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# Fallacies of Global Unregulated Markets: The Case of Telecommunications

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# FALLACIES OF GLOBAL UNREGULATED MARKETS: THE CASE OF TELECOMMUNICATIONS[1]

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The last thirty years have been marked by extraordinary transformations having radical impacts on the world economy and the post-war economic order. These transformations have been linked to the process of globalization and its effects on the structures of the world economy, international relations and international organisations. One of the most important changes has been the tremendous favour given to competition as the main organizational principle of social and economic activities in that states have unilaterally and collectively embraced deregulation, privatisation and liberalisation as the main driving force behind economic policies and international cooperation. A new global economic order characterized by a radical move towards "unregulated" markets has emerged and engaged private actors and states in a new global oligopolistic rivalry. This is particularly significant in some sectors, most notably the telecommunications (telecom) sector. This chapter will review the changes that have led to the emergence of global unregulated telecommunications markets, explore the fallacies of a global unregulated telecommunications regime and put into perspective emerging regulation challenges[2].

The first part of this chapter will concentrate on the process that has led the way to a new political economy in the telecom sector, a sector that, perhaps with the financial sector, is one of the best illustrations of the retreat of state, and the extraordinary power shift to private actors and market in the world economy (Strange, 1996). The second part will shed light on five important fallacies of unregulated telecommunications markets, the exposure of which. will reveal : 1) that competition and private decision-making are not efficient, and 2) that in so-called "unregulated global telecom markets", there is no viable retreat of the state. The concluding part of the chapter will question the future of this important and strategic sector of the new economy. It may be concluded from this discussion that "global unregulated telecommunications" have no future and that debates on regulation must be directed in ways that acknowledge the imperfections of markets as well as the shortcomings of competition and private initiatives as the main driving force of global telecommunications.

## THE ROAD TO GLOBAL UNREGULATED TELECOMMUNICATIONS

Competition did not play an important role in Twentieth century telecommunications. Soon after the emergence of telephone services, this sector was considered to be a natural monopoly that should be placed under public control, either directly or indirectly through the regulation of private

[1] This article was published in Libby Assassi, Duncan Wigan, et Kees van der Pijl (eds), *Global Regulation: Managing Crises After the Imperial Turn*, Palgrave Macmillan, 2004.
[2] We define *regulation* as the way in which decision making process is organized to make a system stick together, not only in an orderly manner but also in a relation to its capacity to resolve inherent contradictions challenging its sustainability.

monopolies. Telecommunications were "organised" at the national and international levels, through the auspices of the International Telecommunications Union (ITU). This telecommunications regime worked well for a numbers of years but then came technological changes and economic globalization which exerted enormous stress on these national and international telecommunications regimes.

Transformations affecting the world economy were not limited to the telecommunications sector in that every economic sector was modified by economic globalization. As a result of the emergence of multinational firms (MNFs) and their ability to extract themselves from national "control", national economic policies and international regimes were challenged. What happened next is history: economic policies shifted from Keynesianism to neoliberalism; international regimes, like the one established at Bretton Woods, were abandoned and competition was gradually adopted as the sole principle guiding national and international economic policy orientations. The idea was to free the forces of globalization from any constraints coming in their way. The United States (US) - the main architects and sole detractors of the post-war international economic order - clearly appeared to be the main architects of the new global economic order. This order is still under construction; and is one that reflects the United States's vision of "transnational" liberalism and also generally coincides with the interests of MNFs[3]. The main theoretical challenge in the field of global political economy is to find a way of comprehending the new interface and relationship between markets, states and economic actors (Gilpin, 2001). This is of the utmost importance in understanding the evolution of the global economy and to grasp the forces that shape and influence the creation of new regulatory frameworks that are needed to address the many challenges of globalization. In this respect, the telecom sector is an extremely interesting case revealing the nature, scope and fallacies of the new global political economy.

In the telecom sector, the internationalization strategies of US firms challenged national and international regulatory frameworks and a new global telecom regime emerged, and indeed is still under construction. As we can recall, changes in the telecom sector were first introduced by the US which then embarked on an export strategy of transformations in the sector. Of course, changes in technology certainly contributed to the erosion of the natural monopoly thesis as, in the 1970s, tensions grew between new unregulated emerging telecom markets (mostly data transmission) and regulated telecommunications services provided by private monopolies. Most importantly, a gap developed between the demand from powerful clients and the supply structures constrained by national territories and regulation. Large business users became the main advocates of competition so as to benefit from better rates as a result of the elimination of subsidized rates to ordinary costumers and, later, to ensure that the merger of telecom, media and computer sectors – known as the convergence process - proceeded outside regulatory frameworks. Tensions between regulated and

[3] "Transnational" liberalism requires the construction a global economic order adapted to the process of deep integration characterised by the emergence of transnational corporative networks. Changes in the world economy require a deepening of integration between firms as well as between States. Rules of the game at the international level can longer be limited to the elimination of barriers between national economies but also deal with traditionally "national" issues that affect market access, investment and competition, and more generally constraints to the globalisation process.

unregulated services put enormous stress on regulatory frameworks and it soon became apparent that the Federal Communications Commission was unable to resolve them. Regulation either had to be extended to new services, or competition had to be introduced into regulated sectors since middle-road solutions were unsustainable. The crucial moment for deregulation was when the Justice Department stepped in and broke up the AT&T/Bell system[4]. From that time, competition would be promoted as the sole organizing principle of the telecom sector.

As a result of globalisation, growing internationalisation of US firms and strategic US policies, changes in the US were to have profound consequences at the international level. The US deployed a strategy aimed at exploiting its lead by introducing competition in the telecom sector as a first-mover advantage to foster the competitiveness of the US economy and firms on a global scale. At first, the issue mostly related to the right of US firms to interconnect with foreign operators, which were still mostly national monopolies, so as to secure access to foreign markets for US operators and equipment providers. The international telecommunications regime was, at the time, designed to interconnect national monopolies rather than to interconnect multiple operators operating in competitive market environments. The second objective was to ensure that "the same competitive incentives that have developed domestically also develop for investment in facilities between the United States and other countries, and within other countries themselves" (Council of Economic Advisors, 1999).

Resistance to change from states and enterprises has been very important but a general consensus engaging private and public actors has gradually led to the demise of nationally regulated monopolistic structures networked through international agreements at the ITU. In the 1990s, US strategy achieved important results in that states were increasingly tempted to introduce competition, and were challenged by the bypassing of national monopolistic networks thus benefiting US firms. The growth and leadership of the US "new economy" have also certainly constituted a powerful and attractive force contributing to the emergence of a general consensus on competition. The impressive growth of the US Information and Communications Technologies (ICT) sectors throughout the 1990s and the dominance of US firms on ICT global markets, have convinced others to proceed to undertake changes which they generally resisted in the 1980s. It is within the context of the rise of the Internet (which triggered a wave of speculative strategies) that enterprises and states changed their attitudes. It is not clear whether the new economy emerged out of neo-liberal policy packages, but the idea that actually became dominant was (1) competition has to be allowed for dynamic growth to occur in a sector no longer considered to be a "natural monopoly", and ( 2) regulation is an obstacle to innovation (Oxman, 1999). Another very important factor contributing to deregulation was that actors recognized that the juxtaposition of regulated monopolistic structures and new competitive markets and operators was not sustainable internationally. Regulation was a burden on local monopolies facing competition from foreign operators who were targeting new lucrative business opportunities and benefiting from fewer regulatory constraints.

[4] The dismantling of AT&T freed the former monopoly and allowed it to compete on new lucrative emerging markets.

In Canada, where resistance to change was significant in the late 1970s and early 1980s, three main reasons explain the decision to favour competition in the late 1980s and 1990s: 1) the importance of US MNFs located in Canada, 2) the increasing importance of bypassing of Canadian networks, and 3) the change in firms and the government's strategies. In the context of emerging global telecom markets, Canadian telecommunications policy shifted towards a new strategic industrial perspective and away from more national, cultural and social considerations[5]. Changes were also supported by commercial agreements in that not only did the North American Free Trade Agreement (NAFTA) provide for a new international -North American- telecommunications governance model, but there was also a growing consensus leading to the General Agreement on Trade of Services (GATS) and the Basic Telecommunications Agreement (BTA) at the multilateral level. These agreements took Canada and others further along the road to change: states were engaged themselves to open telecom markets and to respect the principle of national treatment which meant the adoption of new telecommunications policies based on competition and a reworking of regulatory frameworks[6].

A regime based on nationally and internationally monopolistic regulated markets was replaced by a global regime of competitive and market-driven telecommunications. Notwithstanding important and significant differences in national processes, the US model of "unregulated" telecom markets has gained global acceptance. Such regulatory frameworks have favoured a shift from public to private decision-making or governance, since it has been taken for granted that this is the way to innovative global networks and services. Geographical and sector frontiers which have existed for most of the last century are being eliminated in favour of the development of a new economy carrying the promises of a new society – and even a global information society[7]. In this respect, deregulation, liberalisation and privatisation, at the national and international levels, have been at the core of the construction of a new telecom regime.

Telecom firms now compete amongst themselves in markets no longer fragmented by national economic space and are increasingly brought into direct competition with enterprises in the media and information sectors of the new economy. If Schumpeter were alive today, he would probably consider the evolution of the telecom sector as illustrative of a creative destruction process profoundly modifying a sector that had been stuck in heavily regulated monopolistic structures until the 1980s.

[5] Canada first took the decision not to regulate new services and to allow interconnection of new operators, a decision that took a North American dimension with the free trade agreement with the United States in the last part of the 1980s. In the early 1990s, Canada decided to allow competition in the long-distance market, a decision highly conditioned by the bypassing of Telecom Canada's networks controlled by Canadian monopolies. The Canadian government approved of competition and decided to allow industrial convergence of ICT markets. National monopolies had changed their attitudes towards competition and were seeking increased manoeuvring space for adjustment to a new market environment in North America. Old responsibilities needed to be eliminated for new business models to emerge and the Canadian government responded by revamping the telecom regulatory framework.

[6] While States can maintain monopolies and public enterprises, there is a clear bias towards market-driven telecommunications regimes. States must see these enterprises, including monopolies and public enterprises, do not abuse their dominant position through regulatory measures.

[7] The new economy concept generally refers to changes occurring in the mid-90s and resulting from the effects of globalization, increased international competition and technological innovation. Yet, important debates surround the new economy and illustrate the difficulties of capturing the present economic evolution of capitalism (Gadrey, 2000; Castells, 1996; Schiller 1999).

Industrial reorganisation has occurred on a grand scale and firms now compete globally in a new "unregulated" industrial space.

In the next section of this chapter, it will be argued that competition in the telecom sector has revealed perhaps more dramatically than any other sector (except maybe finance) the fallacies and shortcomings of unregulated markets. As deregulation of telecommunications unfolded and global unregulated telecom markets developed, (re-) regulation appeared to be no less relevant.

## FALLACIES OF GLOBAL UNREGULATED TELECOMMUNICATIONS MARKETS

In a perfect world of global unregulated markets, competition would be workable, sustainable and quite justified, both in terms of private and public interests. Markets are never perfect and in the new economy, market failures are the norm rather than the exception (DeLong and M. Froomkin, 1997; Shapiro and Varian, 1999). In stating that global "unregulated" telecommunications markets do not really exist exploring the five main fallacies of global telecom markets help us to recognize the true nature of the new political economy of telecom markets.

### *1. From publicly regulated monopolies to "unregulated" private oligopolies*

One expects competition to be characterized by numerous operators competing for shares of a market, each of them being incapable of influencing markets. Far from indicating a move to more decentralized decision-making, competition in global telecom markets has, rather, meant a greater centralization of power in the hands of a few enterprises.

Global telecom markets are still very more characterized by concentration. As we look at the top 20 telecom operators (Table 1), these telecom firms who controls the global telecom markets are not new. Most of them are old monopolies which have kept their grip of the telecom market. Verizon, for example, a new name in the market, is born out of the merger of Bell Atlantic and GTE. We also find SBC, which enjoyed a local monopoly in the US and has acquired with Ameritech; AT&T and AT&T Wireless; France Telecom; BCE; British Telecom… These firms must now, indeed, operate in competitive environment but it is indeed a type of competition amongst giants well established in their local markets and well as international markets. Changes occurred in the telecom market but consolidation has made competition look more like a paradox than a reality.

| **Table 1 : Top 20 Telecom Operators**<br>by telecom revenue in 2002<br>(in million of USD) | | | |
|---|---|---|---|
| | *Operator* | *Country* | *Revenue* |
| 1 | NTT | Japan | 87 114 |
| 2 | Verizon | USA | 67 625 |
| 3 | Deutsche Telekom | Germany | 50 528 |
| 4 | Vodafone | United Kingdom | 45 601 |
| 5 | France Telecom | France | 43 855 |
| 6 | SBC | USA | 43 138 |
| 7 | AT&T | USA | 37 827 |
| 8 | Telecom Italia | Italy | 28 610 |
| 9 | British Telecom | United Kingdom | 28 114 |
| 10 | Telefónica | Spain | 26 739 |
| 11 | Sprint | USA | 26 634 |
| 12 | BellSouth | USA | 22 440 |
| 13 | KDDI | Japan | 22 211 |
| 14 | China Mobile | China | 18 232 |
| 15 | China Telecom | China | 16 467 |
| 16 | AT&T Wireless | USA | 15 631 |
| 17 | Qwest | USA | 15 487 |
| 18 | Japan Telecom | Japan | 14 322 |
| 19 | BCE | Canada | 12 597 |
| 20 | KPN | Netherlands | 12 031 |
| *Source: IDATE* | | | |

In the new telecommunications world, national and cross-border mergers and acquisitions (M&A) reached extraordinary levels especially during the second part of the 1990s. In the US, as a result of a significant wave of M&A, only a few of the seven Baby Bells that emerged out of the 1984 dismantling of AT&T, remain. AT&T also multiplied acquisitions, notably cable companies such as TCI and MediaOne. Old monopolies kept their grip on the market and have actually increased their reach geographically and along market segments. New entrants, having to face old monopolies which enjoyed dominant positions, also adopted aggressive growth strategies of mergers and acquisitions. The best-known case is WorldCom which in the 1990s made more than 70 acquisitions, one of the most important being the acquisition of MCI. WorldCom became one of the most important telecommunications service providers before it collapsed in a sea of accounting scandals. However, the difference is that new entrants now enjoy incredible freedom from public regulation. The story abroad is no different: enterprises struggled to establish alliances and multiplied M&A to build new global and innovative networks so that a few oligopolistic enterprises from developed countries, mostly US firms, dominated and competed for market share.

In the face of the paradox of increased concentration in unregulated competitive markets, governments and regulatory authorities did not intervene[8]. Antitrust has therefore not stood in the way of concentration and, indeed, competition has not been the real issue. The real issues were innovation and competitiveness. It has generally been believed that grand manoeuvring would allow firms to

[8] Only few M&A were blocked. One exception was the WorldCom-Sprint deal blocked by the US as well as by the EU.

provide new telecommunications global services. The development of interactive broadband networks, technological innovation through industrial convergence (voice, video, data), and globally competitive networking and services were promised by the telecommunications operators who expected M&A and strategic alliances to pay off. In a sense, concentrated ownership is to new broadband networks what dormant anti-trust laws were to the early telecoms history (Winseck, 1997). Concentration, rather than competition *per se*, was becoming the means to greater efficiency and innovation.

In a world of technological change and globalisation, competition was also believed to change in nature. The emergence of global telecom markets characterized by rapid technological changes was perceived to offer sufficient competitive pressures on national oligopolies and near-monopolies. Concentration in national markets could indeed be justified since it could help create globally competitive telecom operators, thereby increasing competition in global markets. New ways of promoting competition gained in importance as institutional frameworks were used to foster technological and regulatory changes having pro-competitive effects. Pro-active measures such as deregulation and liberalisation of ICT markets were considered to be substitutes, or complements to antitrust measures that might have negative impacts on competitiveness and economic progress.

Concentration in global and national telecom markets has considerable implications in that not only - as we will see - does it brings new regulatory challenges but it also exposes an important fallacy of global unregulated telecom: competition was introduced and public regulation reduced in many respects, but telecom markets are controlled and managed by a few powerful corporate interests rather than by the invisible hand of the market. In a sense deregulation has meant a shift form public to private regulation. The benefits of "unregulated" markets must thus be evaluated by comparing the relative efficiency of centralized private governance with that of public regulation. A transfer of decision-making power into few private hands to reach objectives relating to increased innovation, efficiency and competitiveness, would be justified if private control and decision-making models were superior to public control and regulation. We will come back to this contention later on, when we address the fifth fallacy.

*2. From the retreat of States to new national strategies*

The second fallacy of unregulated telecommunications markets is the *so-called* retreat of the state. The retreat of state is real: it takes form through the adoption of neo-liberal policies, the signing of commercial agreements liberalizing the sector and the effects of globalisation. It is no surprise that Strange should consider telecommunications as an "extreme example of one process by which authority has shifted massively away from governments of States to the corporate management of firms" (Strange, 1996, p. 100). States disengage from old types of regulation and interventionism, with protectionism no longer being seen as appropriate. Even measures aimed at protecting national culture are associated with - most notably by the US - protectionist measures which must be eliminated. Indeed they are increasingly eager to reduce regulatory constraints and obstacles to globalization processes, sometimes helping national champions and at other times trying to attract foreign investors - often trying to do both at the same time.

States retreat to give way to MNFs, but as they do so, they reinvent national economic strategies[9]. States have not abandoned all forms of interventionism in that if the role of the state was radically modified by globalization, it is of no less importance than before. One of the most significant phenomenon to recognize is that, in the context of globalisation, states are engaged in a race of competitiveness (Krugman, 1994; Cerny, 1997). Some authors even go as far as to talk of a new form of mercantilism , which might be called "competitivism" (Deblock, 2003; Levi-Faur, 1998). New strategic policies aimed at increasing the competitiveness of firms and territories have emerged. These are directed at capturing the benefits of globalization and have a common to be based on policies and governance approaches that rely on the private sector, competition and market forces. The introduction of competition, through privatisation, deregulation and liberalisation, plays an important role in new economic policies designed to create the conditions conducive to the development of efficient, innovative and globally competitive industries and firms. It would be impossible, in the context of this chapter, to enumerate the many ways states can intervene and affect both the structures and the rules of the game of global "unregulated markets"[10] but the idea is generally to exploit the interface between competitive advantages of firms and nations (Porter, 1990; Dunning, 1990). Governments have become aware of the effects of their policies on corporate strategy in the area of investment, as well as the numerous interactions between corporate performance on international markets and the environment within which corporations operate. First, it is recognized that a firm's competitiveness depends not only on its resources and the dynamic quality of its own organization, but also on external economies drawn from its environment. Second, it is emphasized that national economic growth and competitiveness increasingly depend on a nation's insertion in the global economy.

In the new global telecom regime, states are making an impressive return combining the myth of competition with strategic considerations and interests. ICT sectors are strategically important and "(…) the key features of the new international telecommunications regime are competition among firms and countries in the area of international telecommunications services" (Drahos and Joseph, 1995, p.620). At first, international rivalry related to the opposition between old and new, with many countries resisting adoption of competition and opening markets so as to protect their industries. Subsequently, the timing and regulation of the transition to competition were important strategic decisions which affected the actual capacity of domestic industry to face new competition. Rivalry has now shifted to the actual definition of standards to which principles guiding the emerging global telecom and media policy regime are linked, and to how they affect the conduct of states and firms. What are the rules and regulatory principles governing foreign access to national markets? Should

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[9] For a discussion of the interaction between governments and MNF, see A. M. Rugman and A. Verbeke, « Multinational Enterprises and Public Policy » Journal of International Business Studies, 29, 1, First Quarter (1998), pp. 115-136.

[10] Examples are numerous: strategic partnerships with private sector, export promotion strategies, support to strategic alliances, subsidies, fiscal measures, etc… States also sign commercial agreements to secure international markets for national enterprises, choose to open doors more widely to foreign capital in order to attract new money, new technologies and to facilitate the global networking of the national economy and firms.

investment restrictions be allowed in the telecom markets? Can states elaborate and pursue innovation strategies and subsidy economic activities? These are still grey areas that need to gain a precise meaning internationally. Essentially, the meaning of competition in oligopolistic markets is rather vague and the challenge is to go beyond deregulation to ensure that competition works and is not constrained by oligopolistic behaviours of economic actors. This means defining the rules which discipline states and firms so as to have them play the competitive game. It is increasingly clear that economic actors in telecom markets, especially the US and US firms, do want to discipline others while having the minimum constraints placed on them.

Let us make no mistake, states do cooperate but they are engaged in oligopolistic competition which, like firms, implies a hybrid logic of rivalry and cooperation. For one thing, they recognize the importance of creating an *interoperable* policy environment for the development of *interoperable* networks (Abramson and Raboy, 1999). They also recognize that if they want access to foreign markets, they must allow foreign entities into their market. Strategic alliances linking national operators to global networks are also important and imply cooperative efforts but even so, if telecommunications are increasingly globalized, there exists no global coherent global institutional framework. States are re-examining their culture of governance and are favouring the emergence of rules of the game adapted to global competitive telecommunications. Cooperation to create a coherent and truly global telecommunications regime founded on competition and market-based solutions is important but, in the course of defining new rules of the game, strategic interests appear to be more important than the clear and well defined engagement of states toward competition.

It should be considered as a process that leads to a *race to the bottom* or to a *race to the top.* States are competing to create *world class* economic policies and economic environments, *world class* regulatory frameworks, etc… but there is no common understanding of what types of policies and regulatory frameworks are required and acceptable internationally. Since there is no political will to impose a “formally” organized global telecom regime, the actual tendency is to promote competition between institutions to discover *best practices* and bring about internationally interoperable institutional forms. Obviously one of the problems with this is that this gives a clear advantage to more powerful states and to MNFs in the shaping of the new global telecom regime. States and firms do not have the same structural power to shape oligopolistic rivalry and define new rules of the game since competition in the realm of defining new rules of the game and new practices clearly favours industrialised countries, mainly the US and the EU, and MNF. It can therefore accentuate asymmetries in global telecom markets. Another risk, of course, is the danger that rivalry could predominate and lead to commercial wars mostly on the transatlantic front. With the present US administration, such a risk has to be taken seriously.

### *3. Deregulation or Re-regulation?*

The third fallacy concerns deregulation. Paradoxically since competition has made its way in the sector, regulatory authorities have increased around the world from about 12 to over 90. Regulation is still needed and is surely not disappearing: as Intven and al notes, “ without it, viable competition is not likely to emerge (…) regulators must often remove barriers to market entry” (Intven and al, 2001, p. ....) and indeed, many authors prefer to use the term re-regulation to that of deregulation (Levi-Faur, 1999). Regulation has, however, changed radically as it is oriented towards the transition and governance of global competitive telecom markets.

The task of regulatory authorities involves new and complex dimensions relating to the transition towards competitive telecom markets and to new responsibilities written in international commercial agreements. International trade agreements now engage regulatory agencies to counter and sanction anticompetitive conducts of enterprises controlling essential installations, and to adopt independent, non-discriminatory and transparent regulation. Hence regulatory authorities, newly created if need be, must often adopt asymmetrical regulation to favour new foreign entry facing national monopolies or dominant players. The idea is, of course, to level the playing field and to make market access a significant possibility since the link between competition and market access is far from clear and automatic.

Foreign firms and states as well as international organizations are looking closely at the ways in which states take measures to make competition work. If regulation is still important at the national level to ensure, amongst others things, that new players are not *de facto* incapable of gaining entry because of market barriers erected by dominant players, it has now taken on an international scope[11]. Incidentally, for the first time in history the US took a dispute with Mexico relating to barriers to competition in the telecom market , to the WTO. These issues are progressively going to be an area of increasing “regulatory” importance both at the national and international levels in that they are going to be the object of intense negotiations pertaining to the nature and scope of regulation in competitive global telecom markets[12]. We recently notice, in the new bilateral agreements signed by the US with Singapore and Chile, that dispositions concerning regulatory and market surveillance are becoming more significant and biased against countries with less “competitive” telecom environment. This, of course, adds to the stress of national regulatory authorities and implies very challenging issues concerning more traditional regulatory objectives (universal services, content regulation, etc.).

*4. Competition involves complex antitrust surveillance, at national and international levels.*

The fourth fallacy relates to competition issues. Open markets do not mean competition is effective and, indeed, antitrust issues are bound to monopolize future attention. Competition authorities are already deeply involved in very complex competition issues in the telecommunications markets and in other ICT sectors and these issues now have an important international dimension.

[11] In North America, Canada and Mexico were, and continue to be, under close scrutiny in terms of regulatory barriers and discrimination. Regulation in both these countries has to increasingly take into consideration the complaints of American firms and US surveillance efforts.

[12] The Trade Act of 2002 includes clear objectives relating to the telecommunications sector. Trade agreements signed by the US with Chile and Singapore incorporate new and more precise obligations in terms of regulatory frameworks.

Competition is gaining importance in international forums but the emergence of global antitrust is clearly unrealistic right now. Nobody, be it public or private actors (except perhaps in Europe), are interested in supranational law and authorities in this domain. The fact is that no consensus exists on the principles to be defended by competition laws. There is even less consensus on the ways in which deepening international cooperation can be achieved, except from the as yet very minimalist use of voluntary intergovernmental cooperation. Nevertheless, important debates on competition are capturing international attention.

There are, first, market access issues. Markets are more "open" but corporations face yet new obstacles. Trade negotiations increasingly struggle with anticompetitive practices affecting foreign entry and commercial agreements, notably at the WTO, which is quite inadequate to resolve competition issues. A number of WTO agreements have incorporated some competition safeguards, for example, the Trade-Related Intellectual Property Agreement and the Basic Telecommunications Agreement. Others, like the EU, recognize the need to go further and although the Cancun meeting placed a big question mark on the prospects of reaching an agreement, efforts are under way to create an all-encompassing agreement on competition which would define basic principles and procedures to be accepted by WTO members[13].

There are also increasing efforts to make national antitrust approaches and competition policies converge internationally so as to foster the development of an international antitrust adapted to the challenges of globalisation. Future international antitrust arrangements will probably not go any further than engaging states to apply competition policies and adopt a new *Competition Culture* being promoted through to newly created *International Competition Network,* a network launched by the US in 2001. The result of a global competition culture may be that the rules of the most powerful States will be imposed on weaker states and that firms, most notably the largest MNFs, will enjoy the benefits of the antitrust vacuum at the international level. Moreover, it seems clear that new antitrust developments are oriented to providing even greater market access to MNFs and to reduce the transaction costs they face by having to comply with different national laws[14].

Both types of initiatives fall short of providing a global antitrust framework which directly addresses anticompetitive practices and concentration of global telecom markets. Firms will not be the first targets of international antitrust as it is developing at the moment. Through commercial or antitrust agreements, states are going to be targeted more than enterprises. States must increasingly take measures to guarantee effective competition of their national markets and respect new international commitments. On the other hand, however, states remain free to respect and apply their own policies as most new disciplines relating to competition will probably not be obligatory. Most states do not always show self-discipline and tend to exploit the rather vague and controversial meaning of competition, especially in the context of the new economy. The dilemma is real since it is

[13] We have addressed these developments elsewhere, see Rioux (2002a).
[14] We have addressed this in «Culture de concurrence: les limites de l'antitrust international», Charles-Albert Michalet (ed.), *Questions sur l'économie politique de la mondialisation*, Karthala, Paris, 2004.

imperative, in the context of globalization, for states to develop new means of encouraging the competitiveness of national firms which does not always mean strong competition policies.

Looking at trends in national competition policies in the last 20 years, we find increasing importance given over to efficiency and international competitiveness as states try to promote the development of competitive industries in a global marketplace. Yet competition policies are promoted as one of the key determinants of competitiveness, particularly in developing countries, where competition laws do not yet exist or where they have been adopted only recently. But competition policies can be an important strategic instrument to be used to force competition on others, while justifying the "anticompetitive" practices of national champions, especially when the effects of those practices are felt abroad. It is not surprising to see that states, most importantly the powerful ones, are increasingly claiming the right to examine and sanction anticompetitive foreign practices, both private and public. In this context, it is also, very understandable to see competition becoming an important issue internationally and we can expect competition will continue to challenge global telecom regulation.

Global antitrust surely requires more than a mere global competition culture relying on national antitrust law enforcement and voluntary international cooperation, but neither States nor firms are truly interested in seeing precise and obligatory supranational rules of the game which could limit the manoeuvring of space and autonomy (Rioux, 2003 and 2002b).

*5. Inefficient markets and regulatory challenges emerging out of the crisis in the ICT sectors.*

The legitimacy of global "unregulated" markets depends of the efficiency of markets and private decision-making processes. Concentration was tolerated because of the benefits it could bring in terms of efficiency and innovation, and in adopting new business models telecommunications firms invested massively and multiplied M&A. If the public was losing out in this process, in the long term, it would benefit from innovative and quality networks and services. Hype about the new economy, favourable financial conditions, investors' eagerness to reap the strong returns together with some very "creative" accounting practices, supported telecommunications operators in risk-taking strategies. The new economy promised infinite growth and few wanted to wake up from this dream. Alan Greenspan talked of the irrational exuberance of markets back in 1996 but nobody wanted to do anything about it until, that is, the new economy suddenly came to halt at the end of the 1990s.

Promises of innovation, efficiency and competitiveness soon became motives of embarrassment. Oligopolistic competition has led to overcapacity and duplicated networks in high-end urban centres in that demand was not sufficient and the sector clearly went through a wave of over investment. Little is left of the grand manoeuvres of the 1990s: most enterprises are retreating to their home base and back to "traditional" activities. Globalisation and innovation are nowhere in sight. Telecommunications firms are now staggering in emergency rooms of the world economy (Schiller, 2003, p. 66).

One can truly question the efficiency of so-called unregulated telecom markets. What competition produced was, in a sense, the opposite of what it was supposed to. Old monopolies are in a good position while others are struggling to survive. Moreover the crisis brought up some very important and disturbing ethical questions which challenge the whole capitalist system. The WorldCom affair is well known: it is the biggest bankruptcy and the biggest financial scandal of the US history. There is a sense that corporate strategies and public policies have to change radically. The crisis troubling the global telecom market has called for another wave of regulatory changes and states are confronted with: 1) the revival of intervention to pave the road to growth in the ICT sectors, 2) the need to preserve some kind of competition in a sector yet again characterised by consolidation, and 3) the challenge to realize the national, social and cultural objectives of the new economy.

Some observers suggest that competition is the problem in that too much can indeed kill competition and lead to monopolistic structures. However, what is actually coming out of the painful experience is a tendency to do just more of the same rather than to question market forces, private decision-making and corporate governance. A lot can be said about the debates that are taking place in the US but to make a long story short, the solution is to be found in more *Deregulation*. As M. Powell, the head of the FCC, stated: "...neither the crisis of accounting scandals and corporate malfeasance nor the related but distinct economic downturn suggest it is appropriate to change our nation's fundamental public policy of fostering competition in telecommunications and "reliance where possible on competitive market forces rather than regulation is a key part of the solution to our current troubles" (Powell, 2003).

What kind of regulatory approach should be adopted when reliance on market forces is not possible? Answers appear in the *Economic Report of the President* of 2003 where a clear distinction is made between two basic approaches: *command and control regulation* which typically uses the coercive power of the government to intervene and *performance- or incentives- based regulation* which, in contrast, harnesses market forces to achieve the same goals. The current US administration clearly prefers the second which is considered more appropriate in a dynamic economy. Regulation must rely on markets and, if not, it must have the least impact upon them.

With regard to corporate governance problems, the US approach has been to target "bad apples" and to provide incentives for good corporate governance rather than to consider the systemic determinants of the moral crisis of American capitalism. Far from considering questioning the effects of oligopolistic competition on corporate practices, it appears that "competition will continue to shape the evolution of U.S. corporate governance" (*Economic Report of the President* of 2003, p. 108). The main instrument of the corporate governance reform package put in place by the Bush administration, the Sarbanes-Oxley Act adopted in 2002, targets the "bad apples" undermining American and global capitalism.

Corporate governance failures are probably the most troubling problem of global telecom markets since they reveal that private initiative and competition are not leading to self-regulating and efficient markets. Solutions may require more that the minimalist approach adopted so far but, again, even if anyone desires regulation, there are few who would accept the burden of more regulation. In any case, regulatory measures are going to be needed to face the instability and systemic risks within the telecom markets.

## THE FUTURE OF GLOBAL UNREGULATED TELECOMMUNICATIONS MARKETS

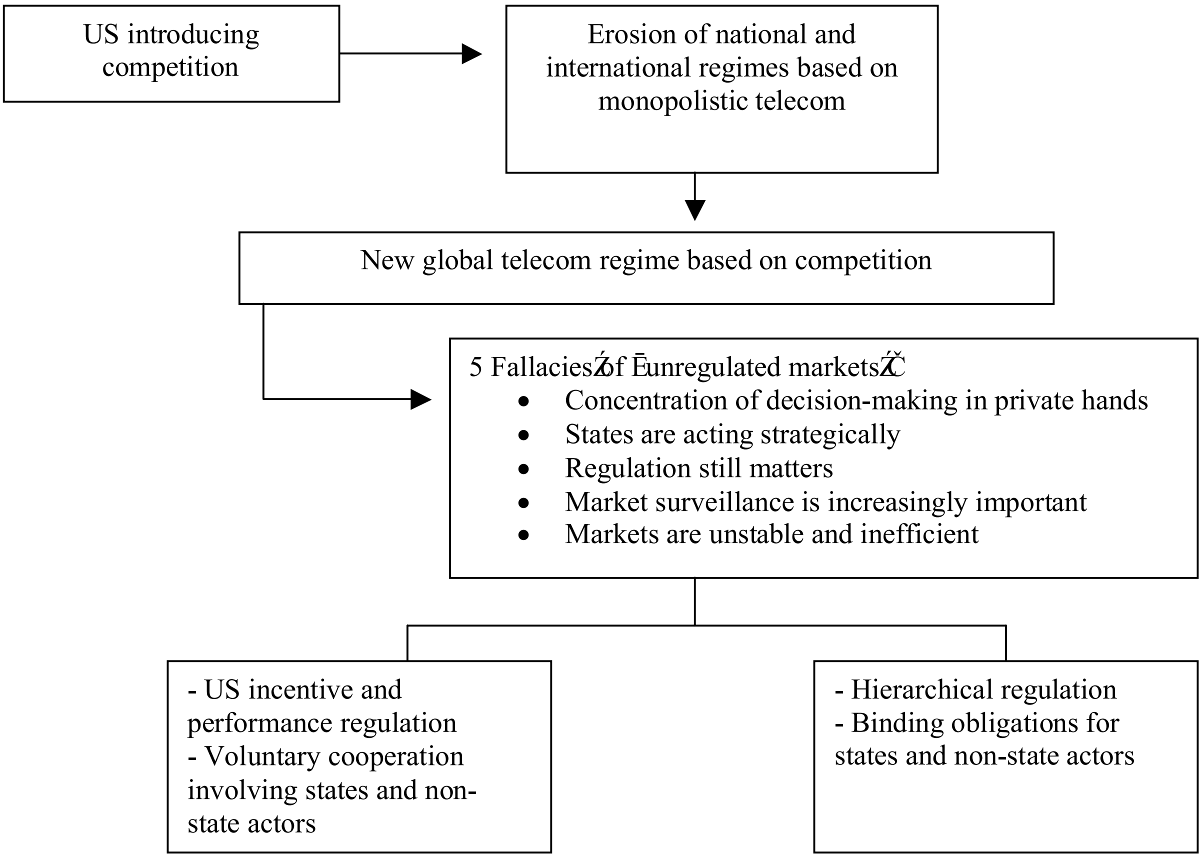
If globally regulated telecom markets are probably utopian, so are global unregulated markets. The fallacies of global unregulated markets are numerous since there is no end of regulation in the telecom sector. So-called "unregulated" telecom markets have led to the concentration of decision-making power in a few private hands, to the increased strategic manoeuvring of states competing amongst each other, an ever more complex regulatory task for telecommunications and antitrust regulatory agencies and to a situation where regulation is called upon to face the tremendous turmoil of the last couple of years in ICT sectors. "Unregulated" global telecom markets have neither demonstrated their efficiency nor their capacity to unleash the growth of global multimedia networks and services.

We are undoubtedly at a crossroads and must consider the balance sheet of competition as the prime organizing principle of telecom markets. What future can we predict? A return to nationally regulated monopolistic structures is clearly not the answer - the world has changed dramatically and we cannot turn back the clock. Globalization is here to stay, with the inevitable rise of powerful private agents, the emergence of new international rivalry and the multiplying of governance challenges.

Two basic approaches to the problem can be considered, with each being based upon a different tradition of international cooperation and different conception of regulation (see Graph 1). The first stresses the need for global – that is supranational - regulatory frameworks which rely on hierarchical and holistic regulation, while the other, being more confident in market individualism and private institutions, puts the emphasis on the autonomy of actors and voluntary cooperation. The dominant model is the second one. States, most notably the US, do not want any constraints on national policy and firms. Global regulation has to rely on a market-driven type of regulation, private self-regulation, national regulation and intergovernmental cooperation. Emphasis is placed on: 1) self-discipline of private actors, 2) on their respect of existing transparent and non-discriminatory national laws, and 3) on voluntary international cooperation. In a sense, competition, the main organizational principle of social and economic activities, is extended to markets, individuals and institutions. At the very most, national and international institutions might be called upon to arbitrate in disputes, to eliminate abuses of market power and to manage systemic risks. This approach relies heavily on the idea of a « natural » order that ignores market imperfections as well as inequalities and rivalry between states. It favours the concentration of market power in a few private hands and also tends to favour the rise of "competitivism" which put states in competition with one another.

The other approach, closer to the European model, seeks to develop common institutions to discipline states and to have them take measures in terms of common good and welfare. It can, if the political will exists, allow the emergence of a framework that could oblige firms and states to be more responsible towards the public interest. However, states need to forego part of their sovereignty and it is a slow-paced and laborious project. It can also prove to be less efficient as markets evolve rapidly and also to restrain innovation.

**Graph 1 : New global telecom regime and regulatory challenges**




The pragmatic solution probably falls in between these two projects. It could avoid forms of idealism that have no historical basis and potential for success: these include allowing so-called “unregulated markets”, “self-regulation” or utopian projects of global institutions to develop. Two facts can help us look for pragmatic solutions and new policy mix: first, the liberal economic system cannot rely on competition exclusively, and second, the international system does not only function on the basis of power. In looking for answers, we must look for ways first to reinvent the link between private and public decision-making processes and interests, and secondly, to build institutional frameworks that go beyond national and intergovernmental governance. Solutions must also be sought though processes which go beyond national and private economic interests to take into account the social dimensions of building an information society. Without such a project, it is to be expected that monopolistic and mercantile strategies will develop freely with enormous costs to societies.

Despite numerous and significant imperfections, the myths surrounding competitive "unregulated" markets still remain at the core of a new global telecom regime which tend to favour an uneven and unstable development of telecom networks and services. What we have tried to show in this chapter is that, in developing global unregulated markets, we do not follow the road towards less politics, less regulation, and less concentration of economic power. This alone obliges us to recognize that visible hands are actually shaping global telecommunications regimes and that neither states nor firms are actually behaving in ways that might benefit the general interest. New regulatory frameworks are needed and to elaborate them, two questions have to be kept in mind: 1) what kind of regulation is required and for what purpose and, 2) at what level (multilateral, regional, bilateral) must we develop these frameworks and what type of interactions must there be between the different levels?

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