

Answer to All, Answer to None?
Accountability in Pricing Public
Services after Liberalization

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Introduction

In the post-liberalized state, accountability has become very complex. A government agency is required to answer to many actors, and achieve many goals. In a world of limited resources, it can probably not address the concerns of all the actors to the same degree; yet, if it is to remain legitimate, it cannot really ignore any of them. How does it deal with this complex situation? The paper will analyse one example of this tension, the issue of network pricing in electricity and telecommunications in the UK and France, drawing on empirical research, and will address the issue of accountability; to whom are the agencies in question really accountable? Whom do they converse with? Who can effectively put pressure on them? How do they make their decisions while staying accountable to all the actors that demand it from them?

The paper concludes that in this issue at least the agencies manage their accountability pressures by **using an economic dialogue to limit effective participation to one important set of actors** (in a similar way as analyzed by Morgan (2003), i.e. industry actors; by **providing large amounts of information** and thus declaring to the world that they have nothing to hide; and by **making their decisions by closing in**, justifying decisions by insisting that they are adhering to norms of responsibility and duty, rather than responsiveness to wishes of external actors.

One of the important tensions the agencies deal with is the tension between their independence and their accountability. The combination of strategies described here is their answer in the context of economic issues.

1. What is Accountability?

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A lot of ink has been spilt over the meaning of the term “accountability”. There have been debates about whether it should have a broad or a narrow meaning (Mulgan, 2000; Uhr, 1993), about whether it should include ‘internal’ as well as ‘external’ accountability (Friedrich, 1940 and Finer, 1941; deLeon, 2003), about its relationship to responsiveness and to responsibility (Peters, 2001; Gregory, 2003). Scholars distinguish between different kinds of accountability, legal, administrative and political, hierarchical and communitarian, etc’ (Day and Klein, 1987; Harlow, 2002; Kearns, 2003; deLeon, 2003).

Different authors stress different aspects of accountability. Behn (2001) sees it as meaning ‘punishment’, in the broad sense of the word, i.e., both actual punishment – criminal sanctions, loss of one’s job – and negative publicity or comments. Friedrich (1940), Gregory (2003) and DeLeon (2003), as well as many others, stressed the importance of internalized norms to complement the external mechanisms of accountability and control the actions of the accountability holdee (in Behn’s term).

Control is the key word. Accountability is generally used as part of a discussion of control. In his discussion of the core meaning of accountability, Mulgan (2000; 555) saw it as having the following features: ‘it is *external*, in that the account is given to some other person or body outside the person or body being held accountable; it involves *social interaction and exchange*, in that one side, that calling for the account, seeks answers and rectifications while the other side, that being held accountable, responds and accepts sanctions; it implies *rights of authority*, in that those calling for an account are asserting rights of superior authority over those who are accountable, including the right to demand answers and to impose sanctions’ (emphasis in the original text).

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In this paper, I will use “accountability” in a sense that fits this concept of core accountability, as well as the definition used by Day and Klein (1987), Graham (2000) and the British House of Lords in its report on independent regulators (2004).

Accountability means the responsibility of one party, the accountability holdee, to justify its actions to another, the accountability holder, according to a preexisting set of rules, standards or expectations (Day and Klein, 1987). This means that the accountability holdee has to provide information about its actions², that is to say, the accountability holdee is obligated to report what it is doing. It also implies that the accountability holdee is bound to comply with preexisting standards, rules or expectations, or explain why it is not complying. For example, in my context, a communications company may ask the regulator to set prices at a certain level. The independent regulator of telecommunications may decide not to comply with the request, explaining that it does not fit its mandate under the law; but it will have to explain its actions, and provide information on how it arrived at its decision. So, while the company is accountable to the regulator for complying with those decisions, the regulator is accountable towards the company for the reasons behind those decisions. Often, but not always, there will also be a possibility to challenge that decision through an external actor or through some kind of sanction.

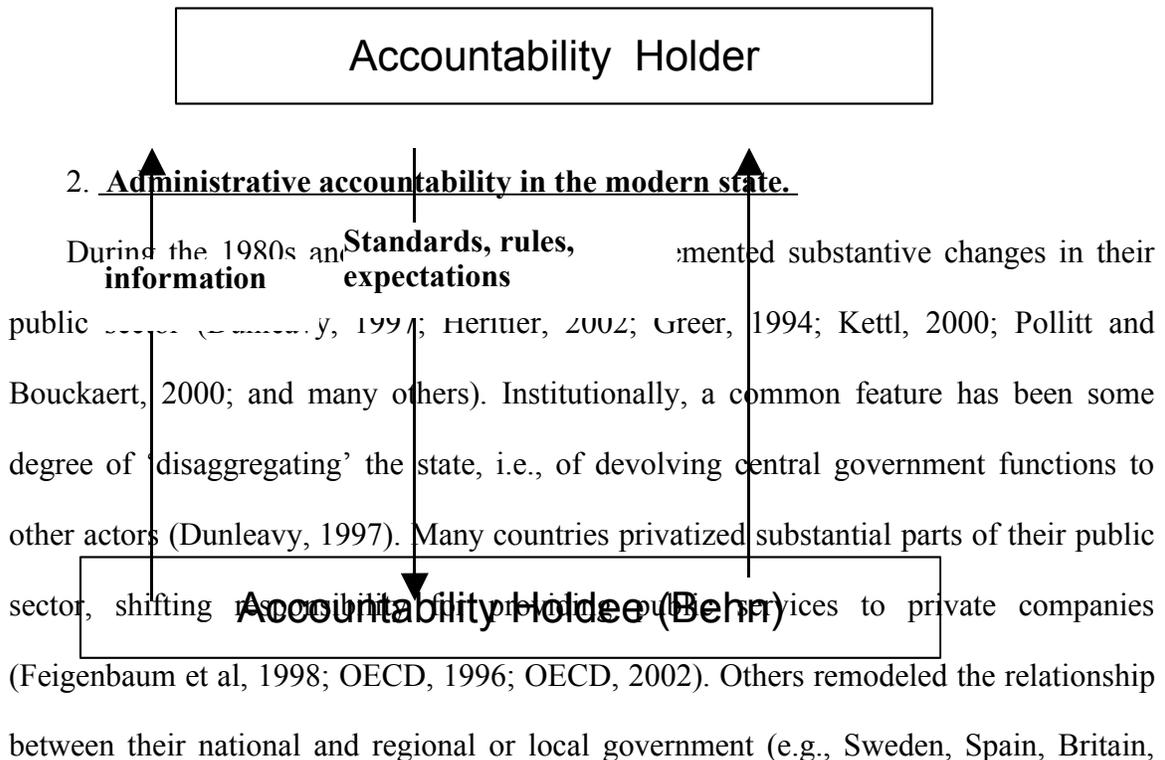
Note that this goes beyond the definition of accountability as sanction and punishment, adopted by Behn (2001) and others (Day and Klein, 1987; Thomas, 1998). While sanctions can be an important part of a mechanism of accountability, a great deal of accountability activity consists of things that are not punishment: writing reports, writing decision statements to explain specific actions, changing actions in response to an

² In the modern state, an accountability holdee is more often than not an organization, and not a person; hence the use of “it” rather than a personal pronoun.

order from an accountability holdee, writing press statements. Even for some of the activities that have a punitive or unpleasant aspect, such as being called before a legislative committee to explain a mishap, the grilling is not the point: the change in behavior is the point. An actor may not like being told to change its behavior, but that does not make it a punishment.

My focus in this paper is on the accountability of administrators, and not on that of elected representatives, which raises different (and important) issues. The reason is that in the modern administrative state much activity occurs within administrative agencies (Peters, 2001; Wilson, 1989), but unlike elected officials, they do not have to be voted into office and are therefore non-majoritarian, i.e. not subject to accountability via elections and voting (see Thatcher and Stone Sweet, 2002). This fact gives the question of how they are held accountable a great deal of significance.

Figure 1 – What Is Accountability?



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France, United States [state government]; Pollitt and Bouckaert, 2000). Many countries created new agencies to handle functions previously performed within government ministries (Hogwood, 1993; Gilardi, 2002).

At the same time they have been transferring power to other institutions, central governments have taken steps to prevent losing control of the newly formed institutions. To do so, they, and added layers to the accountability process (Vogel, 1996; Hood and Scott, 1996; Levi-Faur and Jacint, 2005). An outburst of new regulatory rules and institutions led Majone (1994, 1996) to talk about the new regulatory state, where centers of government devolve many of their traditional functions to new actors and preserve for themselves the power to regulate and to monitor performance – to hold the new actors accountable. Drawing a more complex picture, discussing the relationships between states, markets and society, Levi-Faur coined the term regulatory capitalism (2005).

One of my interviewees in Sweden described the changed situation in the telecommunications industry as follows:

“Before the reform, we had an unregulated unaccountable monopoly. Now, we have regulated competition.” (Interview, PTS).

Institutionally, regulatory agencies are primarily accountable to legislatures, to executives, and to the courts. But they may also be accountable to consumer groups, or to boards created to supervise them. In Britain, for example, an Energy watchdog has been created to hear complaints from the public about energy suppliers and the energy agency³. In France, consumer groups work directly with l’Autorité de régulation des télécommunications, the independent regulator for telecommunications, where they have a voice and a department dedicated to their interests⁴. Agencies are accountable to

³ <http://www.energywatch.org.uk/>.

⁴ <http://www.art-telecom.fr/>.

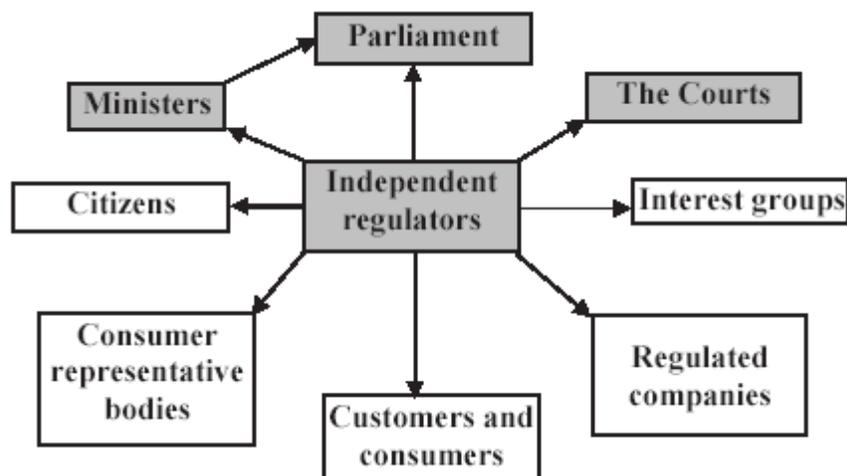
ombudsmen and audit offices (Barzalay, 1997). Freedom of Information Statutes, granting citizens power to demand information from government, have been passed (Bennet, 1997). Hood and Scott (1996) have also pointed out that one of the results of the changes in government has been an increase in internal regulation, and that more and more mechanisms of accountability have been put into place.

Similarly, there has been a growth in the powers and activities of courts in many countries. Courts are a traditional mechanism of accountability; judicial review of the administration, in the sense of making sure it stays in line with law, has long existed in many countries, whether through regular courts or through administrative tribunals (Schwarz, 1992). However, in recent years there has been a substantial growth in court activities in general, and in relation to administrators in particular (Kagan, 1997; Shapiro and Stone Sweet, 2002). In the United Kingdom, for example, the change has been extensive enough that the British government published a manual called “The Judge Over Your Shoulder” to help administrators manage the administrative law, to initiate programs of training in public law, and to increase the use of lawyers in departments⁵.

The British House of Lords, in a recent report about the accountability of regulators (2004), referred to this as the 360° view of accountability (figure copied from the report, at <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/68/6805.htm#a9>):

FIGURE 1 360° view of accountability

⁵ <http://www.treasury-solicitor.gov.uk/Publications/judge.pdf>.



Another change occurring during the same time period⁶ is the increasing power of transnational organizations. The European Union's power is increasing, and writers are today discussing "Europeanization", or the creation of a European Administrative Space (see Stone Sweet, Sandholtz and Fliegstein, 2001; Olsen, 2002; Kassim, Menon and Peters, 2001). Other organizations, such as the World Trade Organization, the OECD and Professional associations, are also increasing in importance (Harlow, 2002; Tamm Halström, 2004).

Institutionally, therefore, the situation in the post-reforms state has become very complex, with agency facing many pressures from many directions. We can no longer think in terms of traditional hierarchical bureaucracy.

Ideologically, again, as pointed out by many scholars, these reforms derive from a host of sources (Pollitt, 1995; Löffler, 2003). Peters (1996) in his classic book, the Future of Governing, talks about four models, market models for reforming government, participatory reforms, reforms aimed at making government more flexible, and deregulatory reforms, aimed at allowing more creativity in governing.

⁶ Though the causal links between the two are not clear.

While the neo-liberal ideas of the market have been very important, ideas of democratic legitimacy and citizen participation have not lost their power. Scholars have also pointed to the conflicts in the lower level, practical goals reflected in the reforms. The reforms seemed to aim at empowering managers, empowering lower level workers, empowering citizens as consumers, empowering interest groups, all without giving up the power of politicians and traditional governing bodies (Aberbach, 2002; Pollitt and Bouckaert, 2000; Pollitt, 2000). In other words, the reforms draw on a host of ideas that are not always compatible with each other, and aim at achieving many, and often conflicting, goals.

In accountability terms, a common thread in many of the reforms has been moving from accountability for process, or for fairness and finances, or for inputs, to accountability for performance, or for outputs, and adding in a focus on customers. One recognized distinction in accountability is between accountability for finances and fairness (or process) and accountability for results, or accountability for inputs in contrast to accountability for outputs (Behn, 2001; Day and Klein, 1987). This may also be phrased in terms of accountability for legality and political appropriateness in contrast to accountability for efficiency. As Behn points out, these are two kinds of demands that are very different in substance and may well contradict, because the mechanisms put in place for helping achieve accountability in finances and fairness often interfere with the attempts to achieve results. Auditing and reporting to ensure the former take time, time that can be used for improving efficiency or striving for results. Process requirements can also contradict efficiency requirements, and slow the process down. Allowing citizens to take an agency to court – a commonly used mechanism of accountability for fairness or finances – may force the agency to spend scarce resources – money and time – on

handling court cases, and may also divert the agency's attention from initiating projects to dealing with complaints (Kagan, 2001; Wilson, 1989).

Many of the disaggregating reforms have tried to improve accountability for results by removing procedural mechanisms protecting accountability for inputs, "cutting red tape" (Gore, 1993; GAO, 2000; Newland, 2001; Pollitt and Bouckaert, 2000). Indeed, one of the criticisms aimed at the reforms emphasizing responsibility for results was that these measures hurt accountability for finances and fairness (Moe, 1994; Minow, 2003). However, many writers have pointed out that following the reforms, there has been a move towards increased inter-government regulation, much of which was aimed at adding mechanisms of accountability for inputs (Vogel, 1996; Hood and Scott, 1996). Several scholars addressing the issue, especially in the British context, stress that it does not necessarily lead to less accountability. Notably, Scott (2000) has seen the situation as a way of creating accountability in the new more fragmented reality, by adding mechanisms and using the methods of interdependence and redundancy to hold actors accountable. Graham (2000) has seen the new situation as leading to more procedural guarantees of accountability and more transparency.

What these developments do mean is that in a modern government, agencies are held accountable for both procedural regularity (inputs) **and** efficiency in outputs. As described above, a common thread of the reforms had been the placing of multiple demands on governments. Citizens and policy makers in a modern state are not willing to give up either accountability for finances and fairness or accountability for results.

Therefore, the pressures on an agency to be accountable push it in all directions at once – it is simultaneously required to be accountable for inputs, outputs, and for responsiveness to demands from clients.

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In a world of limited resources, dealing with all these pressures is very complicated indeed. This paper focuses on the way an administrative agency handles its ‘impossible job’ (Hargrove and Glidewell, 1990), that is, how and why it succeeds (or fails) in juggling accountability pressures (Radin, 2002).

As in other sectors, one aspect of the reforms has been the creation of independent regulatory agencies (See Levi-Faur, 2004, on the diffusion of these agencies). Independent regulatory agencies have become part of the European regulatory framework, their number and power increasing, for a number of reasons (see Gilardi, 2002; Gilardi, 2004). They are important institutions, and are particularly interesting actors in terms of accountability because of their nature as non-majoritarian institutions (Thatcher, 2002⁷). In a modern state, in the world of ‘governance’, policy is made by more than just public bodies, and certainly more than government agencies alone (Rhodes, 1997; Scott, 2001; Scott, 2002; Mulgan, 1997; Mulgan, 2000b; Minow, 2003). However, the agencies are still important players and have a substantial and growing influence on policy making in these areas.

For these reasons, the agencies are the subject of my research. In the complex of accountability relationships characteristic of a modern state, I look at the relationship between the Independent Regulatory Agency and the other actors, placing an emphasis on the IRA’s perceptions and behaviors.

This paper is part of a larger dissertation project looking at telecommunications and electricity IRAs in three European countries, Sweden, the UK and France. I examine patterns of accountability in the power and telecommunications sectors in the context of several important policy issues the agencies face: price setting, universal service, and

⁷ And See Prosser, 1997 and Graham, 2000 for the claim that in spite of their nature, the independent regulators can, and in the British case are, more accountable than the Ministers.

other issues. In this short paper I focus on the UK and France alone. The paper also focuses on network pricing, an issue in which economic factors are very pronounced. This may affect the ability to generalize to other policy areas, but since economic regulation is an important part of the work of the independent regulators, a discussion of what is sometimes seen as the most important part of a regulator's job is in order. The dissertation will address a broader and more comprehensive set of issues.

The reason I chose to focus on Europe is that first, the European Union has moved towards liberalization in both sectors (although in my test cases, the UK's reforms predated the EU move to liberalization), and the move to complex accountability can be seen clearly. The first telecommunication packet of directives was enacted between 1988-1998⁸ and another was put in place in 2003, while the first electricity directive dates to 1996 and the second also to 2003. Europe therefore provides a good 'laboratory' to let us look at the effects of liberalization. The second reason is that the common European legislative framework highlights the national differences in the way agencies and other actors respond to new accountability dilemmas.

That may, of course, raise the claim that because of the existence of a transnational body and transnational network of regulators you cannot generalize to other cases. However, the differences between the countries chosen are large enough to justify generalizing from their experiences, and the existence of transnational networks and bodies is a fact of life in these sectors even without the European Union.

⁸ Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment, *Official Journal L 131*, 27/05/1988 P. 0073 – 0077; 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 *Official Journal L 192*, 24/07/1990 P. 0001 – 0009; Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services *Official Journal L 192*, 24/07/1990 P. 0010 – 0016; Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets *Official Journal L 074*, 22/03/1996 P. 0013 – 0024; 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 licences in the field of telecommunications services *Official Journal L 117*, 07/05/1997 P. 0015 – 0027.

Figure 3: the New Model of Accountability⁹ (in end)

3. The Test Case: Accountability in Network Pricing in Telecommunications and Electricity.

Two of the areas (by no means the only ones) that have been subjected to serious reforms and academic research in many countries are electricity and telecommunications (Hall, Hood and Scott, 2000; Palast, Oppenheim and Macgregor, 2003; Heritier, 2002; Jabko, 2001; Thatcher, 2002; Thatcher, 2004; Chevalier and Rapin, 2004; Levi Faur, 2005; and many others). Both electricity and telecommunications are important to the functioning of a modern society. They are also sectors where reform has been accompanied by difficulties, and issues of accountability have been discussed (see for example Prosser, 1997; Graham, 2000; Lodge, 2003).

That said, there are substantial differences between these two sectors, which could affect their accountability regimes. First, the telecommunications sector has seen in recent decades dramatic technological developments (Thatcher, 1999), as well as financial ups and downs. This means that regulation and the industry actors had to deal with a sector in flux. The electricity sector, on the other hand, is technologically stable, and the investment pattern in it is long term (Palast et al, 2003, Sault, 2003).

Second, in telecommunications, fixed telephony, mobile telephony, voip (voice services over the internet), cable, satellite services provide equivalent functionality but use quite varied technologies; thus to an extent they can compete with one another.

⁹ This diagram is given from the point of view of an agency; it is therefore partial: it does not include the accountability relations between different political actors, between interest groups and politicians; this was done for simplification reasons: the model is complex enough as it is.

Although there can be alternative ways to produce electricity, the end product is always the same, as is the means of distribution. There is no real alternative to electric power in most end-use applications. This means that telecommunications may be seen as a more ‘natural’ candidate for market opening and liberalization than electricity.

Third, electricity services, for a host of reasons, are more politically sensitive. In countries with serious winters that use electricity for heating, electricity may literally be a life or death matter. When there is a major blackout, it creates headlines, and is very hard to ignore. The costs, financially and politically, are very high, as can be seen in the events in New York, London, Sweden, Italy, and Chile this year. The pressures on the government to intervene are substantial. In addition, there is the question of the impact of electricity production and transportation on the environment; nuclear energy has always been a political hot button, and following the entry into force of the Kyoto agreement requires national efforts to reduce carbon emissions, which often requires changing the way their electricity is produced. Further, the California energy crisis led some observers to question the wisdom of liberalization in this field (Palast et al, 2003; Soult, 2003; ALL my European interviewees in the energy sector referred to negative lessons of the California experience). For these and other localized political reasons, electricity is seen as a more sensitive sector and hence less suitable for liberalization (Palast et al, 2003; Soult, 2003).

One main accountability issue in both electricity and telecommunications is the setting of network prices. Network prices are the prices the owner of a network – whether the former state monopoly or a new entity – can charge other actors for the use of its network – whether for transmission or provision of services¹⁰. Network pricing involves

¹⁰ In electricity, the question is mainly of using lines for transmission; in telecommunications, one network owner needs an interconnection agreement with other network owners for its clients to be able to call people on the other owners’ network; for example, a mobile operator (Vodafone, for example) needs an

very complicated economics, partly (though not only) because it does not operate in a free market environment. In the countries and sectors discussed in this project, the starting situation was one of monopoly control of a single network that served most citizens in the country. And even when alternative networks could be added, as in telecommunications, the number of networks is still limited, both for economic reasons (a network requires a very high level of investment) and for environmental and other reasons (anyone volunteering for a high voltage electricity line through her back yard or a mobile phone mast on the green hill facing her balcony, please stand up). It is therefore not one of the areas where full competition is likely to emerge, at least not in the near future¹¹. It is also an area which involves big money, since at the volume of traffic on the network is usually enormous, and accordingly, the gains and losses resulting from changes in policy, even small ones, are substantial. And while customers do not get billed separately for the network component of the service, network pricing can substantially affect prices to end users. To use a known example, mobile companies make a substantial profit by charging a high interconnection rate for calls originating in fixed lines¹².

In setting network prices an incumbent¹³, especially if it has both a network and a retail/wholesale operation, has incentives to engage in anti-competitive behavior: it has no reason to HELP competitors get a market share. In addition, an incumbent in these areas has an information advantage. Not only does it know the network and its operating

interconnection agreement with the landline network operator so that cellphone users can call land lines.

¹¹ As is also seen by the difficulties of enforcing Local Loop Unbundling in the telecommunications sector. See: "Reflections - Ten Years of experience with the Swedish Telecommunications Act", report published by PTS, the Swedish Telecommunications Regulator, in March 2003; Bourreau, 2003, also found at his home page, <http://egsh.enst.fr/bourreau/>. See European Union report on the issue, "Legal Study on Part II of the Local Loop, Sectoral Inquiry", from 2002, found at: http://www.grad.berkeley.edu/fellowships/pdf/travel_grants.pdf.

¹² See for example ofcom's and oftel's discussion about mobile termination prices and their negative effects, http://www.ofcom.org.uk/consult/condocs/mobile_call_termination/mct_consultation/chapter4.pdf, and http://www.ofcom.org.uk/consult/condocs/mobile_call_termination/mct_consultation/annexk.pdf.

¹³ The term incumbent when discussing utility regulation refers to the former state-owned monopoly company.

costs better than the government and the regulator, but it has managed prices in that regard longer than anyone, including the competitors and customers. For a long while, most incumbents have had quite a bit of leeway in their activities as state monopolies. Generally speaking, too, the incumbents know the political system well and have had connections and influence with important figures in it. It is therefore an area where accountability of the network operator is an issue.

A second issue is the accountability of the independent regulator in each country created under the EU framework for the electricity and telecommunications sectors. The independent regulator has to determine the network pricing. It has to do so in a way that achieves a number of potentially conflicting, or at least not always compatible, goals. For example, in the recent British review of electricity distribution prices, the goals the regulator had to achieve were¹⁴:

- Protecting consumers' interests: prices not higher than they have to be.
- Increasing investments.
- Increasing efficiency.
- Quality improvements.
- Promoting the government's environmental objectives.

This list of goals is can be thought of as typical to this issue.

In dealing with these issues, the regulator has to answer to national actors, the national executive, the national legislature, and the courts. It is required to respond to the operators in the industry, the incumbent and the new entrants, and explain its decisions. Because of the factors mentioned above, it has to worry about capture by the incumbent.

Finally, it must answer to the European Union commission.

¹⁴ Taken from ofgem's site, from two documents, at:
http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9405_DPCR_analyst_presentation.pdf
http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/6584_Consultation_Final.pdf

Network Price Setting in Two Countries

I will address two cases here, the issue of telecommunications interconnection prices and electricity network – distribution/transmission - prices. The information is based on reports published by the relevant agencies, by other actors, and on 100 open ended qualitative interviews I conducted between 9/2004-2/2005 in Sweden, the United Kingdom and France, with agency members, government members, members of consumer agencies or associations, industry members and other actors in the fields.

Not be easily visible from the description of each country's story is the degree to which the agencies communicated with each other. There are two networks of independent regulators in Europe, the ERG – the European Regulators Group, which is an organization initiated and created by the independent regulators, and the IRG, the Independent regulators group, which is the ERG plus the European Commission. The regulators have regular meetings and discuss current issues. The telecommunication regulators also have an email list server in which they discuss current problems and issues that arise. I did not have access to that list server, but several of my interviewees made reference to it, and they were well informed about the affairs of the other countries. When the Swedish regulator, PTS, announced to the European Commission that it intends to declare all three mobile operators as SMPs (operators with substantial market power), that decision was not seen well by the Commission, and the issue was discussed thoroughly on the listserver¹⁵. It is hard to assess the impact of that network on the activities of the regulators, but it is clear that it does have influence, which indicates that the national regulators are subject to professional accountability system as well as a bureaucratic, legal and political one (Dubnick and Romzek, 1991). This fits in with

¹⁵ Interview, ART.

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findings of several scholars about the informal and formal networks connecting actors and influencing policy making (Slaughter, 2004; Stone, 2004).

Telecommunication:

In the United Kingdom, the regulating agency is today the Office of Communications, Ofcom, previously known as Oftel, the Office of Telecommunications. In France, it is ARCEP, l'Autorité de Régulation des Communications Electroniques et des Postes, previously known as ART, l'Autorité de régulation des télécommunications. I will first discuss Oftel's 2001 review of network pricing and what it shows about accountability in that country, then discuss the same process in France. Since the events I refer to occurred under the agencies in their former life, I will be using their former names, Oftel and ART respectively.

Britain: the 2001 Price Review

In the UK, Oftel was authorize to regulate the network prices of the British incumbent, BT, which was privatized in 1984¹⁶. This case study focuses on the 2001 price review, done according to the famous, but sometimes criticized, Littlechild formula of RPI-x (Littlechild, 1983; Vass, 1997; Graham, 2000). The RPI-x formula allows the incumbent to increase its prices by the no more than the retail price index minus X per cent, with X determined by the regulator. The aim of the system was to avoid what Prof. Littlechild, commissioned by the UK government to suggest a system of pricing in the liberalized market, saw as the problems of the rate of return system used in the United States. He criticized that system as “burdensome and costly to operate, reduces the

¹⁶ see Hall, Hood and Scott (2000), Thatcher (1999) for a detailed description of the change in BT's realities.

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incentive to efficiency and innovation, and distorts the pattern of investment (Littlechild, 1983).” He also criticized it for being too inclusive, covering all parts of the business, not just the monopoly parts. The RPI-x formula was initially suggested for telecommunications pricing, but was later applied to other fields. It has been criticized on several grounds, including the fact that it is not easier to administer than the rate of return idea (Vass, 2000; Newberry, 1997); that it focuses on creating a system of incentives and does not really address resetting price controls, a recurring aspect in the British telecommunications sector (Graham, 2000).

The prices for telecommunications are determined every 4 years. The 1997 price setting was detailed by Hall, Hood and Scott (2000) in their wonderful study of Oftel (the British Office of Telecommunications). The basic framework of the 2001 price review started with Oftel publishing a consultation document in March 2000¹⁷. The first question it addressed was whether to impose further price controls on BT. As for determining the prices, the document articulated general principles and asked for comments. It got responses from operators, the public utilities access forum, consumer associations, academics, and advisory committees for Scotland, North Ireland and Wales. During September and October, public hearings were heard, including representatives of consumer organizations.

A Further consultation document was published in October 2000¹⁸. The proposed control for interconnection services was a formula of between RPI-7.5% and RPI-11.5%. The document includes a very brief summary of comments made.

¹⁷ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/pcr0300.htm>.

¹⁸ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/pcr0101.htm>.

The final decision decided to renew price controls for the retail services basket of RPI-4.5%¹⁹ until 2002, where the decision will be reevaluated. In relation to interconnection services, it divided the services subject to price controls to six baskets and set the formula between RPI-7.5% and RPI-10% for each, for the period of four years, 2001-2005.

The legal framework for price controls at the time of the 2001 review required license modification; i.e., in order to change the price control, BT's license must be change²⁰. Licenses could be changed either by agreement with the licensee or, if there is no such agreement, Oftel could refer the matter to the competition commission, which can make a decision as it see fits (and can make a decision going beyond the immediate case). Interestingly, in this case, the license modifications were accepted by BT, in spite of the company's complete disagreement (as mentioned by my BT interviewees) with Oftel's decision to continue the price caps.

There are several interesting points about this process. First, the process can be divided into two stages: the first stage addressed whether continuing price controls are necessary. On this issue, Oftel solicited responses from industry and consumers. BT naturally objected to continuing price controls, claiming competition in the field has increased sufficiently to make these superfluous. Several other operators supported its views. However, most of the other respondents, including some of the new operators, supported the continuing of the price controls and Oftel elected to do so. Interestingly, Oftel framed this decision not only in terms of the professional judgment but also in terms of hand counting:

¹⁹ Similar to that set in 1997; see:
<http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/pcr0300.htm#Chapter%203>.

²⁰ The new Communications Act, 2003 (see text at : <http://www.opsi.gov.uk/acts/acts2003/20030021.htm>) changes that system, abolishing the licensing regime.

“Respondents were generally divided into two camps. There were respondents that agreed with BT that most retail telecommunications markets were either effectively competitive now or would be by 2001, but this proved to be the minority view. The majority of respondents believed that BT was broadly dominant in the provision of most retail services for most consumers and that future retail price controls were, therefore, required.²¹”

In the second stage, the price setting itself, there is no reference in Oftel’s decision documents to customer input. Nor do the documents of the Public Utilities Access Forum or of the National Consumer Council address that issue. It seems that while consumers did take a stand on the general question of the existence of price controls, they were not really involved in the setting of prices themselves. This was a discussion between Oftel and the industry, with no involvement of consumers or of politicians²². In fact, in one of the National Consumer Council’s responses, they criticize the consultation document, by saying:

“The ways in which the proposed new price controls are intended to work – and the rationale for them – are complex and frequently unclear and inaccessible. Some key information is either missing or it is difficult to have complete confidence in the figures presented. Neither does the document contain any clear consumer impact assessment. The document is very disappointing in these respects, especially given the crucial nature of the proposals for domestic consumers.²³”

Parts of the discussion were conducted behind closed doors (Ofcom’s mobile termination consultation mentioned that it put informal regulatory pressure on the

²¹ <http://www.ofcom.org.uk/static/archive/oftel/publications/pricing/pcr0300.htm>, annex B, par. B26.

²² The lack of involvement of politicians was testified to by all my interviewees.

²³ “Pricing and Competition in the Telephone Market: Protecting Consumers by Promoting Competition - Response to Oftel’s Consultation”, 2002, National Consumer Council, found at: http://www.ncc.org.uk/communications/pricing_competition.pdf.

industry on that issue, and several of my interviewees mentioned that ofcom prefers to achieve agreements with BT through informal pressure rather than coercion).

At the end, we do not really know how the numbers were arrived at. As pointed out by others, there are no clear published guidelines for the agency to arrive at its conclusions; it is free to rely on its best professional judgment.

There was no appeal of Oftel's decision – it was accepted by all the actors, including BT, whose cooperation was necessary to prevent an appeal to the competition commission.

In reaching the pricing formula, there was a clear attempt on Oftel's part to provide as much information as possible, to stakeholders and the public in general by having information on its web site and creating brochures that could be acquired free of charge or for a low fee from it, and to consult, at least formally. It held several consultations, it summarized the comments it received. In fact, a common complaint I heard from British interviewees was that the telecommunication regulator (and the same complaint was made towards the energy regulator) consults too much, that the consultation documents are too long, too many, and often not sufficiently too the point, that it is hard to keep up with. This of course is a classical dilemma for a regulator: if it does not provide enough information, it is criticized for not being transparent; if it is providing a lot, it is criticized for drowning the stake holders in information²⁴. In this case, the regulator is clearly opting for the information abundance stance, making an effort to be accountable through providing information and soliciting information; and the multiple sources of information may counterbalance the information a-symmetry it has with BT, as pointed out by Hall, Hood and Scott (2000).

²⁴ Or from the other side's point of view: "It's Catch-22. Either they give you so little information that you don't know the facts, or so much information that you can't *find* them" (italics in original). J. Lynn and A. Jay (1984) The Complete Yes Minister, New York: Harper and Roe Publishers. P. 138.

France: the Interconnection Catalogue, 2004-2005²⁵

In France, France Telecom (the incumbent) is partly (over 50%, but the percentage is decreasing) owned by the government, and its president is appointed by the government and is often a political figure²⁶. This implies a more complicated situation in terms of accountability because the government has a double, if not triple, interest – on one hand, it may want political capital and therefore want to keep prices low²⁷ and on the other hand, it is a stakeholder and wants the company to be profitable; it also wants its workers happy and therefore wants to pay them well. In a highly centralized state like France, we can expect serious (if subtle) pressures on the regulator from the government in these issues²⁸.

France Telecom (FT) creates an interconnection catalogue, including the prices for interconnection, on an annual basis. The catalogue is then submitted to the regulator, Autorité de Regulation de Télécommunications (ART), to approve/disapprove²⁹. There are no formal consultation requirements with industry or consumers³⁰. The only formal

²⁵ The description is based partly on interviews and partly on ART's decision of 2004, decision 03-1231 from 13th Nov. 2003, which can be found on ART's site: <http://www.art-telecom.fr/>.

²⁶ For example, the latest president just left France Telecom to become Minister of Economy and Finances, and is known to be a friend of president Chirac, see La Tribune, 28 February 2005, "THIERY BRETON DEVRA REMETTRE BERCY EN CONFIANCE"; Le Figaro, 28 February 2005 "Breton, un redresseur d'entreprises à Bercy". Le Monde, 1 March 2005, "M. Breton s'installe à Bercy et cède ses actions de France Télécom ».

²⁷ And the evidence for that is, for example, that France's subscription prices for fixed telephony are among the lowest in Europe, and when the company wanted to raise them, recently, it has been a hard political struggle – see: Le Monde, 20 January 2005, "Polémique autour de la tarification de France Télécom".

²⁸ For example, in relation to the subscription prices, while it was not in the general newspapers my interviewees told me that the president of ART was invited to the prime minister's house for dinner just before the ART gave its avis (Interview, Orange; Interview, Telecomitalia).

²⁹ According to the old legal framework, until the telecommunications law of 2004, this was one of the few cases where the authority has the power; most other prices had to be approved by the minister; however, my interviewees pointed out that the minister accepts almost all of ART's avis (opinions), except some that are politically sensitive. The discussion here refers to the system existing before the law of 2004.

³⁰ And in relation to most prices suggested the ART, the regulator, who has the choice on the matter, only rarely consults other operators, according to my interviews.

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requirement facing ART is the obligation to ask the Conseil de la Concurrence, the competition commission, for its opinion on the proposed catalogue.

In practice, the process was characterized by a high level of consultation with industry actors beyond FT. Some of the work had been done before the interconnection's catalogue submission to ART in work groups with the other operators, with the regulator soliciting their views on what changes should be included in the catalogue. Then ART prepared a document of demands which it sent to France Telecom in July 2003. France Telecom submitted a catalogue in September, which was immediately transmitted to the other operators for comments. Following those comments, ART asked France Telecom to modify its offer. The new offer was submitted to the Conseil de la Concurrence, the competition authority, for its opinion, and then approved by ART in November 2003, in a 20 pages detailed decision. The final catalogue left local termination and collect prices at their 2003 level, contrary to the initial proposal by FT, which wanted to raise them, and lowered regional tariffs. Leased line prices were also lowered³¹.

There was no appeal, even though in theory, there is an appeal option to the administrative courts. In fact, these kinds of decisions, I was told, are usually not appealed. The explanation my interviewees used was that it was unacceptable, in cultural terms, to take the regulator to court on such issues (though it did not stop the operators from taking the regulator to court on other issues, notably universal service decisions)³².

³¹ Taken from ART's press announcement: « *Communiqué de presse, INTERCONNEXION, L'Autorité approuve le catalogue d'interconnexion de France Télécom pour l'année 2004* », published on 20 November 2003 on ART's website, , <http://www.art-telecom.fr/>.

³² And sometimes these issues are too; the Conseil d'état has in fact invalidated a decision of ART 25 February 2005 on the tariffs of local loop unbundling, on the grounds that ART has not acted transparently and not published how it calculated the tariffs; ART now published a decision on how it does that, decision 05-0267, from 24 March 2005, found on ART's website, <http://www.art-telecom.fr/>. The case was brought by France Telecom, the incumbent.

The 2005 was in fact a continuation of the 2004 catalogue discussed above; in 2004, the law governing telecommunications was changed to transpose into French law the telecommunication package of directives enacted by the EU. The new law changes the system for setting interconnection prices; and therefore, the process described above will be substantially altered. Instead of following the new process, ART decided, after consulting the interconnection committee, to prolong the 2004 catalogue³³. The interconnection committee (Le comité de l'interconnexion) is an advisory committee created by the previous telecommunications law that includes representatives of the minister, operators (including France Telecom) and ART. It indicated that the 2004 conditions should be continued, and France Telecom agreed. The decision was not to the liking of at least some of the operators I interviewed; there was not a detailed consultation process, and they felt they did not have an opportunity to express their opposition. There was no appeal.

Network pricing in telecommunications, General Comments

Several things are clear from the discussion above. First, in both the UK and France, the dialogue was mostly between the independent regulator and the operators. In the UK was there an effort to include consumer representatives, but the main input of those representatives was on the question of regulation or not, not on the price levels, important as those may be to end consumers, and the customer representatives themselves told me they felt they did not have the ability to participate as well as they would wish. There was no supervision of the process by the political elected branches, and they gave the regulator very little guidance on the priorities of making the decision – in both countries, countries characterized by a strong political executive.

³³ Decision 04-1000, available on ART's website: <http://www.art-telecom.fr/>.

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Second, both the UK and the French regulators held extensive consultations, much beyond the demands of the law, and both provided a fair amount of information on their site. Both held themselves to high procedural requirements of transparency.

Third, in both cases the regulator made a decision justified in economic terms, based on professional economic arguments and not ‘public policy’ arguments. As pointed by Morgan (2003), one dominant feature of post-reform regulation is the translation of issues into economic language. Here like elsewhere the regulators stressed and used the language of economic efficiency to justify their decisions. Not only was the main value stressed efficiency, as opposed to, for example, values of access and inclusiveness, which are also part of a regulator’s mandate, both under national law in both countries and under European Union law, but the efficiency was discussed in terms of encouraging competition rather than lowering prices per se and without much reference to issues such as continuity and security of service.

Electricity:

The situation in electricity is somewhat different than in telecommunications. While one can argue about the situation in terms of interconnection in telecommunications, transmission in electricity is still considered a natural monopoly. There is only one set network in each geographical area³⁴. The electricity transmission system in each country has a national grid operator, operating the high voltage line, and then separate regional distributors, operating lower voltage lines. In addition, as discussed above, electricity prices are more politically vulnerable³⁵.

³⁴ Though in Britain the option of having several distributors in one area is being experimented with, the experiment seems not to have gone very far; see:
http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11958_17605.pdf

³⁵ This is true for all three countries I’m looking at - In Britain, one of the themes that the government is dealing with is the issue of fuel poverty (Collard, 2001; The Fuel poverty advisory group, at:

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Under the EU framework, and in the UK under the privatization scheme adopted prior to that, one aspect of liberalization is ‘unbundling’: the entities handling transmission/distribution must be at least managerially and preferably legally (a filial) or through ownership, separate from companies engaged in generation or supply. However, in all aspects, electricity in Europe is a pretty concentrated market, with a limited number of relatively big actors. Therefore, while the countries have found ways to guarantee the independence of the transmission network operator, distribution networks still have close ties to other kinds of companies.

In Britain, electricity network prices are regulated by Ofgem, the Office of Gas and Electricity Markets, which has been created in June 1999 by uniting Offer, the Office of Electricity Regulation and Ofgas, the Office of Gas Supply. In France, it is la Commission de Régulation de l'énergie, CRE, created in 2000, which regulates this issue.

Britain: the 2005 Distribution Price Review

As for telecommunications, the formula used here was the RPI-x formula. Unlike telecommunications, however, the primary discussion was not just between the regulator and one incumbent but between the regulator, ofgem, the office of gas and electricity markets, and 14 electricity distribution networks. The result was different for each network. Ofgem’s goals were³⁶:

- “Protecting consumers’ interests: prices not higher than they have to be.
- Increasing investments.
- Increasing efficiency.

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/260_5march02a.pdf). In Sweden, the issue of prices is sensitive, according to an interview with a ministry official. In France, too, the government intervened to keep EDF’s tariffs low even when expenses for environment-friendly energy should have pushed it high (according to my interviews). Intuitively, these issues would be important in any country.

³⁶ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9405_DPCR_analyst_presentation.pdf.

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- Quality improvements.
- Promoting the government's environmental objectives.”

Ofgem engaged in a two-year intensive consultation process, including many lengthy consultation documents and long meetings with the relevant operators³⁷. In interview, an ofgem member mentioned they were always open to input from industry, and while refusing to give information about the distribution prices gave an example from the National Grid Transco investment scheme, where the company wanted an investment scheme allowing them large 600 million pound investments, Ofgem demanded further explanation, refusing it initially, then agreeing to 400 million and ending up around 500 (interview, Ofgem). While the consultation process was open to anyone who wished to participate, there was no input from consumer groups. When I asked a consumer group representative why, he said that the consultations documents were very long and he simply did not get to it. The final proposals, in November 2004, were given in a 137 page document³⁸.

In spite of the regulator's efforts to keep the process transparent and open, the industry members felt there was another story going on behind the scenes, similar to that described by Cooper, Crowther and Carter (2001), and in line with the description above of the negotiation for the National Grid Transco's investments. From the point of view of the industry, the regulator starts with a number (for the X, the percentage by which prices must decrease) that is seen by the industry as dramatically too high; the industry counters

³⁷ The networks are: owned by CE: NEDL, YEDL; Owned by EDF, EPN, SPN, LPN; Central Networks East and West; Scottish Power Distribution; SP Manweb; owned by Scottish and Southern Energy: SHEDL; SEDP; United Power Distribution; Owned by Western Power Distribution, South Wales and South West.

³⁸ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/6584_Consultation_Final.pdf. also, one of the consistent complaints I heard from interviews about ofgem is that the consultations are too long and not sufficiently focused; again, the problem is, that that may well be a no-win situation: the regulator can either put out not enough information and be accused of low transparency or put out too much information and be accused of overloading the actors with information.

with offers that are lower than what they expect to end with; and they meet in the middle. In fact, an industry official told me that his impression was that the only way industry could influence Ofgem's views was in cases where they had a legal case, i.e. a case that would stand up in court; otherwise, their impression was that Ofgem set its views before the process started and held onto them. However, that was not Ofgem's feeling and not the assumption it operated under:

“My perception and my understanding of others' perception is that the companies have been very happy with the process that we have adopted, ... they feel very involved and very engaged, and that's good. because even if they don't agree with us at the end at least it's not on the basis of misunderstanding, it's on the basis of us having understood their arguments and understanding what they have got to tell us and then forming a different view. And that's, you know, what we have got to do. That's our job.”

Unlike other issues, I found not signs of government involvement in this issue. Interviewees from the Department of Trade and Industry (DTI) mentioned that they had very close ties with the regulator. According to one interviewee, there is someone from her office in the regulator's office every day. On this issue, however, most actors – DTI interviewees and others - agreed they were not directly involved. However, the government did make it clear it was generally worried about security of supply issues, and this may have impelled Ofgem to put a stronger emphasis on the need for investment (interview, industry member), and thus allowing for a lower X, then it otherwise would have.

As in the UK telecommunications case, the process in the UK is done through license modifications, and the company has to agree. If it doesn't, the regulator has to refer the issue to the competition commission, but as the process is lengthy and the sides do not

know what the outcome will be, it is rarely done. However, while the current process is still ongoing, an employee of a distributor mentioned to me that if the regulator does not meet some of the company's expectations the firm will reject its suggestions, and thus force the regulator to go to the competition commission - a process that typically takes about 6 months, according to interviews with the commission's officials.

Appeals to the courts are very rare. This has been affirmed by all interviewees, and in a Westlaw search, I found only 7 court cases on energy matters since privatization, in 1986 for gas and in 1989 for electricity³⁹. This is partly because the courts, under the British model of judicial review, rarely intervene (Graham, 2000:); the doctrine is that they can only intervene for procedural reasons, or if the decision was unreasonable, which, in the words of one interviewee, means "that the regulator is insane". However, according to interviewees both in industry and in government and the regulator, the regulator is very anxious not to be taken to court and even more anxious not to lose a court case, and therefore the threat of litigation is an effective bargaining tool and is used by the actors.

France: the 2000-2002 Transmission Price Setting

The reason I am focusing on transmission in France is that I was not able to get enough information about the distribution processes; to my understanding, the regulator is still feeling its way in the issue of electricity distribution prices (as opposed to gas, where the system is pretty much in place). That is partly because the process of unbundling the distribution lines operators from the other parts of EDF, *Électricité de France*, the former state monopoly⁴⁰, has not been completed. Transmission prices were set once, in a process

³⁹ And 9 for telecommunications issues; such a search has its limitations as a way of finding cases.

⁴⁰ A gigantic and politically powerful company.

that lasted between 2000-2002. There is no time frame to set them again; negotiations about it are on going but there is no deadline. The formal process of setting them was: CRE, la Commission de regulation d'énergie, the regulator, prepared an opinion recommending the tariffs, and the minister, le Ministre délégué de l'industrie, in the ministry of de l'économie, des finances et de l'industrie had the power to decide if to accept it or not, but not the power to modify it. The CRE submitted a proposal, later submitted a slightly modified version, and that one was approved by the minister.

In practice, the process was very lengthy for a number of reasons. First, this was the first time the rates were set independently of EDF, by an outside actor; there was a lot of work to do to clear off the old rules and design a total new set of rules. It was also the early stages of independence for the Transmission System Operator, RTE, and the rules had to be developed. Second, CRE itself was new (only created in 2000), and they had to learn how to do their job and think carefully about the issues. The process included consulting economists about the general framework. Their consultations took time. Third, the process included some other administrative steps, in particular, a referral to the competition commission (Le Conseil de la Concurrence) which took time. Finally, there was a political struggle: the powerful lobbies of the food industry and the tourist industry did not like the initial setting of tariffs, saw them as too high, and they put pressure on the minister to change them. The minister pressured CRE by doing nothing with the tariffs, i.e. not rejecting them but not homologating (putting into effect) them either. At the end, CRE modified its proposals slightly, according to my CRE interviewees, without giving up on any substantial points, and the minister accepted them.

Most of the discussion was conducted in economic terms, and the search was for a workable economic model; however, at the relevant time, most of the staff members of

CRE were engineers (Ex- school de mines) and only a few were economists. There was one economist on the board. The economic discussion was the main focus of CRE itself, and it was what the Conseil de la Concurrence, the competition commission, looked at. The CRE stuck to its guns and refused to substantially alter the tariffs in response to the ministerial pressure; although the end proposals were slightly modified, they were still very similar to the agency's initial proposals.

There was no appeal, and the regulator's members I interviewed mentioned that in general, appeals against their decisions are rare - one interviewee put the number at 4 appeals since the creation of CRE, in 2000⁴¹ - and 12 others against their decisions in dispute solving, i.e., not their pure administrative decisions.

There was clearly government involvement, but it is interesting that the minister did not see fit to openly reject CRE's proposition, in spite of the heavy political pressures on him, and would do no more than wait with it; it shows the strength of the independent regulator. Members of the regulator and of the ministry mentioned that while the CRE does not have the authority to decide on other tariffs, which are decided by the ministry, the regulator routinely gives an avis, an opinion, on them, and the ministry has to publish it. Moreover, only for serious reasons does the ministry deviate from the regulator's opinion, because when it does, it needs to justify itself to the parliament, and since the regulator phrases its decisions in neutral, professional economic terms, it is hard for the ministry to do so without seeming blatantly unprofessional and partisan.

Also, it is interesting to note that the agency, new, small in size and not yet big on prestige, managed to stand by its professional views and only modify its proposals slightly, notwithstanding pressure from a government as strong and centralized as the

⁴¹ Against administrative decisions. There is a higher number of appeals against the CRE's decisions in its role as a dispute settling body.

French. This is in at least in part due to the strength of the individual heading the agency: Jean Syrota, former director of the prestigious Corps de Mines, who served in many influential roles in the French government, and has a very strong personality, according to all opinions (those of admirers as well as of those hostile to him).

But it is also partly because of the stand the agency took: it used the language of economics to present a neutral professional model stemming from expertise, which made it difficult for the politicians to attack its conclusions without losing legitimacy.

General Conclusions, electricity

As in telecommunications, we have seen both UK and French regulators acting with a high degree of independence from the political branches. Much of the dialogue involved was conducted almost completely between the regulator and the industry. In the U.K. government officials did not take an active part in the discussion, and in France the government had a role but was reluctant to directly challenge the regulator and instead applied only indirect pressure and was only slightly effective.

As in telecommunications, the regulator put out a lot of information, and the process included lengthy, elaborate consultations. However, we do not know how the final numbers were arrived at.

As in telecommunications, while the shadow of the courts was in the background, and the possibility of appeal existed, the actors did not readily use it, except perhaps as a bargaining tool.

4. Discussion

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Network pricing is an issue easily translated into economic terms, although in the background of the discussions are a lot of other issues, often value laden: the desire to encourage innovation, the need to keep basic services such as electricity and telecommunications affordable, the need to allow for decent maintenance of the networks. The consumers' representatives, for example, in both countries, stress the need to keep the services accessible, and therefore keep network prices down. For example, in a response to Oftel's price controls consultation in telecommunications in the UK, the National Consumer Council, an important consumers' organization, said that:

“Having a telephone line at home has become essential, and it is a lifeline for people in vulnerable situations...⁴²”

Governments also think about keeping prices low, not for economic reasons or through economic means, but for political reasons, as demonstrated by the French electricity transmission case. These stakeholders make their case not always in terms of economic efficiency, but in terms of social justice and providing basic societal needs. Those values are also acknowledged as part of the general utilities discussion by European Universal Service directives. This view can serve as an alternative to a discussion focusing on the economic efficiency per se. However, the agencies clearly favour the latter, and they conducted the setting of these prices in almost purely economic terms. Discussing the issue in economic terms permits the agencies to take a stance of professionalism and expertise in making its decision. They can appear value free and neutral.

⁴² “Pricing and Competition in the Telephone Market: Protecting Consumers by Promoting Competition - Response to Oftel's Consultation”, 2002, National Consumer Council, found at: http://www.ncc.org.uk/communications/pricing_competition.pdf.

One of the surprising aspects of this analysis is the similarity in the patterns of accountability behaviors between the regulators across these two different countries and two different sectors. In all of them, the regulators employed the same general models.

In all cases of network pricing, the new model of accountability, through an independent regulator, answerable in differing ways to many actors, led to an abundance of information about what is going on. All four regulators published consultation documents, usually extensive ones. All of them hold exhaustive consultations with industry actors, including competitors of the incumbent. All of them published reasoned decisions, though generally, industry criticized them for the way they gave reasons. The regulators sought to demonstrate their accountability by being transparent and giving reasons for their actions, what one might call a **glass house** model of accountability.

On the other hand, in all these cases, the final decision was taken by the regulators, behind closed doors, on explicitly professional, economic and technical, grounds. They were not well explained in terms of public policy, the focus being on the economic terms and stressing the efficiency argument. All actors interacting with the regulator expressed doubts, sometimes strong doubts, about the regulators' taking their views into account; they felt the regulator was only marginally responsive. Ironically, the increase in transparency and information did not lead to an increase in meaningful participation.

The regulator reacted to all accountability pressures by taking a stand saying, we are charged with protecting certain values, and we will make our decision according to our best judgement, and no one has the right to push us: not government, not industry, not anyone. Using the distinction used by Bardach and Kagan (1982), they presented themselves as acting responsibly, but not in an accountable way. This is not a criticism: it is probably the way price setting is supposed to work, since the reason for an independent

regulator is to distance it from the political realm and to protect it from pressures (Gilardi, 2002). This illustrates that one possible response to a multiplicity of accountability mechanisms is closing them all out and acting responsibly by making the best available professional decision: a **closing in**, or **professional responsibility**, model.

Three last points should be raised. While the regulators in all these cases preserved a fair amount of independence from the government, their independence from industry is not as marked; while all regulators made an effort to appear free from industry pressures, their most extensive discussions on the issue were with industry representatives and there are indications that industry did have an influence, for example, often the regulators did deviate from their starting numbers, though it is hard to assess how much. That is not to say that there was capture of the regulator. In fact, all regulators took steps to demonstrate that they are not captured, especially by encouraging participation of several actors in the industry. But there is, as pointed out by Scott, a degree of interdependence.

An interesting fact in all these cases is the absence, at the table, of customer representatives. Only in the British telecommunications price controls review did consumer representatives actually make an input, and even there, it was in relation to the existence of price controls, not to their content. I asked consumer representatives why they did not get involved in the process. The usual answer is that consumer associations are typically under-staffed and under resourced, and there are many issues⁴³. They simply do not get to all of them, and network pricing, which relate to only one part of the overall cost of these services and do not directly translate into retail prices, are not where they put their effort. Another point was that the consultation documents that relate to these issues are complex and written in highly technical language, which makes it hard for customer

⁴³ The extreme case is in France, where the most active consumer organization in telecommunications matters, UFC-Que Choisir, has a staff of one person dealing with telecommunications issues.

representatives to deal with them and answer them in their language – as demonstrated by the National Consumer Council comments on the consultation document quoted above⁴⁴.

So there is no direct involvement of citizens' representatives, either in the form of elected government officials or of consumer representative associations⁴⁵. It should be noted that all four agencies see protecting consumers as an important part of their job; however, they tend to stress increasing competition as the means for protecting consumers, and talk in terms of economic efficiency.

The final point in terms of accountability is the role of the courts. Several authors pointed to the rise of litigation following neo liberal reforms (for example, Kagan, 1997). In these two countries and two sectors, however, courts have been marked by their absence⁴⁶. However, this ostensible lack of litigation is only part of the picture. First, while network price settings was not subject to much litigation, other issues in these field were taken before the court, and network pricing was done in the shadow of such litigation and with the possibility of going to court strongly in the background. Second, the threat of going to court has been raised by some of the actors, and thus between the industry and the regulators, going to the courts may be counterproductive; the parties do not wish to do it.

Conclusion:

⁴⁴ This reflects Morgan's (2003) argument about the role of dialogue and the importance of the ability to converse in the language of economic rationality to take part in social economic policy making.

⁴⁵ Ofcom, the new office of communications, includes a consumer panel which is to contribute to issues and have input from the consumers point of view. Consumer representatives told me they hope this will create a change but are skeptical, since the new consumer panel is not well resourced. The impact of this change is to be seen.

⁴⁶ In the Swedish case, which is not included in this paper but is part of the dissertation project, there was very high court involvement, in telecommunications, all decisions of the regulator are appealed.

How can an agency be accountable to all and sundry? It can't. It can write a general explanation. But it cannot react to pressures from everyone at the same time. It has to find other ways to deal.

Some of these ways are explored in this paper, in relation to a specific issue, network pricing, an issue easily discussed almost entirely in the language of economics. This was used by the agencies to limit meaningful participation to those actors capable of conversing in this language, mainly industry and other economic regulator, and thus presenting a façade of professional behaviour. The regulators also, at the moment of decisions and in their justification, **close in**, taking the stand of a professional body acting according to its best judgement. On the other hand, to assure all the other actors placing accountability demands on it that it is doing its job as it should be, the agency makes sure to provide a **glass house** environment, taking pains to supply all the stake holders with as much information as possible, and attempting to consult as much as possible.

The agencies are told to do an impossible job (Hargrove and Glidewell, 1990); they struggle to deal with it. As pointed out by Graham, 2000, they are probably more accountable than ministers; though their accountability, at least on some issues, is limited to a certain set of actors and certain set of values.

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3. The New Model of Accountability

Ideology: Market mechanisms; Participative; Flexibility; Deregulation – creativity, innovation. Stress on outputs and inputs.

Empowering: Managers, low level managers, field workers, politicians, citizens, interest groups, economic actors.

