interdependencies, which exist in the relation of regional and multilateral integration. Due to the principle of reciprocity in global trade liberalization, the European Union and its member states certainly had an incentive to introduce competition in telecommunications services and equipment in order to gain equal access to third country markets. The fact that the formulation and implementation of the respective policy programs has occurred almost simultaneously at all three levels of governance is a strong instance for the degree of internationalization of the telecommunications industry as well as for the importance of modern telecommunications services and equipment for the economic development of advanced industrialized countries. Both the principle of reciprocity as well as the economic importance of the telecommunications industry may explain why EU

¹⁴ Council Resolution of September 18, 1995 on the implementation of the future regulatory framework for telecommunications, OJ C 258, 03.10.1995.

¹⁵ European Commission 1999: 5.

¹⁶ „Liberalisation of International Infrastructure and Services. The Perspective of EU Competition Policy". Speech given by Herbert Ungerer to the International Telecoms Pricing and Facilities Conference, London, October 3, 1996.

member states were ready to agree on a far-reaching liberalization program, even though the process of policy formulation and decision-making as it applies to the EU's common commercial policy provides several veto-options.

Liberalization programs at all three levels of governance were based on the same basic principles. Consequently, a high degree of convergence can be observed between the regulatory frameworks at the European and the multilateral level, even though the EU certainly has defined its regulatory scheme in more detail. Nevertheless, in view of the degree of market openness, there are still remarkable differences which exist in EU member states. These differences primarily concern competition in the local access network. As of December 2000, only six EU member states have achieved full local loop unbundling, while shared access to the local loop has not been offered in any of the member states. The unbundled and shared access in the local loop are, however, a prerequisite for effective competition, both in voice and data communications services. As a result, even though the number of operators, which offer local call services, has increased to a number of 388 within the EU, the average incumbent operators' market share was still 96 percent (European Commission 1999, 2000).

Table 1: Market liberalization for telecommunications equipment

	<i>National level (Germany)</i>	<i>Supranational Level (EU)</i>	<i>Multilateral Level (WTO)</i>
1986		Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications.	
1988		Directive 88/301/EEC on competition in the markets in telecommunications terminal equipment.	
1989	Gesetz zur Neustrukturierung des Post- und Fernmeldewesens und der Deutschen Bundespost German Postal Reform I (Implementation of Directive 88/301/EEC)		
1991		Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity.	
1993		Directive 93/68/EEC supplementing Directive 91/263/EEC in respect of satellite earth station equipment	
1996	Telekommunikationsgesetz German Postal Reform III (Implementation of Directives 91/263/EEC and 93/68/EEC)		
1997			Information Technology Agreement (ITA)
2000		Council Regulation (EC) No 2559/2000 of 16 November 2000 (Implementation of EC's list of specified products)	Initiation of an Inventory of non-tariff measures on trade in ITA products

Table 2: Market liberalization, market access and sector specific regulations in telecommunications services

	<i>National level (Germany)</i>	<i>Supranational Level (EU) - Selection</i>	<i>Multilateral Level (WTO)</i>
1990		Commission Directive 90/388/EEC of 28 June 1990 on open competition in the markets for telecommunications services. Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP)	
1991	Amendment of §9 of the German Telecommunications Directive Implementation of Directive 90/387/EEC		
1994		Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector	
1995		Council Directive 95/62/EC of 13 December 1995 on the application of open network provision (ONP) to voice telephony	
1996	German Telecommunication Law (Postal Reform III) Implementation of the EU's regulatory package		
1997		Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licenses in the field of telecommunications services	
1998	Federal Law on the Fourth Protocol of the GATS Agreements		<i>WTO Basic Agreement on Telecommunications Services</i>

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