

**Strategic Behaviour of Utility Suppliers  
in a Multilevel Regulatory Regime:  
An Analytical Framework**

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David AUBIN

Dept. of political and social sciences

Université catholique de Louvain

Place Montesquieu 1/7, B-1348 Louvain-la-Neuve (Belgium)

Tel. +32 10 47 42 74 Fax. +32 10 47 46 03

Email: david.aubin@uclouvain.be

**Abstract:**

In the post-liberalisation area, utility suppliers operate in a context of multilevel regulation, involving a wide set of authorities with general or sector-based competencies. With a lack of co-ordination, this complex institutional environment generates a potential for regulatory competition that creates opportunities for suppliers to behave strategically in playing regulators off against each other, or in exploiting blind spots in regulation. How do regulatees make the most of regulatory fragmentation to improve their market positions? Strategic behaviour consists for a supplier in activating the existing substantial and procedural rules in order to defend its interests. The aim of this communication is to present an analytical framework based on process analysis that describes the regulatees' strategies and to test it on one example in the telecoms sector in Belgium.

## **Introduction**

Two decades after liberalisation, most utility sectors within the European Union are regulated by complex institutional arrangements involving agencies, governments and courts of multiple levels of authorities and with general or sector-specific competencies. This multilevel and cross-sector regulatory environment is likely to generate redundancy, incoherence and blind spots that create a range of possibilities for suppliers to defend or improve their market positions in exploiting favourable rules and possibly playing regulators against each other.

How do regulatees make the most of regulatory fragmentation to improve their market positions? The aim of this communication is to set up an analytic framework able to reveal the strategies used by regulatees to make the most from existing rules. Strategic behaviour consists for suppliers in activating the existing substantial and procedural rules in order to defend their interests.

How to study strategic behaviour? Why is it relevant? How to do it? What are the expected outcomes? I present an analytical framework that describes the regulatees' strategies of activation. First, the literature is reviewed with the perspective to underline the appropriate elements that justify and contribute to the design of the analytical framework. Second, the concepts of strategic behaviour and process analysis are presented and their relevance illustrated with an example taken from the telecoms sector in Belgium. Finally, I conclude about the expected outcomes of a full empirical test and the expectations in terms of contribution to regulation studies.

### **1. Relevance of the approach for regulation analysis**

After a short review of the literature, I stress the need to look at the actual functioning of the utilities sector and its impacts on regulatees, using a regime approach, and considering the effects of rescaling in terms of power shifts.

In the past 20 years, research about regulation in the utility sectors has developed in three steps. Initially, the aim was to analyse the formal delegation of powers by governments and legislators to non-majoritarian institutions with the principal-agent as main theoretical approach (Majone 1994). This institutionalist view focused mainly on the creation, accountability and functioning of national regulatory authorities. This first body of literature

provided a fair description of formal regulatory arrangements and distributions of competencies.

Later, the attention turned to the actual functioning of non-majoritarian regulators (NMRs), their roles and relationships with other actors, expressing “the need to go beyond the formal institutional framework of delegation to NMRs to uncover the processes and mechanisms whereby the roles and relationships of NMRs develop and affect the governance of markets” (Coen and Thatcher 2005: 335). The central concern was to assess the impact of these relationships in terms of legitimacy and accountability. These researches showed how the relationships between governments and regulators work, as well as the way regulatees attempt to influence the regulatory process at the European and national levels. The comparative method widely used in these works demonstrated the mechanisms of access to the policy arena (Bouwen 2001) and implementation. However, the focus remains on regulators and their relationships with governments and regulatees.

Nowadays, regulation studies are moving to interaction and coordination among multiple regulators at different governmental levels and their influence on regulation effectiveness and market performance (Coen and Héritier 2005). Regulators are no more approached as isolated actors, but as participants to a regulatory regime involving several regulators and many kinds of regulatees (Coen and Thatcher 2006). Hence the recommendation to investigate the institutional constellations of regulation (i.e. the diversity of regulatory bodies and the division of responsibilities and power) which determine, execute and enforce the regulation (Jordana and Sancho 2004: 297).

This overview of the literature displays the evolution of regulation studies towards the description of the actual functioning of utility sectors, taking liberalisation for granted. It also suggests new paths for further research. First and foremost, there is a need to concentrate on the impacts of regulatory arrangements on target groups and economic sectors. So far research in this direction only addressed market performance (for telecommunications, see Boylaud and Nicoletti 2000) and the quality of regulation (Gilardi 2003). With a few exceptions (e.g. see Coen and Héritier 2005), not much attention has been paid to the consequences of the interplay of all regulatory bodies in the involved sectors, neither to actors’ games in policy arenas or the redistributive impacts of the rescaling and transformations of the decision-making process.

Second, recent studies stress the need to consider regulation as a system or ‘regime’ (Hood et al. 2001), i.e. a set of institutions that organise, steer and control the activities of a given sector (see Krasner 1983; Varone et al. 2002). According to them, the institutional coherence of the regulatory regime is an important factor in the effectiveness of regulation. If regulatory authorities fail in co-ordinating their initiatives, they will be confronted to regulatory shopping and other forms of opportunistic behaviour from the regulatees. The regulatees evolve within a given regulatory regime that distributes the positions both within the market and the policy area.

Third, the effects of regulatory arrangements on the positions of power of regulatees (market and political positions) must be stressed. The rescaling of the governance structure of utilities sectors is a power-laden process (Faure et al. 2007): “The emergence of new territorial scales of governance and the redefinition of existing scales (like the nation-state) change the regulation and organisation of social, political and economic power relations” (Swyngedouw 2004). Any reconfiguration of the regulatory regime, with up-scaling of some regulatory process (e.g. competition rules or state aid) and the down-scaling of others (e.g. regulation of the media aspects at the regional level) have impacts on the relative power position of the regulatees. Particular regulatees benefit from tailored rules or a better access to the decision-making arenas, while others lose. They shift from policy venues, selecting the most favourable to them, adapt the way they frame the issues and search for support or attempt to contain the rivalry to defend their positions (Pralle 2006; Schattschneider 1960; Baumgartner and Jones 1993). The venue and scope of the rivalries are not power neutral.

## **2. Developing an analysis of strategic behaviour**

In the following, I take stock of these orientations and propose an original way to consider them. About strategic behaviour, the argument is that suppliers make the most from the rules available to them in multilevel regulatory regimes to enhance and defend their market positions. They exploit the lack of coordination to play the regulators one against the other and activate the rules that are most favourable to them and, respectively harm their rivals. As such, strategic behaviour should be of common occurrence in a fragmented regulatory environment.

Strategic behaviour means that a regulatee placed in a regulatory environment with multiple authorities will tend to strategically select the rules to comply with as well as the authorities

with which to maintain relationships (mainly information exchange and participation to the decision-making process). “By ‘strategy’, I mean the process of choosing and executing a plan of action to realize policy goals. Strategizing involves selecting targets for action, choosing specific tactics, and paying attention to timing [...]” (Pralle 2006: 6). Such a ‘regulatory shopping’ is a strategic selection among a whole set of available opportunities that blind spots and redundancy create. The regulatee exploits the rooms of manoeuvre left by the loose or incomplete co-ordination between the decisions and actions of a multitude of authorities. Hence, strategic behaviour consists in exploiting the set of available rules of regulation in order to defend one’s own interests and market positions<sup>1</sup>. I suppose a positive correlation between lack of coordination and intensity of strategic behaviour. If the regulatory arrangement is fragmented, then the regulatees play regulators off against each other and exploit the blind spots in regulation.

The regime approach puts an emphasis on rules, seen as a kind of (formal) institutions. Institutions are defined as “cognitive, normative, regulative structures and activities that provide stability and meaning to social behaviour” (Scott 1995: 33). They encompass the whole rules and organisations that shape the sector or policy area. These institutions are seen as a set of opportunities and constraints that actors face or mobilise in the defence of their ideas, interests and values (Scharpf 1997). Regulatees benefit from margins of manoeuvre to develop strategies and tactics in order to reinforce their positions on the market.

These strategies materialise in two ways: lobbying and resolution of rivalries. Either suppliers utilize existing rules to confront with competitors on the market scene, or put pressure on the regulator for a change in rules. In lobbying, they activate procedural rules that grant them an access to the decision-making process or attempt to reach access in providing services to the regulator, as attested by the theory of access (Bouwen 2001). In confrontation, they rather opt for substantial rules that grant them access to the market and provide advantages and privileges over their competitors. While lobbying has been subject to much attention (e.g. see Bouwen and McCown 2007), the way business mobilises regulation to develop market opportunities remains barely investigated.

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<sup>1</sup> Of course, strategic behaviour is a much broader concept encompassing any forms of commercial strategies (e.g. purchase or merger with competitors, aggressive pricing policy, advertisement, political influence and public relations). Here, the concept is voluntarily narrowed to the use of regulation.

Within the regulatory regime, regulatees develop a strategic behaviour based on the activation of existing rules in order to defend or improve their market position. Rule activation is the invocation of a rule that defends one's rights over a thing or a resource. Actors assert their rights against their rivals (Aubin, 2006). This concept takes its source into public choice institutionalism that stressed the importance to consider rules-in-use in the analysis of policy change (Ostrom 1999). Rules-in-use are formal rules that were made effective by participants in action arenas: “[Rules-in-use] are the rules used by participants in ongoing action arenas. They are the set of rules to which participants would refer if asked to explain and justify their actions to fellow participants” (Ostrom, Gardner and Walker 1994: 39). Rules are defined as shared and mutually understood prescriptions that refer to the actions that are required, prohibited, or permitted, and the sanctions that are authorized if the rules are not followed (Ostrom et al. 1994: 38).

The regime approach puts an emphasis on formal rules (or rules-in-form), i.e. legal prescriptions that lean on a coercive apparatus (Reynaud 1993). Formal rules do not automatically produce effects at grassroots' level. In order to be effective, they must be enforced and implemented, but no public authority has enough external presence to ensure the day-to-day enforcement of all existing rules (Ostrom 1990: 106). Hence, a strong part of their effectiveness lies on their recognition by the affected actors and their daily invocation and manipulation. The transformation of formal rules into rules-in-use, that I call rule activation, stresses the importance of the behaviour of individual actors in the implementation and enforcement of rules (see also Lowndes et al. 2006 and Andreasson 2006). This process contributes to legitimise these rules and stabilise over time their shared meaning among the group of participants. In fact, rule activation shows how formal rules are actually used by regulatees in their (strategic) behaviour. In the empirical study, I suggest to consider strategic behaviour as a process.

### **3. A process analysis to grasp strategic behaviour**

How do suppliers succeed in mobilising the regulatory regime in order to defend their market positions<sup>2</sup>? A wide array of strategies are potentially available to them. My aim is to identify the patterns of interactions within the regulatory regime, and describe different types of

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<sup>2</sup> To respect the logic of suppliers, the outcome (or dependent variable) is measured as the gain (or loss) of market shares. Of course the principal mean to increase market shares is the development of products and their sales, but the strategic games around the elaboration and implementation of rules cannot be set aside.

strategies employed. Suppliers operate in a given context (size of the market, policy arena, etc.), activate rules enforced by different authorities of varying levels and opt out for different modes of confrontations, more or less conflictual. In their choice of strategies, they draw expectations about possible outcomes and set a hierarchy of preferences among available options. The objective is to disclose the dynamics of strategic behaviour with a process analysis that describes the evolution of the confrontation and the deployment of actors' strategies (Tarrow 2005: 29-30). Different processes may be identified given the issue and the policy arena.

Process analysis is an inductive approach that aims at identifying regularities and recurrences in the dynamics of social phenomena. Processes are "recurring combinations [of mechanisms] that can be observed in a variety of episodes [of contention]" (Tarrow 2005: 30). Mechanisms are then defined as "a delimited class of events that alter relations among specified elements in identical or closely similar ways over a variety of situations" (McAdam, Tarrow and Tilly 2001: 24). They are different from variables; they either exist or don't exist. Which kinds of processes, i.e. combinations of mechanisms, are repeatedly present in the dynamics of strategic behaviour? The study aims at identifying recurring combinations of mechanisms in strategic behaviour.

A priori, I emphasise three clusters of mechanisms:

1. Forms of action (lobbying versus contention);
2. Levels of action (domestic versus EU; general versus sectoral);
3. Modes of engagement and confrontation:
  - Search for support versus containment;
  - Activated rules (procedural versus substantial);
  - Use of registers of persuasion versus threat (consent/coercion).

(1) I claim that in each rivalry, the regulatees identify and develop different forms of action. The two ideal-typical forms of action are lobbying and contention. With lobbying, regulatees attempt to influence the elaboration and implementation of the rules. With contention (dispute), they make a claim, i.e. contest the situation and require the effective application of

existing rules. Regulatees can simultaneously launch several actions of lobbying and contention. The choice between alternatives depends on the relative benefits of each one.

(2) Each action inside the strategy addresses a particular level of rules. A regulatee may launch a lobbying activity concerning the definition of general rules (e.g. competition rules) at the EU level and contention at the regional level about a particular rivalry with a competitor (e.g. about broadcasting). As such the level of action operates as a matrix combining the level and competence of rules (domestic versus EU rules and general versus sector-specific rules). Each action is located within the matrix. As said earlier, the level and kind of rules pertain to power relationships and the choice of venue matters in issue framing. “Venue shopping refers to the activities of advocacy groups and policymakers who seek out a decision setting where they can air their grievances with current policy and present alternative policy proposals” (Pralle 2003: 233). Actors manoeuvre strategically in order to defend their interests; they move to another venue, i.e. they internationalize (upscale) or relocalise (downscale) the confrontation when they feel in a weak position.

(3) The different actions taken at different levels follow varying modes of engagement and confrontation. Three mechanisms are identified in this last cluster. The first one distinguishes between the strategies of extension or containment (Schattschneider 1960). In some cases, the regulatee may search for support; he would then publicize the contention and extend its scope. On the contrary, he may remain discrete about the rivalry and support a resolution process involving only few key actors. The second mechanism is rule activation itself. How does a regulatee activate rules? The process of activation, i.e. the manner to transform formal rules into rules-in-use (e.g. single oral mention or a claim to justice), is at least as much important as the kind of rules activated (procedural versus substantial). Once activated, rules confer power positions to the regulatees involved in the confrontation. The register of contention is the third mechanism. In its strategy, a regulatee may oscillate between persuasion and threat. Its attitude can evolve given the kind of action taken and throughout time. It can also attempt to negotiate under the (credible) threat of a judicial action. As such, the level of animosity may vary during the confrontation.

These mechanisms certainly all play a role in strategic behaviour, but it is too early to hypothesize about their combinations<sup>3</sup>. The theory provides much information to assess their importance in actors' rivalries, but separately. For instance, the alternative between lobbying and contention refers to the theory of access (Bouwen 2001), or the choice of levels to multilevel governance (Hooghe and Marks 2001) or issue framing (Pralle 2006). As such, the identification of the process behind strategic behaviour will rather follow an inductive approach. In a first step, the mechanisms are identified and, in a second step, processes are rebuilt from the observed recurrences of the combinations of mechanisms. The method is qualitative, based on documents and interviews with the actors involved. Different processes, possibly a few, should come out from the empirical analysis.

More specifically, the question is raised about how to operationalise rule activation. Two categories of rules are activated among the set of rules available: substantial and procedural rules. Substantial rules determine what is compulsory, forbidden or permitted. They refer to the policy instruments or tools in policy analysis (e.g. delivery of a license, tax on gas transport or subsidies for investments in grids). Procedural rules refer to the mechanisms of participation in the policy process (e.g. access to the consultative process or right of recourse). Regulatees tend to activate rules that grant them some benefit and, respectively, do some harm to their rivals<sup>4</sup>. The activation process corresponds to any form of invocation: judicial complaint, public protest, demand of a permit, etc. In operational terms, rule activation is pointed in official documents bearing testimony to judicial activities (e.g. litigations, notifications, and license request), participation to consultative processes (e.g. consultations in policy-making, expert panels, and professional associations), and invocations (e.g. public declarations).

Particular episodes of market penetration, mergers or commercial conflicts are described through a process analysis to show how individual business actors use regulation, which rules they activate, and which outcomes they achieve. A first example is provided from the telecommunications sector in Belgium.

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<sup>3</sup> The questions of expected costs and benefits of alternative actions as well as the one of the resources may also be raised in the empirical analysis. About resource mobilisation, it is interesting to know what kinds of action resources are at disposal of the regulatee to engage in the rivalry (e.g. money, organisation, or political support) (Knoepfel et al. 2006), as well as how they operate to get the resources. The basic idea is that an actor is unable to activate rules without resources.

<sup>4</sup> E.g. a mobile phone incumbent succeeds in imposing a standard for connections that increases the difficulty for new entrants to get a licence from the sector-based regulator. Then, new entrants may expose the case to DG Competition of the European Commission.

#### 4. Belgacom's confrontation with Telenet on digital TV

Belgacom is fighting against Telenet about the development of the HDTV. Belgacom refuses to open its new infrastructure network to competitors. It protests against the distortion of competition with the cable television suppliers, which are not submitted to the telecoms regulations. Its strategy is developed along several paths ranging from lobbying to judicial claims.

Belgacom is the incumbent Belgian telecommunications company. It is a semi-public company where the Belgian State holds 53.5% of the shares<sup>5</sup>. The holding, with its tributaries (Proximus, Telindus and Belgacom ICS) provides all kinds of telecoms services (fixed phone, mobile phone, Internet, HDTV, carrier activities and ICT services) with a turnover of EUR 6.065 bio and a profit of EUR 958 mio in 2007. They do not view themselves as a “simple telecommunications company”, but as a “real provider of integrated solutions to households and businesses”<sup>6</sup>.

Belgacom has launched its Belgacom TV service in 2005. Belgacom TV is supplying digital TV (interactive digital TV, iDTV) through the fixed phone line. The digital signal is routed through the net of raw copper, using the VDSL2 standard<sup>7</sup>. VDSL2 is a new technology, or rather a recent improvement of ADSL that brings the optical fibre closer to the final customer (at street box level (<1.5 km) rather than central office level (<5 km)). Consequently, it improves the data stream to 20 Mbps (Mega bits per second), compared to the current 3 Mbps of ADSL. Such a speed is necessary to watch and record several TV channels at the same time. Belgacom has invested EUR 377 mio in this technology since 2003 and intends to exploit its competitive advantage in monopoly.

While this investment in digital TV grants a (temporary) monopoly to Belgacom in the broadcasting through phone lines, the telecoms company enters in competition with the cable suppliers who are already positioned on the market. The main concern of Belgacom is to keep its position of leader in all segments of the telecoms market in Belgium, but also to maintain a technological advantage in integrating technologies and contents. For instance, they plan the

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<sup>5</sup> Belgacom (2008), *2007 Annual report*, p. 17. The main private shareholders are three telecoms companies (the US company SBC communications, Singapore Telecom and the Danish telecoms company TDC) involved into a consortium called ADSB Telecommunications.

<sup>6</sup> *Ibid.*, p. 4.

<sup>7</sup> Very high speed digital subscriber line.

future provision of TV and internet services on mobile phones. Their rationale is to “provide all services at any time and any place with any appliance” (e.g. laptop, TV screen or mobile phone), thus managing the supply of all kinds of contents<sup>8</sup>. As such, digital TV is a salient issue in a larger competition where Belgacom needs to improve the speed of its data transmission on every supports to remain competitive.

Cable companies have also developed digital TV and used their network for years to provide telephone and internet services. Belgium is a particular case where the cable wires up nearly 100% of households. In addition, cable transmissions do not have problems of capacity and speed limit. Telenet, a cable company mainly active in Flanders and a part of Brussels, is already a regional leader in broadband internet supply. More than 1.7 mio households are connected to its network<sup>9</sup>. In 2006, Telenet had a turnover of EUR 813.5 mio with a profit of EUR 5.5 mio, positive for the first year. It counts 800.000 customers for broadband internet (compared to 1.235.000 for Belgacom) and 250.000 for digital TV (compared to 300.000 for Belgacom). However, in the Flemish region, the market share of Telenet in broadband internet is 52%, compared to 36% for Belgacom<sup>10</sup>. This explains why Didier Bellens, the CEO of Belgacom, is focusing his attacks on this rival.

Since 2005, Belgacom is compelled to unbundle the local loop (ULL) and provide an equal and fair access to its network to other licensed operators (OLOs). While Belgacom applied unbundling for other DSL lines, it intended to prevent them from accessing to VDSL2. The Belgian telecoms regulator, IBPT (*Institut belge des postes et télécommunications*), took an opposite decision. On 30 January 2008, it has constrained Belgacom to extend its unbundling offer of reference to VDSL2<sup>11</sup>. Every other supplier should be able to propose the same services as those offered by Belgacom with the same technical quality. Belgacom is not allowed to keep a monopoly on digital TV through phone lines. The decision of IBPT refers

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<sup>8</sup> *Ibid.*, p. 37.

<sup>9</sup> Telenet (2007), *Jaarrekeningen en verslagen 2006*, p. 5.

<sup>10</sup> *Le Soir*, 14 December 2007, p. 23.

<sup>11</sup> IBPT (2007), *Décision du Conseil du 30 janvier 2008 concernant l'introduction de la technologie VDSL2 dans le cadre de BRUO*. BRUO means Belgacom's reference unbundling offer. It is different from BROBA (Belgacom's reference offer for bitstream access) in the sense that other licensed operators use the DSLAMs (DSL access multiplexer) of Belgacom which carry the signal from the operator's infrastructure to the final customer. In BRUO the operator installs its own DSLAM in the central office (CO).

to the 2002 telecoms framework directive<sup>12</sup> and, after consultation, received the consent of the European Commission<sup>13</sup>.

Belgacom has not waited the IBPT decision to protest against the opening of the VDSL2 technology to competition and launched a strategy to thwart the IBPT regulatory policy. This strategy includes several actions. The first was to block the procedure of market analysis that IBPT was conducting to implement the EU legislation<sup>14</sup>. The procedure was delayed between 2005 and 2007 because of several judicial recourses from Belgacom<sup>15</sup>. Hence, Belgacom threatened IBPT to use its right of legal recourse to the Brussels' Court of Appeal against both the market analysis and the decision of 30 January 2008 (pending). The main protest was that IBPT was, on the one hand, too strict in its interpretation of the Commission's recommendation and, on the other hand, that its arguments to refuse to divide the market analysis in regional submarkets were not relevant. Thus, the incumbent is exploiting all the judicial channels to defend its market positions.

Second, Belgacom is lobbying the European Commission in order to allow infra-national market analyses and temporary monopolies on innovative products (such as iDTV). It also demands the inclusion of cable companies within the scope of the telecoms legislation, as it is currently not the case. At the November 2007 ETNO's conference, Didier Bellens, CEO of Belgacom, denounced the Commission's proposal to separate the telecoms networks from the provision of services and, hence to fully liberalise access: "If we have to open everything to everybody, is it worth to make the investment?"<sup>16</sup>. About the market analysis, he criticized the "helicopter view" of the Commission that neglects the specificities of each national market<sup>17</sup>. His last attack was against the fact that the cable is not yet regulated, a necessary condition to create "a level playing field for all technologies"<sup>18</sup>. In this case, the Belgacom CEO is playing

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<sup>12</sup> Directive 2002/21/CE of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive).

<sup>13</sup> European Commission (2008), *Telecoms: Commission supports new efforts of the Belgian telecoms regulator to enhance competition in the broadband market and asks for speedy and effective action*, Press release, IP/08/4, 3 January.

<sup>14</sup> Recommendation 2003/311/EC of the European Commission of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC, replaced by recommendation 2007/879/EC of 17 January 2008.

<sup>15</sup> E.g. claims from Belgacom and the Flemish Government to the Constitutional Court to contest the competence of CSA (Conseil supérieur de l'audiovisuel) to make a market analysis in Wallonia (decisions in 2004 and 2007).

<sup>16</sup> *Reuters EU Highlights*, 22 November 2007.

<sup>17</sup> *AFX international focus*, 22 November 2007.

<sup>18</sup> *Ibid.*

the role of speaker of ETNO, a way to gain the support of the other members to its protectionist positions.

Third, Belgacom is engaged in several judicial battles against Telenet. In March 2008, the court of justice of Antwerp made an interim ruling against the purchase of the local cable consortium Interkabel by Telenet. Belgacom claimed that a public tender was required as the transaction concerned publicly-owned cable networks<sup>19</sup>. This purchase, broke off until a final judgement is pronounced, would add 770.000 additional customers to Telenet and give it a monopoly on the Flemish cable. Belgacom has also an eye on the takeover of Interkabel. The second example concerns the public sharing of football pictures, with an appeal from Belgacom to the Competition Court (*Conseil de la concurrence*); the incumbent contests the suspension of the legal duty of Telenet to share pictures. This strategy is mainly designed to gain time in order to expand the market shares of Belgacom TV. This time is used to increase the territorial coverage of the VDSL2 technology and make commercial campaigns<sup>20</sup>.

Finally, IBPT is open to consider the inclusion of cable companies within the scope of the legislation, but they doubt that it will interest other telecoms companies to invest in the cable<sup>21</sup>. However, this solution would not satisfy Belgacom at all. Their claim is against the opening of the access to VDSL2 technology rather than in favour of the liberalisation of all the networks<sup>22</sup>.

The observation of this episode about HDTV reveals two main processes that constitute the strategy of Belgacom to develop its content services. First, Belgacom contests the decision of IBPT, the regulator, to open its VDSL2 network to competition. The contention is made at the domestic level, referring to sector-based regulation. The rules activated are procedural; Belgacom uses its right of recourse to the IBPT's decision. The register of discourse is threat. Second, Belgacom is lobbying in order to prevent the unbundling of the networks and the provision of services foreseen in the next reform of the EU telecoms package. In this lobbying process, the incumbent is playing at the EU level and also refers to sector-based regulation,

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<sup>19</sup> *Trends-Tendances*, 12 March 2008.

<sup>20</sup> Some observers remark that this stubbornness diverts Belgacom from the surveillance of the development of Mobistar, the second national operator. *Trends-Tendances*, 12 March 2008.

<sup>21</sup> *De Standaard*, 23 November 2007.

<sup>22</sup> "Hij voegde eraan toe dat hij niet per se vragende partij is om Telenet aan dezelfde regels te onderwerpen. 'Men zou er ook voor kunnen kiezen om minder beperkingen op te leggen aan Belgacom, waardoor we meer commerciële vrijheid zouden hebben om met hen te concurreren', zei hij", *De Standaard*, 23 November 2007.

i.e. the telecoms package. It doesn't activate particular rules to make its claim, but rather search for broad support in order to influence the European Commission. The register of discourse is persuasive. The description of this episode gives preliminary examples of the variety of strategies that suppliers can use to defend their market positions. It illustrates the variety of registers of action (contention versus lobbying) and discourse (persuasion versus threat), the different levels of action, as well as the different kinds of rules that can be activated in strategic behaviour.

## **5. Conclusion**

The analysis of strategic behaviour consists in identifying the recurrent processes that suppliers (or regulatees) use to improve or defend their market positions, and focuses on the activation of existing rules. It looks at the impacts of the multilevel regulatory regimes on regulatees and economic sectors. The dynamics of strategic behaviour is explored through a process analysis that is deemed to reveal the different strategies employed, according to the forms of action, the level of intervention, and the modes of engagement and confrontation.

The interest of process analysis appears in the preliminary case study provided here. Suppliers develop complex strategies, based on a combination of lobbying and judicial claims. Hence, it is not satisfying to limit the analysis to the conditions of success of such strategic behaviour. A careful analysis of the development of these strategies, the combinations of initiatives, rules used and coalitions of actors built seems much more promising.

The process analysis allowed me to observe strategic behaviour, but at this stage regulatory shopping remains an assumption. The first noticing is the high level of conflict in sector-based regulation. Is it the result of an affirmation of the non-majoritarian regulators or a maximal pressure put on the regulatory regime by suppliers which must maximise their profits and satisfy their shareholders? Suppliers have a massive recourse to legal claims. They search after every possible mean to reach their goals. They knock on all doors and develop a variety of arguments. Thus strategic behaviour is frequent and quite conflicting. Suppliers attack both the regulators and their rivals as shown in the Belgacom-Telenet case about HDTV. Regulation is highly contested and competition between suppliers is tough.

Do suppliers really play regulators each against the other? It is too early to conclude about the importance of multilevel strategies and regulatory shopping. However, the Belgacom-Telenet

case shows a common protest of Belgacom and the Flemish government against the market analysis that IBPT conducted. The incumbent used this alliance to try to divide the market analysis into regional subparts. It was supported by the political demand to regionalise the telecoms policy. On the other hand, it is too early to say that Belgacom is playing the European authorities against the national ones. The incumbent mobilises both levels, but differently. At the EU level, it lobbies the Commission in favour of a redefinition of the perimeters of market analyses in the next reform of the telecoms package. The attitude is only rhetorical, as far as I know, denouncing the “helicopter view” of national markets. The enquiry must still go deeper into this question, as well as the use of incoherencies between sector-based and competition regulations.

In a second step, once the process analysis is done, it would be fruitful to explain the choices or combinations among the different possible processes. Some conditions could be tested. The first is the different attributes and resources of the providers. The influence of a regulatee may depend on its size, origin and market position (e.g. incumbents versus new market entrants, large firms versus small and medium companies) (Coen and Héritier 2005: 11). The second is the characteristics of the market, its size (e.g. national versus multi-national) and the degree of competition (e.g. number of competitors and their market shares). The third is the characteristics of the regulatory regime (e.g. degree of fragmentation/co-ordination).

A better understanding of actors’ games around regulation would also be facilitated by this approach. Which actors are involved in the processes? What kind of coalitions are emerging (policy communities or issue networks)? What is the influence of the action arena on the patterns of interaction (e.g. multiple allegiance, cross-cutting issues)? Another path to explore would be the effects of regulatees’ interactions on the evolution of the regulatory regime, and the adaptation in terms of co-ordination. Answers to these questions would certainly contribute to understand better the post-liberalisation era in terms of actual functioning of the regulatory regime and the distribution of power between the actors, and develop regulation studies a step further.

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