First Draft. Comments welcome.

INSTITUTIONAL CONSTELLATIONS AND REGULATORY POLICY

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The development of regulatory policy

For differing reasons, both national and international, many countries have experienced a considerable transformation in their model of government over recent decades. Public actions aimed at regulating markets have taken on a greater role to the detriment of systems which had prevailed in preceding decades and which were based on prioritising direct state intervention in the economy (Majone, 1997: 140-142). In line with Lowi’s traditional classification (1985: 74), regulatory policies are characterised by the fact that they directly impose obligations on individuals or organisations and determine their most basic forms of intervention through specific rules which have direct consequences. This does not mean that they do not have other impacts (of a distributional or constitutional nature) which also have important consequences. Nevertheless, there is no doubt that regulatory policies have generated new problems for government action as a result of its greater centrality in the new state model, as is stated by Majone:

“In the regulatory state the political contest shifts from the traditional arena of the budgetary process to a new arena where jurisdiction over the review and control of the regulatory process provides the main source of conflict” (Majone, 1997: 151).

If we apply Wilson’s typology of regulatory policies (1980) it might seem that the policy process is also changing profoundly. With public services being offered under a monopolistic regime – what could be termed as direct state regulation in the words of Majone, or as distributive policy in the words of Lowi -, we had before us a majoritarian policy process, where costs and profits were widely distributed and integrated into public budgets. The introduction of regulatory policy-making led to a type of policy process which was more focused on interest groups, where costs and profits were distributed among a very defined set of groups or companies (for example, conflicts between new entrants to the market versus established companies). In the user area, a policy process emerged which was customer-oriented with costs being widely distributed among the majority of domestic consumers, while business users, who had a stronger negotiating power, obtained better rates (Chang, 1997: 712). The problems which arise from this type of policy management are different from problems arising, for example, from policies of a distributional or constitutional nature.

Institutional constellations: an interpretative framework

Within the context of new models of government associated with regulatory policies, it is not surprising that governments implement new institutional set-ups to manage,
control and supervise regulatory action or that these models lead to a general tendency
to restructure the public action set-up which defines public policy for the newly
regulated sector. The new institutional constellations which emerge as a result of these
new policy processes, where companies and consumers are basic actors, also create
problems in terms of policy management. These problems can be represented
schematically and divided into three separate areas. Firstly there is the matter of
establishing consensus and pacts among actors, which is a very complex process due to
the presence of net winners and losers throughout the different steps of the regulatory
process. Secondly there is the struggle by institutions to gain a dominant position
among the many available positions in the institutional constellation belonging to the
policy field. And thirdly, there are the problems which challenge the stability of policy-
related decisions, which can at times be complex due to the intervention of multiple
actors with different time perspectives. Each of these areas of policy management can
generate imperfections which are different from the typical imperfections which
characterise government-steered regulatory policies. Nevertheless, in order to analyse
these problems and the regulative failures which arise as a result of the institutional
constellations which exist within the field of regulatory policies, we must first define
these constellations.

It is common to find a number of public actors in these constellations, for example:
Parliaments, which specialise in drawing up complex laws to determine the mechanisms
of market regulation and tend to set up specialised supervisory commissions. Courts of
justice can also play a role in this new system, or at least this is the case with courts or
bodies whose job it is to ensure competition in the markets. Ministries responsible for
public policy in regulated sectors also change, disbanding highly bureaucratic structures
and aiming towards setting up strategic management and policy control cores.
Additionally, in many cases, there is a tendency for new specialised public bodies to
come into play – these are generally known as regulatory agencies and supervise and
guide the new regulations. These agencies often tend to be independent or semi-
independent of the classical ministerial structure. Regulatory agencies often take charge
of the implementation of policy instruments whereas policy definition, changes in
policy orientations or supervision of the policy itself more frequently fall to parliaments,
courts, ministries or other public authorities.

In view of the fact that these different actors are present in the institutional
constellations of regulatory policies, our starting hypothesis is that intensity in the
difficulties involved in managing a regulatory policy vary in accordance with how
certain key institutional variables converge within the regulatory regime. To our
understanding, the most significant variables which can exist within the institutional
constellations associated with regulatory policies are the degree of policy fragmentation among different institutions, the degree of overlapping of responsibilities and the hierarchical structure of the institutional constellation which exist within the public action system.

As to the policy fragmentation, it is not uncommon to find a certain fragmentation of responsibilities in terms of policy given the multiple institutions which are involved in the management of regulatory policies. From this perspective, we consider that it is necessary to analyse the regulatory policies by taking into account that the typical policy context which exists is characterised by simultaneous actions and interventions by different public authorities, which have different responsibilities and degrees of power and also diverse visions and interests. What is more, in this type of framework, it is also common to find a certain degree of overlapping of responsibilities within the institutional constellation. This is caused either to the absence of an effective institutional design or as a result of intentionally defined check and balance controls. Also, overlapping is reinforced by cognitive limitations which arise from the difficulty involved in clearly defining limits in terms of policy-related responsibilities. Finally, in terms of the characteristics of hierarchical structures, we are interested in identifying interdependencies, as how the different bodies effectively fit into the politico-institutional landscape. Within this context, as specialized literature has highlighted, it is of the utmost interest to examine the matter of how much control other institutions – often majoritarian - have over regulatory agencies. Along the lines of Jon Elster’s final reflection in his book *Ulysses Unbound* (2000), we consider that politicians, as authorised navigators within the policy system, generally maintain – although only when this is really necessary - their control over the different members of the politico-governmental make-up, including new institutional set-ups. However, this degree of control can vary in strength, a fact which undoubtedly has different implications for the policy-making process. Further, we will dedicate a few pages to analysing each of these institutional variables in more detail.

The degree of hierarchical control within the institutional constellation

The setting up of public bodies specialised in regulatory tasks which are relatively independent of and removed from classical ministerial structures, is a relatively recent phenomenon in Europe and many other parts of the world. In Great Britain, it was only from the 1970s onwards that specialised bodies began to appear. The aim behind these bodies was to supervise very specific tasks or activities such as civil aviation, television or racial relations. In each case, they were motivated by the conviction that the specificity of the subject matter required special attention and it was not only necessary
to establish control but also to formulate consistent and very specific policies. For a variety of reasons, which were not necessarily the same in each case, it was considered that the internalisation of these tasks within ministerial departments was not the best solution. Nonetheless, there was no reason for the new body to lose its hierarchical dependence on the ministry, with the exception of some special cases, where special self-regulatory set-ups were implemented with differing degrees of participation on the part of the actors in the sector being regulated. Along the same lines, the privatisation of public services in Great Britain in the 1980s gave rise to a new variety of organisational set-up which was aimed at regulating public services through the figure of a director general. These director generals, appointed by the corresponding ministry, were given regulatory power and aided by an autonomous government body. Thus, the English model – which we will analyse in more detail later – shows us a general continuity in terms of hierarchical structures in the dissemination of new public bodies specialised in regulatory tasks. Nonetheless, the complexity which the new system involved inevitably led to the reduction of the personal responsibility of ministries and obliged the definition of new more sophisticated systems of accountability (Moran, 2001: 31).

The setting up of specialised bodies with regulatory power has a deeper-rooted tradition in the American public sector than in Europe, with the exception perhaps of some British precedents (McLean, 2002). The US’s radical decision not to create public monopolies and to leave the provision of public services to the market made it necessary to establish more sophisticated systems of control and supervision to guarantee free competition and to protect the rights of consumers in these types of markets. In general, regulatory powers were not so much awarded to agencies – in the sense of public organisations – but rather to specialist commissions. The justification behind these commissions was the possibility of bringing together experts in technical matters with a large technical capacity to take decisions on very specific matters, on which neither the ordinary courts nor Congress itself had enough knowledge (Majone, 1996: 16). Later, as these commissions started to develop their own organisational structure, they started to be generically called agencies as well, i.e. public bodies with a relative degree of autonomy.

The independence of these commissions from the Executive was more a result of the politico-institutional functioning of the American system rather than a set-up which was chosen as ideal. It was simply that, given the presidential model that existed in the US, Congress did not want to grant regulatory powers to the Executive on a permanent basis. Quite on the contrary in fact, it wished to limit presidential action in some policy areas. As Majone points out (1996: 17), the conferring of powers during the 1930s to a number of notable commissions (Federal Communications Commission, Securities and
Exchange Commission, Civil Aeronautics Board, among others), was the price which President Roosevelt has to pay for Congress and the Supreme Court to accept his extensive public intervention programmes for the economy although his real wish was to integrate these regulatory functions into his different ministerial departments (Shapiro, 1988, quoted by Majone).

Since these beginnings, the independent agency model practising regulatory policy has become very popular in recent years. However, classifying regulatory organisations solely by their special position in the government set-up (formally removed from the ministerial structure) can lead to certain confusion. It is important to stress that a regulatory agency cannot be characterised as being more independent (less hierarchical control) because it has more responsibilities. Its independence should rather be measured by other factors which are more associated with effective autonomy in decision-taking (no reversibility, no anticipation of preferences, etc.). An agency which has a wide range of responsibilities, but which repeatedly follows the orientations of the Parliament or the politicians in power has little effective independence (Gilardi, 2002).

For Lowi (1985: 85-7), the organisational characteristics of public bodies whose mission is to implement regulatory policies (control the monitoring of rules, sanction non-compliance) must favour the interpretation of rules in their context, and establish clearly defined and standardised application procedures. In this sense, as Lowi demonstrated empirically, the staff in these organisations needn’t be made up of elite civil servants but rather of experts and professionals capable of adequately monitoring the processes and procedures. This organisational model, which is commonly found in regulatory policies, is not, however, overly suited to public utility regulatory policies, where there tends to be a business-oriented oligopoly and, therefore, each decision ends up being a decision on a particular case, with a direct effect on the strategic game between the different businesses which make up the sector. The effect that many decisions can have on the structure of the market means that it is necessary to constantly reflect on what direction the sector’s policy process is taking and which means that the people making up the regulatory bodies need to be highly qualified and the structure less hierarchical than in other organisations which also implement regulatory policies.

In recent years, the autonomous regulatory agency model has been quick to spread throughout the world and has frequently followed a pattern of highly intense institutional imitation in that it has become one of the prime symbols of the success of the new models of state intervention in the economy in the entire world. However, we should examine the extent to which this rhetoric of the regulatory state has brought with it totally superficial adaptations of these organisational set-ups, i.e. cases where the
dominant administrative traditions have adopted new symbols and codes to ensure their own organisational survival (Hood, 1998).

The arguments which justify the creation of independent authorities do not always coincide. On the contrary they allude to very different regulatory arguments and reasoning. If we take the example of the telecommunications sector in northern EU countries, where the states continued to maintain a considerable share in the capital of the incumbent operators, the introduction of the independent agency was justified as a means of preventing a conflict of interests within the government\(^1\). It is surprising, however, that the opposite option was not chosen: why not make the company independent? However, in southern EU countries, arguments took the other direction: the creation of highly specialised technical bodies with highly efficient resources was justified in view of the absence of a government specialised in controlling the sector. Independence was justified more by a desire to maintain professional autonomy as a corporate tradition (engineers and lawyers had already been regulating the sector during the monopoly) than as a means of prevention of a conflict of interests between politicians.

Moving beyond Europe, the degree of variation increases. In the USA, with its special high level of policy and administrative fragmentation, the concept of independence is even less clear, and in the cases where it is applied it is used to characterise that the agency answers before Congress and not before the president, although the president does have certain control over the agency’s activity. In Latin America, the arguments are different again. Here independent agencies take shape in the form of special units within the public sector which are politically independent and have special remunerations and professional selection criteria. Independence is fundamentally understood as being independent of political parties – not so much because of conflicts regarding policy aims but rather as a means of protection against the spoils system which exists in practically all the countries in the region.

In general, although several regulatory agencies or bodies were created in Europe in the 1990s, they were very different from the regulatory commissions in the United States because the institutional structure and government tradition of European countries is also quite different (Coen / Doyle, 1999; Vogel, 1986). Nonetheless the rhetoric and symbology are similar on both sides of the Atlantic, as are the rule models. In both

\(^1\) This need was repeatedly proposed by the EU in the shape of different directives throughout the liberalisation process from 1990 onwards. For a more detailed definition, see the Parliament and Council’s Directive on interconnection 97/33, art. 9.
cases, there is a wide variety of control systems and a certain degree of government fragmentation but the set-ups are different.

The fragmentation of institutional constellations

In the regulatory policy, the different mechanisms for rule making, supervision and imposition of sanctions do not necessarily have to be set up in the same institution and can even be fragmented and divided among different institutions (depending on the level of the rules, or the number of sanctions). Although US-based regulatory commissions normally concentrate all these functions within the same organisation this is not common in Europe, even with the new situation of new regulatory bodies. In Europe, governments and legislators retain certain power over the regulation of sectors (Baldwin et al., 1998: 3). Nowadays, regulatory policies are very complicated as they also involve the promotion of rules, the concession of licences, or the definition of explicit incentives which are integrated into the rules themselves as a more interventionist form of market regulation (Chang, 1997: 723). For all these reasons, it is not surprising to find in many countries an important degree of organisational fragmentation in policy-making and implementation in that different types of specialisation are commonly required to be able to use the instruments available in each regulatory policy. As Thatcher and Sweet (2202: 17) recall, the delegation of power to an autonomous agency has also influenced private interest groups as these have found an institutional space of their own. In general, these bodies were more open to new actors entering the sector – as a result of the opening up of markets – while governments tended to continue to associate to a greater extent with the large traditional companies in the sector (the former monopolies).

When a regulatory agency has little or no autonomy, it is necessary to look for the motives behind the institutional or organisational fragmentation in the symbolic benefits of creating a ‘special’ unit which is highly visible and specialised in the policy sector. Having a certain degree of internal competition within the governmental organisation can also mean better management, a greater degree of transparency within the government itself (more information reaching the principal), or the reduction of the dangers of capture on the part of businesses. On the other hand, if there is a high degree of autonomy (where the agency answers only before Parliament) or full autonomy (where the agency answers directly before the judiciary), the veto and control system within the public policy management system affected by the new institutional set-up becomes more complex. In this case, the reasons behind fragmentation can lie in the fundamental distrust which exists regarding the public sector’s capacity for governing sectors with market imperfections. This results in the establishment of a cross-control
system to monitor the policy process, which makes it for difficult for the system to fail in its task of pursuing the public interest although it reduces the likelihood of always finding the best solutions.

In the two cases where we examined the existence of fragmentation in the delegation of responsibilities – division of power and specialisation of functions – one of the fundamental arguments which specialised studies use to justify the creation of independent organisations is not very effective. It is the argument about the need which politicians have to make a self-limitation commitment regarding their power over public policy to prevent certain short-term temptations (election cycles, interdependence on other policy sectors, etc.) which would condition their decisions on the regulation of the sector in question and introduce elements of distrust and distortion in the functioning of regulated markets. In our opinion, this argument should only work when just one independent agency holds all the responsibilities concerning the regulation of the sector, but not in other cases because if fragmentation exists, the government can maintain its capacity to act on policy-related decisions, even if it does so in a shared manner, i.e. as another actor in the field.

It is worth remembering that in the case of the classical and fully independent agency model – central banks - the main justification behind independence is not so much the regulation of the actual bank sector but the persecution of a common aim – the control of inflation through the use of one of the many possible policy instruments for this - monetary policy -, which is, without a doubt, the most powerful instrument of all. Therefore, it is a relatively clear and specific task (a different question altogether would be the debate on its legitimacy), where the possible conflict with the government is clearly and almost structurally defined. This is quite a different situation to that of the regulation of a productive sector with market imperfections – which justify this type of special intervention -, where the conflict of interests with the government are not clearly defined (in any case this conflict may be occasional and variable) and where regulatory and control tasks are not identified by a clear aim either. It is rather the case where decisions with a ‘political’ aspect are frequently on the agenda (for example the typical debate which exists about whether to promote competition as much as possible in the short term, or keep it in check by stimulating investment in infrastructures, has an ultimately political component which cannot be resolved with purely technical criteria given the uncertainties which exist behind both options).
Policy overlapping in the regulatory arena

The fragmentation of regulatory responsibilities and control is a different phenomenon to that of the overlapping of these responsibilities. Fragmentation can be formally identified by observing specific powers and instruments within a policy area which are assigned or delegated to one or more public organisations. The overlapping of responsibilities is a more complex phenomenon. It is a formal as well an informal phenomenon, which occurs when different bodies, often with different orientations, use the different intervention instruments available to them to act on a single policy aim. It can therefore be understood that overlapping refers more to responsibilities regarding policy aims than to responsibilities regarding instruments, whose division and delegation tend to be relatively clearly defined in the majority of cases. Also some decision-making procedures can conduce to formal overlapping, when co-decision rules or mutual control designs exist.

It is impossible to avoid a certain degree of controversy in the area of public policy management given the fact that responsibilities for a sector are held by different bodies with different orientations and intervention instruments and there can evidently only be one outcome. The formal and complete separation of tasks and responsibilities, as proposed by Spiller and Levy (1996), which distinguishes between regulators which apply rules and supervise their compliance on the market, judges who control the regulators and the government, which uses its different ministries to implement the policies, is much more complicated in practice than in theory.

There are several issues where the different areas of responsibility converge due to the numerous implications which the different steps taken have. For example, policies are made in line with the severity of the rules which are being applied at the time; the technicality of the rules and their definition in the legislation immediately begin to define the capacity for control which horizontally-structured bodies will have (we should also mention that the actual struggles between different groups of bureaucrats can heighten these problems). Furthermore, the regulation of markets with imperfections, such as public utility markets, give rise to a large number of difficulties as the type of public intervention must be very active, constant and make a fundamental contribution to defining the business structure of the market. This does not seem to be a purely technical task, if only because of the level of risk involved in the many decisions which need to be taken.

One of the problems involved in this area is the existence of a discretion zone, where there is an incomplete relationship between the powers granted to the agency and the
control mechanisms established by the principals, and some decisions can be made in a fully autonomous manner. The characteristics of the discretion zone affect the behaviour of the different actors, who attempt to prevent the emergence of constant conflicts between different institutions. As Thatcher and Sweet indicate “The smaller the zone of discretion, the greater the agent’s interest will be in monitoring and anticipating the principal’s reactions to activities, to the extent of the fear, or wish to avoid, having decisions overturned” (2002: 6). Along the same lines, the differences between independence, limited autonomy and hierarchical control have been highlighted by Majone, who showed the conceptual difference between delegating to an agent – which implies retaining hierarchical power – and granting authority to ‘trustees’, as this latter group theoretically has more power than an agent and more distant control, which means that changes in the principals’ preferences hardly affect them but there is a certain overlapping of responsibilities regarding the policy. (Majone, 2001). Finally, complete independence, or institutional armouring, falls into an extreme category, where the commitment not to decide is used in an extreme fashion by the constellation of public actors towards a particular actor, of a non-majoritarian nature.

**Forming hypothesis about the effects of institutional constellations**

Now, we will concentrate on presenting a schematic analysis showing how the relationships between the different variables allow us to identify the different problems which can derive from each type of institutional constellation. By considering the character of the three institutional variables which have been identified in different countries and sectors, we will try to identify tentatively different institutional set-ups in terms of the management of a regulated sector.

What effects does overlapping and fragmentation have for a regulatory policy? This question, to all general purposes, is probably impossible to answer. However, it may be very interesting to identify the different degrees of overlapping and the types of fragmentation which exist regarding regulatory responsibilities and the effect they have on policy management. For example, when there is a high degree of fragmentation and overlapping of responsibilities, the formal or informal policy agreements among the main public actors are a highly complex matter as there are many sources of veto. In contrast, when there is a relatively low degree of fragmentation and heavy overlapping of responsibilities, it is more probable that the aims of the participating actors will coincide, which will lead to consensus and permit the construction of more complex visions of the problems. This is also a situation where politicians, for example, introduce wider aims which go beyond the perspectives of the regulatory agencies and
which lead to improved technical precision and information on areas of a more political nature.

The tables below contain a possible interpretation of each of the key aspects involved in institutional constellations (institutional predominance, formation of consensus and stability in decision-making) that affect the management of regulatory policy. We chose two of the key institutional variables for each case and took the extreme values for each of the three variables to recreate the different situations which can arise in different institutional set-ups. Each case thus clearly shows the four extremes which can emerge in each of the three key definition problems with regards to regulatory policy. This should at least provide us with an initial working hypothesis and allow us to better analyse the problems which can be caused by the different institutional constellations present in each sector or country. In the second part of this document, we will present an empirical discussion of the proposed typologies based on the analysis of the management of the telecommunications sector in four European countries.

Table 1. Policy dominance. Interrelation between policy fragmentation and degree of hierarchical control in the regulatory regime.

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<tr>
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<th>Strong hierarchical control</th>
<th>Weak hierarchical control</th>
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<tr>
<td>High degree of</td>
<td>Predominance of different</td>
<td>Predominance of group of</td>
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<td>fragmentation</td>
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<td>courts</td>
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<td>Low degree of</td>
<td>Predominance of ministry</td>
<td>Predominance of NRA</td>
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<td>fragmentation</td>
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Table 2. Consensus formation. Interrelation between policy fragmentation and overlapping of responsibilities in regulatory regimes.

<table>
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<tr>
<th>Strong overlapping</th>
<th>Weak overlapping</th>
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<tr>
<td>High degree of fragmentation</td>
<td>High degree of complexity in the establishment of agreements (multiplication of vetoes)</td>
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<tr>
<td>Ease in the establishment of agreements (weak vetoes)</td>
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<tr>
<td>Low degree of fragmentation</td>
<td>Ease in the development of consensus-forming processes among the relevant actors (strong vetoes)</td>
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<tr>
<td>Tendency towards the development of conflicts between the relevant actors (few vetoes)</td>
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Table 3. Decision-making stability. Interrelation between the overlapping of responsibilities and degree of hierarchical control in the regulatory regime.

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<tr>
<th>Strong hierarchical control</th>
<th>Weak hierarchical control</th>
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<tr>
<td>High degree of overlapping</td>
<td>Reconciled decision-making (dominant temporal criteria)</td>
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<td>Dispersed decision-making (conflictive temporal criteria)</td>
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<tr>
<td>Low degree of overlapping</td>
<td>Dominant decisions (imposing temporal criteria)</td>
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<td>Opposing decisions (different temporal criteria)</td>
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SECTION TWO: CASE STUDIES

This section will examine case studies relevant to the analysis of fragmented competencies in the telecommunications sector in Great Britain, France, Germany and Spain. This analysis will help us to provide us with arguments to associate regulatory policy structures with action processes. Our choice of countries was determined by different factors. Firstly, the four countries are very different in terms of politico-institutional environments, which means that over time they have adopted different institutional alternatives to regulate the telecommunications sector. This being the case, however, it can be seen that these countries are currently undergoing processes of institutional convergence towards systems of sectoral regulation based on the formation of semi-independent regulatory agencies. They are subordinated bodies, supervised by a ministry. They combine legislative, executive and judicial functions. They interpret, define and supervise rules, and introduce sanctions if necessary (Baldwin and Cave 1999: 70).

Secondly, the differences in the organisational structure of institutions in the four countries provide us with the opportunity to evaluate how different degrees of fragmentation of competencies have influenced the dynamics of sectoral regulation. We have to take into account that Great Britain’s case has had a considerable influence on the other countries on the European continent. The setting up of OFTEL as the first agency specialised in sectoral regulation served as an example for a ‘second’ wave of continental regulatory institutions, which began to appear in Europe in the second half of the nineties under the pressure of European Union directives (Schneider 2001). This next section will describe the regulatory situation and institutions in Great Britain, France, Germany and Spain, which will then allow us to compare the characteristics of their institutional structures.

United Kingdom

Great Britain has been one of the driving forces behind the transformation of systems for the provision and regulation of telecommunications services in Europe. The Telecommunications Act of 1981 divided the Post Office into two separate public entities: the Post Office (PO) and British Telecom (BT). A second Telecommunications Act in 1984 privatised BT and established the Office of Telecommunications (OFTEL) as a semi-independent regulatory body and non-ministerial office within the Department of Trade and Industry (DTI), which is responsible for political initiatives in the telecommunications area. OFTEL is headed by a single Director General of Telecommunications (DGT) which holds core regulatory functions. The DGT is appointed by the Secretary of State for the Department of Trade and Industry for a fixed
renewable term of five years. The DGT may be removed from the post only for reasons of incapacity or misappropriation of funds. He is accountable before Parliament for the implementation of the aims of OFTEL, and a change of government does not mean his dismissal, nor is he subject to the control of the DTI except in a small number of specific cases related to matters of national security.

We can summarise OFTEL’s most important functions in terms of the following lines of action:

- To ensure compliance with the terms and conditions of telecommunications licences.
- To initiate proceedings for changing the conditions of licence, whether on its own initiative or at the instigation of the Competition Commission (CC).
- To promote effective competition in the sector.
- To inform the chairperson of the licensing unit of the DTI on matters as appropriate, in particular with regard to the granting of new licences.
- To investigate and act on formal complaints.
- To obtain information and promote the publication of any documents that may be helpful to users.
- To consider complaints and questions raised in regard to telecommunications services and equipment.
- To designate standards, register licences and certify equipment.

The granting of new operator licences is the sole responsibility of the DTI, although OFTEL is kept fully informed of licensing proposals. The main route by which OFTEL regulates the sector is by overall supervision and control of compliance with all the telecommunications licences issued in Great Britain. The Director General has wide-ranging powers, particularly in terms of amendments, the imposition of licence conditions and the establishment of the conditions for interconnection between different operator networks when these are unable to come to an agreement. Licence control is effected via a procedure of informal contact between OFTEL and the operators. The legislation gives the DGT powers to requisition information necessary for this control from any of the operators.

OFTEL also supervises the obligation to provide a universal service and asymmetrical regulation to ensure that the dominant operators do not abuse their position of power. In terms of service quality, OFTEL obliges the operators to publish regular reports providing information on service quality. Among the OFTEL strategies for opening up the regulatory process to the participation of various sectoral agents, worthy of particular mention are the publication of consultative documents and consumer surveys. OFTEL also publishes its internal management plans and longer-term strategic action programme.
OFTEL funding is provided by Parliament, but the cost is offset by payments made to the Treasury by operators and calculated on the basis of their profits. Apart from this budgetary allocation, another mechanism of control used by the regulatory body is the DGT report on activities submitted annually to the Secretary of State for the DTI and presented before Parliament. Moreover, DGT initiatives may be subjected to judicial control in addition to Parliamentary control.

Regulatory power in the British telecommunications sector is highly fragmented. The set of formal and informal systems that interconnect public bodies has enabled a high degree of control to be established over regulatory actions, and this acts as a key incentive to independent action by the regulatory institutions (Spiller, 1993). The three key players with responsibility in the British regulatory process are the Director General of OFTEL, the Secretary of State of the DTI and the Competition Commission (CC). Control by the Secretary of State of the DTI is exercised by reducing the agency’s budget or by not renewing the Director General in his post. The approval of the CC – which was created in 1948 and which acts through pronouncements on mergers and consumer protection - is a prerequisite for mergers and amendments to operator licences. The CC’s role is to second or veto the policy recommendations of the DGT or the Secretary of State for the DTI. Although the CC is theoretically an agency with close links to the DTI, to all intents and purposes it acts independently (Thatcher, 1994).

OFTEL’s agreement with proposed modifications by operators is necessary in order to change licensing conditions. Once an agreement has been reached, this has to be ratified in turn by both the CC and by the Secretary of State for the DTI, both of which have a power of veto. If OFTEL and the operator are unable to come to an agreement, the CC determines the new conditions for the licence and once these are approved by the CC, the Secretary of State ratifies the pronouncement. OFTEL and operators normally agree on regulations as, an appeal to the CC is not a desirable option for either the companies or OFTEL. For the companies, it is risky because the process may take longer than 6 months and the financial standing of a company may be damaged during this period. For OFTEL to appeal to the CC implies a loss of credibility. Finally, the Secretary of State may not make licence amendments against the wishes of the DGT. In theory, the Secretary of State can initiate a legislative process in Parliament to revoke licences. However, this rarely occurs as it would imply a breach of the informal rule of delegation of powers to OFTEL (Hadden, 1996). Such regulatory dynamics are evidence of a fundamentally stable institutional equilibrium. Furthermore, the existence of an independent judiciary system with a long tradition of control over contracts and property rights facilitates the consolidation of negotiated regulation between public authorities and private operators.
This institutional configuration of cross control grants a wide margin of autonomous action to the DG for decision-making on regulatory policies (Thatcher 1998: 125). In the first place, the high degree of fragmentation in regulatory powers can be associated with a greater input in terms of pluralist interaction (Katzenstein, 1978: 323-332; Atkinson / Coleman, 1989), since dispersed authority facilitates a greater number of organised players competing to defend their interests and this in turn favours a dynamic policy process which is constantly changing. In the British case, the fact that regulatory power is shared between different governmental bodies (OFTEL, DTI and CC) generates a certain element of ‘competition’ between the regulatory bodies when exercising their powers. At the same time, the combined actions of the three regulatory bodies reinforces their ‘strength in action’. For example, the prospect of having to refer disagreements on amendments to licences for the provision of telecommunications services to the jurisdiction of the CC - with all it implies in terms of time lost - acts as a strong incentive for operators to agree new licensing terms with OFTEL (Thatcher, 1994).

The British telecommunications sector, as well as being differentiated by fragmentation in terms of sectoral powers, is also marked by the openness and transparency of its systems for participation in the decision-making process. Acting as an incentive to political debate and the attainment of social consensus is the fact that decision-making processes are open to participation by interests outside the closed circle of groups directly affected by regulatory initiatives. This factor is closely related to the issue of fragmented regulatory power in the sector, since an increase in the number of public participants means an increase in the number of channels that can be used as a means of participation. In other words, political and economic initiative-takers will find it easier to locate agents with decision-making powers whom they can bring round to their point of view (Noll, 1983). In this respect the role of OFTEL has been fundamental, whether in terms of the publication of consultative documents, the organization of sectoral surveys or in the debate on its management plans.

France

In France the regulatory model for the telecommunications sector has traditionally been characterised by a great degree of state intervention in the form of direct control over the operator by a governmental authority (Chevalier, 1996). Thus, European directives have provided the opportunity for restructuring the relationship between France Telecom - the public operator of the services - and the regulatory authorities. In order to comply with European directives, the French law of 26 July 1996 opened up the telecommunications sector to full competition from 1 January 1998.
The ART (Autorité de Régulation des Télécommunications) was set up on 1st January 1997 with the aim of overcoming the incompatibility between the state’s role as both a player in the market and a regulatory body. ART was modelled on the independent regulatory agencies that had been created in other European countries on the basis of the British OFTEL model. The essential argument put forward to justify this decision was that the main operator in the market was still under state control and so could not be "a judge as well as a player" in the market. The state cannot be a majority shareholder in France Telecom and at the same time be expected to impartially guarantee compliance with market laws in a free market environment. In order to guarantee the credibility of the regulatory function and to instil a feeling of trust among investors, the two roles of control over the system for providing the telecommunications service and the tasks of sectoral regulation needed to be separated.

France created a model of regulatory agency that had been tried and tested in other countries, but which in the French case lacked a public administration tradition (Vedel, 1997). This creation therefore, has been fiercely criticised, particularly in the powers that the law has granted to the ART, since it supposes a break with the tradition of a strong concentration in ministerial authority of powers both in the area of design as well as of control over policy regulation in the telecommunications sector. For this reason, the French legislator has attempted to establish mechanisms favouring independent action by the new agency. Thus, a special system for selecting the five members that make up the regulatory authority has been established, with three of these appointed by the President of the Republic, one by the Chairman of the National Assembly and one by the Chairman of the Senate. The members are appointed for a six-year period and the posts are irrevocable and non-renewable. One third of the members of the authority appointed by decree shall have their appointment renewed every two years. Moreover, a system of incompatibilities typical of this kind of regulatory body is laid down. Thus, the office of a member of the telecommunications authority is incompatible with any other professional activity, any nationally elected office and any direct or indirect interest in a company in the telecommunications, broadcasting and information technology sectors. Furthermore, the members of the telecommunications regulatory authority may not be members of the public service commission for post and telecommunications.

The funding of the telecommunications regulatory authority comes from payment for services provided and the taxes and fees payable under the conditions set out by the Finance Act or by State Council decree. During the drafting of the annual Finance Act, the regulatory authority submits to the Telecommunications minister its proposals for the funds needed to carry out its functions. These funds are included in the general state
budget. Thus, the actions of the regulatory body can be controlled by the ministry through budgetary allocation.

In the French case, the regulatory agency model is conditioned by a distribution of powers, which constitutes a set of powers shared with the Ministry by means of the need for ministerial approval. Thus, in terms of the specification of certain rules of a technical nature for network and services operations, interconnection and terminals, decisions are ultimately approved by the Ministry. Moreover, ART deals with licence applications for the establishment and operation of networks open to the public, and also with requests for licences to provide the public telephone service. It also deals with applications for licences for the public provision of services using radio frequencies. In all these cases, the processed files are submitted to the Minister, who is entrusted with issuing the licences. Finally, the regulatory agency assesses the net cost of the universal service and the contributions to be paid by operators but must send any action proposals to the Minister for approval.

ART, in conjunction with the Ministry, also acts in an expert technical advisory capacity to the government. At the request of the Telecommunications Minister, ART participates in the preparation of the French position in international negotiations on telecommunications issues. At the Minister’s request, it represents France in the relevant international and European Union organisations. These advisory and representative functions are complemented with reports on the drafting of enactments and regulations governing the telecommunications sector drawn up by the government.

ART has the following powers:

a) The Authority issues licences for the opening and operation of private networks intended to provide telecommunications services reserved for closed user groups.

b) The Authority draws up and manages the national numbering plan and assigns frequency and numbering resources.

c) Public network operators whose market share is greater than 25% are declared to be "powerful" and must for that reason publish a standard interconnection offer. The Authority draws up a list of such operators every year and approves their standard offer. The Authority may request modification of interconnection agreements made between two operators.

d) The Authority is responsible for the terminal equipment conformity assessment for equipment connected to networks.

e) The Authority has powers for the conciliation and settlement of disputes between operators in three areas: interconnection, technical restrictions, and shared use of public field.

f) The authority may be called upon to play a conciliatory role and to settle disputes that do not come under the jurisdiction of the dispute settlement procedure. In addition to the Minister responsible for telecommunications, any individual or legal entity, any professional
organisation or consumers’ association may thus refer matters to the regulatory body, who informs the competition authority thereof.

As far as sanctioning powers are concerned, ART may impose penalties at the behest of the Telecommunications Minister, any professional organisation, any natural or legal person, or as a matter of course if a default is observed on the part of network operators or telecommunications service providers in relation to the legislative and regulatory provisions pertaining to their activity or to decisions taken to guarantee implementation. The power to impose penalties is administered subject to specific conditions and includes measures to suspend a licence temporarily or permanently or to impose a fine of up to 5 % of the operator’s turnover when the offence is repeated.

ART has introduced a certain degree of transparency and possibility for participation into the decision-making processes and implementation of French telecommunications policy. The involvement of market players is an essential element that will prove to be increasingly necessary when it comes to areas of forward planning. The methods used to design the regulatory actions largely determine their effectiveness and relevance. In this respect, ART encourages permanent consultation among sectoral agents, which in turn improves the transparency of their actions. Consultation involves regular meetings of bodies such as the advisory committees on radio communications and on telecommunications networks and services, and the interconnection committee. Consultation also involves organising regular public hearings.

The control systems for the new regulatory agency again demonstrate a restrictive approach in terms of capacity for action. The ART’s decisions are subject to multiple forms of control. Firstly, there is control by the government and Parliament, to whom the ART issues an annual report on its activities. It is also heard by permanent Parliamentary commissions and maintains regular contacts with the Posts and Telecommunications Public Service Commission. Secondly, there is judicial control. Appeals against ART decisions may be brought before the Paris Appeal Court or the State Council (Supreme Administrative Court). Appeal does not lead to suspension. However, execution of the decision may be deferred if it is likely to lead to clearly serious consequences or if new circumstances of exceptional gravity have arisen since its notification.

ART has therefore sought to exercise its institutional activities within a framework of constructive dialogue with the public authorities, the government and Parliament. It has also worked hard to develop cooperative links with the other institutions it has to work with, such as the broadcasting authority (CSA) and the competition authority. The State
Council has jurisdiction for all other appeals against ART decisions outside the judicial arena.

ART does not intervene in the "setting of statutory rules" for the sector. Setting rules consists of establishing the legal framework for regulation and they are defined at national level by the Ministry. ART’s role is restricted to control over the application of the regulatory framework, promotion of transparency and a certain degree of participation in the debate, and of a consensus for the proposals for sectoral regulation. This introduces a certain degree of stability and consistency in the sectoral market (Hubert, 1999).

**Germany**

In the case of the German telecommunications sectors, the transformation from PTT to NRA took place in successive phases. The first phase was completed in 1989 and was characterised by three events: Originally, telephone services in Germany were provided exclusively by Deutsche Bundespost, which was state owned and had a legal position similar to that of a governmental agency (*Sondervermögen des Bundes*). In addition to providing telecommunications services, Deutsche Bundespost was also in charge of the mail service in Germany and provided banking services. In preparation for a future competitive market, the Deutsche Bundespost was broken up into three separate public enterprises, one of which was Deutsche Telekom. In 1990, the German Ministry of Post and Telecommunications (BMPT) issued the first cellular phone license to a private competitor. The BMPT still holds the steering competencies for the sector, including ownership and regulation.

In 1994, the ownership was separated from regulatory competencies. While the competencies were left with the BMPT, a new administrative agency, the Agency for Postal and Telecommunications (BAPT), was institutionalised for ownership. The three public corporations were transformed into stock companies, one of which was Deutsche Telekom AG (DTAG). The privatisation of Deutsche Telekom began on January 1, 1995: Deutsche Telekom became a private joint stock company (*Aktiengesellschaft*) under German law, whose shares until recently had until recently been held exclusively by the Federal Government. As a further step in the privatisation process, Deutsche Telekom AG conducted an initial public offering in November 1996. With the new 1996 Telecommunications law, sector-specific regulation was set up with a new regulator, the Regulatory Authority for Telecommunications and Posts (RegTP), an institution under the supervision of the Federal Ministry of Economics (BMWi).
The new regulatory agency began operating in January 1998 and its director was named by the Federal Government upon the proposal of the Federal President. Of the different options which exist for the transfer of competences (ministry, administrative agency), the German Government opted to establish a regulatory authority. Of these options, the German Government opted to establish a regulatory agency. Bollhoff (2001) suggests that this decision was due to the state’s policy of reducing intervention and the size of the state: “The lean state policy of the government played a central role, because it was the core reason not to keep the ministry (BMPT) as a regulatory institution. With the establishment of a regulatory agency, the government described telecommunications liberalisation as a successful example of the lean state. In its general calendar on the lean state, the establishment of the RegTP was presented as an initiative in which a ministry was disbanded and an agency was merged with a new regulator. Here, the RegTP stood as an example for the reduction of the state”.

The competencies for action which were delegated to the new agencies were divided into three large areas:

a) administration the telecommunications market
b) supervision of the telecommunications industry for the purpose of securing compliance with the Telecommunication Act (TA)
c) protection of the consumers against excessive use of market power by market dominating suppliers

Administration of the telecommunications market comprises the issuance and administration of radio frequencies, the administration of telephone numbers, and the approval of terminal equipment. The Regulator is responsible for setting up the framework for the issuance of numbers and is responsible for issuing the numbers to network operators, service providers and users. The numbers are assigned upon an application by the aforementioned persons or legal entities. The Ministry of Post and Telecommunications is empowered to regulate the details (including the fees attached to the assignment of numbers) by an ordinance. The Regulator is responsible for the approval of such equipment in Germany but may delegate this task to other institutions. For this purpose it may accredit other institutions. The supervision of the telecommunications industry means that the Regulator is also responsible for supervising the compliance with the TA as well as any licenses issued under the TA by all participants in the telecommunications market. For this purpose, the Regulator may even enforce its requests by obtaining a search warrant from the local court in charge (Amtsgericht) and may seize the relevant documents. Finally to protect the consumers, the Regulator is responsible for regulating the general conditions of telephony services.
as used by each licensee and approving the prices charged for telecommunications services. The responsibility of the Regulator for the approval of prices is governed by the TA which applies only to entities with a market dominating position.

Also part of the RegTP's remit, aside from regulation of the telecommunications and postal markets, are for instance: licence award, provision of input for standardisation solutions, consumer advice, especially on new regulations and their implications. The RegTP also seeks to increase the transparency of regulatory decisions and intensify public debate on issues of telecommunications. To do this, the regulatory agency promotes sectoral consultations and publishes reports on the different alternatives which exist for the regulation of the sector.

The RegTP's area of competence is very wide and covers both the telecommunications and the postal sector. This makes it somewhat different from the typical competencies regulatory agencies hold in the telecommunications sector. One of the reasons behind this institutional design was the system of competencies which characterised the regulatory organisations which the new agency substituted. Before the liberalisation of the telecommunications market in Germany, the Agency for Post and Telecommunications (BAPT) and the Ministry for Post and Telecommunications (BMPT) had regulatory functions. The competencies of these two bodies were distributed between the new regulator RegTP and the Ministry for Economics (BMWi).

The organisational transformation which the German institutional system for the regulation of the telecommunications sector underwent has led to the development of ‘competition’ between public institutions. Bollhoff (2001) mentions the tensions which exist between the RegTP and the German Federal Competition Authority (BKArtA) with which it shares the control of competition in telecommunications issues. We should recall that before the RegTP was set up, the possibility of designating control of the regulation of the telecommunications and post sector to BKArtA was considered but later rejected.

The Regulatory Authority is equipped with procedures and instruments with which to enforce the regulatory aims. These include information and investigative rights as well as a set of sanctions. The determinations cannot be quashed by the supervisory authority (the Economics and Technology Ministry) in the event of legal action. In derogation of the provisions of the Restraints of Competition Act, there is no scope for ministerial decisions. The determinations are underpinned by the Telecommunications Act and the Postal Act, and are subject to judicial review but do not automatically have suspensory effect.
Moving beyond the traditional control mechanisms which are established for regulatory agencies - appointments, budget control, accountability before Parliament and judicial control, the German institutional system introduced a new control mechanism by setting up the Advisory Council. This consists of nine members of the German Bundestag and nine from the German Bundesrat. The members and their deputies are appointed by the Federal Government upon the proposal of the Bundestag and the Bundesrat. The Advisory Council is required to meet at least once a quarter, and has important functions. First, it makes proposals to the Federal Government on the appointment of the President and Vice-Presidents of the RegTP. Secondly, it participates in the decisions on award proceedings for licences and on the imposition of universal service obligations are made in consultation with the Advisory Council. Thirdly, it is entitled to obtain information and comments from the RegTP, which has a duty to provide all such information and finally it advises the RegTP in the preparation of the report on its activities which the RegTP is required to submit every two years to the legislative bodies of the Federal Republic.

Spain

Telecommunications services in Spain have traditionally been provided through a characteristic organisational system, which set the Spanish case apart from the majority of other European countries. The Spanish system was, in certain ways, closer to the organisational tradition in the US, i.e. characterised by the fact that services were provided by private companies which were regulated by the public authorities although in the case of Spain, up to the late 1980s the incumbent operator was delegated the tasks of developing the general lines for the development of telecommunication services in Spain. Although Telefonica had always been a private company, with and without public capital, it had traditionally enjoyed a privileged position with various Spanish regulatory bodies. Jordana (1998: 286) defines Telefonica’s relationship with public authorities before its complete privatisation as double-edged: “as a formally independent operator and regulator in practice, there is a double-edged relationship between the government and the company, with regard to ownership and management control (their aim being to improve efficiency in order to achieve greater profits) and via regulation and control of results (forcing them to perform efficiently in order to satisfy the citizen)”. Initiatives taken to regulate the telecommunication services market by Spanish governments with distinctly different political tendencies are indicative of this double-edged link. By bringing Telefonica’s privatisation process to an end, all structural links with public authorities were broken. Given the importance of this company to the national economy, both as an employer and for industrial and political strategy (with regard to both international business policy and
the policy on communication media), informal links were established between the government and Telefonica’s management. In the mid nineties there was a remodelling of functions within the ministerial structure, and competencies related to the telecommunications sector were transferred to the newly formed Ministry of Development. Regulatory action in the area of telecommunications was specifically delegated to the Secretary General of Communications.

In 1996, the Commission for the Telecommunications Market (CMT) was set up as a result of the initiatives being promoted by the European Commission. The new regulatory agency sought to incorporate the principles and provisions set out in the Full Competition Directives (particularly those mentioned in the Directive 96/19), and in particular all areas related to the granting of licences, interconnection and network access, universal services and public service obligations, numbering and separation of accounts. The creation of a regulatory body had been increasingly called for within the telecommunications sector in the light of the imminent introduction of the liberalisation process into Spain (Jordana et al, 1997).

The CMT is legal entity which is set up as a public law body with full capacity for private and public action and assigned to the Ministry of Development. The Commission is ruled by a Council made up of a President, a Vice-President and seven Counsellors. The members of the Commission are appointed by the Government upon the proposal of the Ministry of Development and chosen in accordance with their qualifications and professional background. The first Council formed was subject to a political pact between the main Parliamentary groups of the time. The independence of the members of the Council is sought by establishing guarantees that members can and will remain in their offices for a period of seven years, except in the case of special circumstances. They are subject to the regime of incompatibilities which affects senior government officials, with the additional clause that “members of the Commission for the Telecommunications Market cannot pursue any professional activities related to the telecommunications sector when their term of office in the CMT comes to an end and during the subsequent two years”.

The main functions of the CMT are:

a) Advisory functions. The CMT has a global reporting competency in terms of the government’s telecommunications policy.

b) Sector ordinance functions. The CMT can dictate binding instructions for organisations operating in the sector. These instructions are aimed at safeguarding free competition in the market. The CMT issues licences for provision of telecommunications services, authorisations
and concessions, with the exception of self-provision services and those which must be granted by tender through the Ministry of Development.

c) Arbitration functions. The CMT resolves conflicts between the agents in the sector in short-term periods in line with the dynamics of the market. It can act as an arbitrator when requested to do so by interested parties or when it deems it necessary.

d) Sanction powers. The CMT can exercise its power to sanction in the event of non-compliance of Instructions or Resolutions dictated by the commission. It can also press for the Ministry of Development to carry out an investigation or impose sanctions due to the non-compliance of legislation in force in the area of telecommunications.

In Spain, in contrast to Britain, before the CMT was created the fact that regulatory competencies were concentrated in the Ministerial Department led to decision-making processes which did not allow interaction between the regulator and the operator. Nor did the ministerial bodies offer transparency in terms of their action and the institutional mechanisms which existed for participation were not effective. The Telecommunications Advisory Council, a consultancy and advisory council for the government on telecommunications matters made up of representatives from the majority of social groups in the Spanish network (public authorities, political representatives, business associations, large and small users, operators, etc.), was very poorly valued as a mechanism to allow for real intervention in the decision-making process (Jordana et al., 1997:38). The concentration of regulatory power and the lack of a sufficiently strong coalition of users and new operators gave rise to a situation of dominance and capture strategies by the Spanish dominant operator, which controlled the Spanish telecommunications sector in terms of resources and technical information.

There were no clearly defined cross-control systems between the different regulatory bodies in Spain. The aim behind the relatively new CMT was to control the regulation of the sector but not to act as a counterweight to ministerial action in matters of telecommunications regulatory policy. As a result, the CMT and the Ministry of Development, for example, shared competencies in the area of the issuing of licences but the Ministry retained control over licences for more important services. The system used in Spain to fill management positions in the regulatory agency has not helped either to promote its role as a counterweight to governmental action. Senior officers are appointed mainly on the basis of political criteria, a fact which promotes the development of capture strategies by the government. There is, however, the possibility of removing a member from the CMT, as established by the government, upon instruction through the corresponding proceedings for serious non-compliance with duties instigated by the Ministry of Development.
An effective way of controlling the regulatory authority and balance of power of the government in Spain took shape through the European Union and in particular the Directorate General for the Defence of Free Competition. The effectiveness of this supranational control limited the strong influential relationship between Telefonica and the Spanish regulator and the opinion of Spanish sectoral agents is practically unanimous when evaluating the power of influence which European institutions had on Spanish telecommunications policy (Jordana, et al., 1997). Despite the formal introduction of a regulatory agency, the political tradition of centralising the decision-making process regarding telecommunications policy in Spain, and the fact that the structure of the sector network remained practically unchanged, implied a continuity in terms of the regulation of telecommunications services throughout the different governments which were in power in the eighties and nineties.

**Some reflections on the cases analysed**

In our case studies, we have analysed the organisational-institutional characteristics of the regulatory structures in the telecommunications sector in Great Britain, France, Germany and Spain. The fragmentation and distribution of competencies show that there is a wide diversity in terms of set-ups. With the exception of the British case, these systems were an adaptive response by the different politico-administrative traditions in each country to the new liberalised environment which was created in the telecommunications sector. The institutional set-ups range from systems promoting multiple interaction, such as the British case, which was characterised by the ease of participation of interested parties in the decision-making processes, strong fragmentation and even an overlapping of responsibilities in different public regulatory bodies, to the other extreme, where there was a strong centralist tradition by the governmental authority, which led to the emergence of primarily technical regulatory agencies which aimed to control the regulation of the sector without a consolidation of the balance of powers between the agency and the governmental regulator.

The fragmentation of the organisational structure of the regulatory system can serve as a means of restricting free decision-making by regulatory bodies (Spiller/Levy, 1996). Cross-control mechanisms mean that there are guarantees that the political pressures that regulators can be subjected to are limited. A high degree of fragmentation of regulatory power can, to a certain extent, lead to greater interaction by multiple actors as the dispersion of authority facilitates the participation of the sectoral actors to defend their interests. The greater the number of institutions with regulatory power, the greater their capacity for control over one another is, which in effect leads to a more dynamic policy process.
In the British case, the political responsibility of OFTEL before the Parliament is supported by the complex distribution of regulatory competencies among the Secretary of State, OFTEL and the Competition Commission. We have seen how the fragmentation of regulatory power can in itself be a control mechanism as it makes the different public organisations depend on each other for the regulatory ‘output’ stemming from political interaction. Each organisation represents a vision and interests which do not necessarily coincide in all cases. Our overall evaluation of the different structure models of public regulation allows us to draw an initial conclusion that the British case brought about a greater real fragmentation of regulatory power, which acted as a cross-control instrument between institutions.

In the French case, the regulatory agency model was of a primarily technical character and was conditioned by the fact the ministerial structure retained a strong capacity for regulating the sector. In contrast to the British case, the institutional set-up gave rise to a lesser dose of interaction by multiple actors in the definition of the regulation of the sector. The German model is in an intermediate position, with the establishment of a strong regulatory agency, marked by the German administrative tradition which was not very open to the introduction of radical changes. A general explanation of this fact is that “rule-driven” administrations as in the case of Germany are more difficult to change. The design of the German regulatory agency was strongly marked by the constraint which existed to merge an administrative agency and a ministry into a regulatory agency.

The different institutional constellations in the countries analysed generate different perspectives of the regulatory process. In other words, the specific models of public policy are influenced by the institutional and organisational conditions which exist in the regulatory network. Each structural configuration thus creates its own logic and dynamics. On a final note, we can attempt to represent the different cases analysed in two dimensions. Firstly by comparing the interrelation between policy fragmentation and the level of hierarchical control of the regulatory regime and secondly by interrelating policy fragmentation and the overlapping of responsibilities in the regulatory regimes.
Table 4. Interrelation between policy fragmentation and level of hierarchical control in the regulatory regime. Policy predominance.

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Table 5. Interrelation between policy fragmentation and overlapping of responsibilities in regulatory regimes. The definition of aims.

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