

STATE TRADITIONS IN INSTITUTIONAL REFORM.

**A CASE STUDY OF FRENCH AND GERMAN
TELEPHONE POLICY DEBATES
FROM 1876 UNTIL 1997**

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Abstract

This thesis tests the claim that national differences in sectoral state traditions diminish over time. The case study covers telephone policy debates in France and Germany in five time periods from 1876 until 1997: the ‘consolidation phase’ (1876 – 1900); the 1920s; the post-Second World War years; the debates leading up to corporatisation in the 1980s; and the debates around opening for full competition in the 1990s.

The analytical framework is founded in writings on state traditions and on the role of ideas and discourse in policymaking. The study’s object of investigation, ‘sectoral state traditions’, is developed to allow for comparison both longitudinally within one country and cross-nationally. It comprises the notion of authority and of who should be the relevant actors in the policy process; public ethos of sectoral policies; and criteria for legitimate decision-making procedures and discourse.

Central concepts and ideas in public debates are identified in both countries for each period. The investigation of public political debates (parliamentary debates, governmental and other public documents, and newspaper articles) in each country shows that sectoral state traditions were highly resistant to change. Cross-national comparison further corroborates the persistence of the two sectoral state traditions, which, despite common external factors (technology, international cooperation, supranational legislation), showed little or no convergence. The set of actors perceived as relevant to policymaking remained largely stable throughout the period under investigation. The French ethos of ‘*service public*’, and the German ethos of efficient infrastructure provision, remained central. Criteria for decision-making and discourse altered in France in the late 1980s, whereas they remained stable in Germany. Evidence therefore does not support a hypothesis of convergence between the two sectoral state traditions.

This thesis is the product of a long process which would have been made even more difficult had it not been for the invaluable help and support from these persons:

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Abbreviations

AIT	Association des ingénieurs des postes et telecommunications
ART	Autorité de regulation des télécommunications
ATT	American Telephone and Telegraph
BMPF	Bundesministerium für das Post- und Fernmeldewesen
BMPT	Bundesministerium für Post und Telekommunikation
CDU	Christlich-Demokratische Union
CNCL	Commission nationale de la communications et des libertés
CNET	Centre national d'études des télécommunications
CNT	Caisse nationale des télécommunications
CPE	Customer premises equipment
CSA	Conseil Supérieur de l'Audiovisuel
CSU	Christlich-Soziale Union
DBP	Deutsche Bundespost
DGP	Direction générale des postes
DGPT	Direction générale des postes et télécommunications
DGT	Direction générale des telecommunications
DIH	Deutscher Industrie- und Handelstag
DPG	Deutsche Postgewerkschaft
DRG	Direction de la Réglementation Générale
DRP	Deutsche Reichspost
DSP	Direction du Service Public
EC	European Communities
EEC	European Economic Community
EU	European Union
FAG	Fernmeldeanlagengesetz
FCR	France Cable et Radio
FDP	Freie Demokratische Partei
IMF	International Monetary Fund
INSEE	Institut national des statistiques et d'études économiques
ISDN	Integrated Serial Digital Network
KtK	Kommission für den Ausbau des technischen Kommunikationswesens

LRT	Loi sur la réglementation des telecommunications
MP	Member of Parliament
OECD	Organisation for Economic Co-operation and Development
P&T	Post and Telegraph
PDS	Partei des Demokratischen Sozialismus
PS	Partie Socialiste
PTT	Post, telegraph, and telephone
PverwG	Postverwaltungsgesetz
RegTP	Regulierungsbehörde für Telekommunikation und Post
RPTV	Reichspost- und Telegraphenverwaltung
SGT	Société générale des téléphones
SPD	Sozialdemokratische Partei Deutschlands
TKG	Telekommunikationsgesetz
TWG	Telegraphenwegegesetz
UDF	Union pour la démocratie française
USO	Universal Service Obligations
WIK	Wissenschaftliches Institut für Kommunikationsdienste
WMK	Wirtschaftsministerkonferenz der Länder

To Frédéric

Introduction

The continuity of ideas in telephone policy

The recent focus among students of political science on ideas and their role in the policymaking process has led to various claims about the sustainability of distinctive national policymaking traditions. This thesis tests whether sectoral state traditions changed in French and German telephone policymaking between 1900 and 1997, and whether such potential changes can underpin a convergence hypothesis. The thesis thus studies sectoral state traditions as an example of ideas.

Sectoral state traditions

Sectoral state traditions are a set of ideas about political authority and legitimate state action, expressed through political discourse. They are important to political analysis because they increase the understanding of the ideational context within which policymakers operate. The thesis defines these as containing three essential elements:

- A notion of authority, of who should be the relevant actors in the policy process, and what should be their relative power;
- Public ethos of sectoral policies;
- Criteria for legitimate decision-making procedures and discourse.

A theoretical underpinning for the elements within the sectoral state traditions will be presented in chapter 1.

Contributions and limits of this thesis

Two trends in Anglo-American political science literature since the 1980s make the study of sectoral state traditions important. First, increased attention has been paid to the role of *ideas* in the policy process. Second, there has been a renewed interest in the *state* as a socio-cultural phenomenon and as an institution that contributes to shaping policymakers' preferences.

The renewed interest in the state as an object of analysis from the 1980s onwards was a reaction to the alleged low level of attention paid to nationally specific political frames and histories in the 1960s and the 1970s. 'Modern' state studies differed significantly from older studies, which had been largely comparative descriptions of a state's bureaucratic makeup,¹ and included analyses of policy-making and political processes that started taking into account the role of ideas, in particular, ideas about the legitimacy of state action (Dyson 1980; Hall 1986, 1993; Goldstein and Keohane 1993; Favell 2001). Ideas were introduced as explanatory variables to supplement rather than replace the explanatory powers of established theories (Reich 1988; Goldstein and Keohane 1993; Schmidt 2000).

The major reason for the recent academic interest in the role of ideas in the policy process is to achieve a fuller explanation of policy change.² Most

¹ A closely related group of studies, concerned with 'cultural factors' or 'national styles', have traditionally been acknowledged in comparative policy analysis (e.g. Bendix 1996 [1964]; Almond and Powell 1966; Verba 1965; Richardson 1982), but were, however, ill adapted for explanatory use (Hall 1986).

² Assumptions about the existence of changes that require explanation are found e.g., in writings on 'mimicry' (e.g., Dolowitz and March 2000; Ikenberry 1990), 'globalisation' (e.g., Eatwell

political science literature on the role of ideas assumes that policy changes are accompanied by change in ideas, either prior to the policy change (as a pre-requisite for change) or as a consequence of it.

The recent literature on ideas has, however, been criticised for failing to distinguish between the roles of ideas themselves and the interests and power of their advocates. This fundamental problem can be attributed to the fact that the role of ideas often has been analysed through policy outcomes. This thesis therefore contributes to the general literature on ideas by investigating sectoral state traditions as an example of ideas. Sectoral state traditions are investigated through their expression in public political discourse, rather than through policy outcomes.

Consequently, this thesis does not attempt to explain policy outcomes. Moreover, it does not aim at explaining the potential longevity of ideas, but, more modestly, to investigate whether ideas expressed in public political discourse remain stable or whether they change.

The term 'state tradition' has been used by scholars to emphasise aspects of political life that are directly related to the cognition of a 'state', and as such finds its place in the wider literature on the role of ideas in policy-making. 'State tradition', as opposed to 'national traditions', has an intuitive interpretation of 'something belonging to or emanating from the state apparatus'. However, not surprisingly, no general definition exists, even though most

1997; True and Mintrom 2001; Cerny 2000), and by authors seeking to explain either incremental change or policy reversals (e.g., Olsen 1996; Thelen and Steinmo 1992; North 1990; Hood 1994; Elster 1989; Bennett 1991).

analyses involving state traditions emphasise the cognitive aspect and the role of ideas in the political process (Dyson 1980; Grimm 1991; Rohe 1993; Laborde 2000). The thesis, therefore, contributes to the literature on 'state traditions', through its identification of three central elements that makes the term itself more applicable to comparative analysis.

The fundamental empirical assumption about change or continuity in ideas has rarely been exposed to a detailed, sector-specific, long-term investigation. This thesis therefore fills a gap in existing literature, as it investigates the empirical foundations for assumptions about change in sectoral state traditions (as an example of ideas) and thus aims at answering the questions of whether sectoral state traditions change over time within one country, and, subsequently, whether the two countries' traditions converge. It does not, however, aim at explaining such changes or convergence – such a task would require analysis of the many factors that influence the development of sectoral state traditions.

The case study – sectoral state traditions in telephone policy

In order to investigate the validity of claims about change and convergence in sectoral state traditions a long-term historical investigation is required. While other long-term studies of telecommunications have concentrated on either the pre-Second World War or the post-1945 period (Thomas 1995; Werle 1990; Bertho 1981; Cohen 1992; Thatcher 1999),³ this study traces ideas on both sides

³ Exceptions are Libois, (1983), who traces the story of telecommunications in France from the second half of the 19th century until the 1980s, and Schneider (2001), who discusses the development of forms of state intervention in the telecommunications sector in a broad sense from 1800 to 2000.

of this 'barrier', illustrating that the conventional limit of the war is one of convenience for research rather than one that restricts the general model.

Although, in principle, any democratic, developed country could have been used,⁴ there are good reasons for a comparative study of France and Germany. Using these two countries permits a 'most similar systems' approach, because their formal telephone policy institutions have followed similar paths throughout their history. The telephone was brought to the attention of public officials in both countries shortly after its invention in 1876. For a significant part of the 20th century both maintained a state monopoly in telephone service provision, and a comparison of the formal institutions in the two countries shows remarkable similarities. Both France and Germany gave their telephone service budgetary autonomy in the 1920s, and both countries' incumbent operators were transformed into public corporations in the 1980s, followed by privatisation in the 1990s.

When, however, public debate is the focus of analysis, as is the case in this thesis, significant differences appear. Whereas French policymakers in the late 19th century used the safeguarding of the 'general interest' to justify public intervention in the sector and paid increasing respect to the emerging concept of *service public*, German policymakers were preoccupied with correcting economic dysfunctions and ensuring efficient management in public administration

⁴ It seems reasonable that the potential cases should be democratic and developed countries: 'democratic' (in the sense of having a formal system for expression of popular will and a relatively stable institutional cadre in which public political debate is conducted) because the object under scrutiny is public and parliamentary debate; 'developed' because the sector under investigation is the telephone sector and the instrument achieved similar status early on in the developed world, unlike in many poor countries.

through cost-based tariffs. Their respective debates around the introduction of a separate budget (*budget annexe*) in the 1920s were similarly different. The French attempted to balance the *service public* and the industrial characteristics of the telephone service, whereas the Germans discussed the efficiency of different potential financial regimes. These differences in debate and in perception continued after the Second World War. The empirical evidence, therefore, indicates a variation in the conceptual frameworks and ideas of policy-makers in France and in Germany.

The periods chosen as case studies mostly correspond to periods where telephone policy was relatively high on the parliamentary agenda. The literature on the role of ideas in policymaking asserts that ideas are most likely to change during crises and when policy areas are present in public debate (Hall 1993; Kohler-Koch 2002). Institutional reform can indicate that former decision-making procedures, and possibly their underlying principles and norms, were contested (Rochefort and Cobb 1994). Periods of major legislative reform should therefore provide a good opportunity to investigate possible changes in ideas. The chapter on the post-war period is an exception because of the lack of important legislative change throughout the period. However, this period is included because traditional ideas about the role of the state were fundamentally challenged in the two countries.

In sum, the story of telephone policy debate in France can be seen as the history of a *service public*, whereas German telephone policy history can be seen to be

a succession of debates on tariffs, legal structures and technology, all within the framework of economic policy.

As the empirical analysis will show, French telephone policy debate in the late 19th century justified the state monopoly by referring to the state's superiority in providing continuity and territorial equality of service. In the early 20th century both principles were incorporated in the nascent concept of *service public*, which retained its central place in French policymaking debates throughout the 20th century. In the 1920s, the concept was made compatible with industrial management methods. Low parliamentary attention in the 1950s and the 1960s and the concept's absence from technocrats' debate illustrated its value as political myth rather than practical policymaking concept for bureaucrats. However, the latter's adherence to the constituting elements of *service public* – continuity, equality and adaptability – showed the pervasiveness of these principles. The *service public* concept regained its ubiquitous place in French policy debates in the 1980s and the 1990s, whilst being increasingly specified and defined between 1984 and 1997. Thus, despite change in content (and in what was perceived as the optimal instruments to achieve the state's *service public* obligations), the *service public* concept itself retained its central place in public debates in France from its emergence in the late 19th century until 1997.

In Germany, principles of cost-based tariffs, indicating a view that the federal state's main task was the efficient management of infrastructure provision, appeared in the late 19th century, and essentially remained constant throughout the period studied in this thesis. Legal circumscription of federal actions to

protect local and individual interests equally appeared early in sectoral policy-making. The debates around the Reichspostfinanzgesetz of 1924 showed that the ideas of efficient infrastructure provision were compatible with contemporary ideas of the superiority of private enterprise management methods, whereas the subsequent Fermeldeanlagegesetz (FAG) of 1927 illustrated the continued role of legislation as a conflict-solver between federal, local and private interests. The post-Second World War emphasis on democratic structures and transparency in policymaking was not easily reconcilable with the existing sectoral state tradition. The conflict between the new emphasis and the sectoral state tradition from before the war resulted in proposals to separate (objective) operational tasks from broader political issues in the 1960s and the 1970s. Equally, the corporatisation of Telekom in 1989, the law on privatisation of 1994, and opening for full competition in 1997, is here argued to be a continuation of the German state's attempts at providing efficient management of infrastructure provision. Thus, despite changing perceptions about optimal instruments, the basic ideas, as expressed in discourse to legitimise political decisions, remained constant throughout the period investigated.

Approach

The focus of this thesis is ideas as expressed in public political discourse. Sectoral state traditions are not about policy instruments, but are concerned with the political justification of instruments chosen. The empirical material is therefore collected mainly from public documents such as parliamentary reports, parliamentary debates, and government papers. Parliamentary debates

were the most important single source of empirical evidence. Secondary material has, as far as practically possible, been verified against primary sources. Most policy documents have a 30-year confidentiality period, and internal (ministerial) documents were therefore available only until c. 1970.

The empirical evidence was first and foremost drawn from the legislative process related to institutional reform because in such periods the ideas contained in the sectoral state traditions were seen as most likely to appear in public political discourse. Moreover, periods of legislative reform also increased the potential amount of information available because actors from across the political spectrum and from various interested parties took part in these public discussions.

Archive search and selection

Legislative reform provided the practical starting point for research, because most parliamentary reports and debates relating to a particular piece of legislation are relatively easy to trace in the public archives.⁵ In addition to debates and reports on specific legislation, the national archives provided material that had not necessarily been presented to Parliament, but which had been used within the bureaucracy, typically the ministerial central offices.⁶

⁵ The methods for classifying material changed throughout the 20th century, which increased the complexity of empirical research. The appendix on sources gives more details on the situation in the different time periods. As the appendix shows, both the quantity and the accessibility of the empirical material varied in the different time periods investigated. Such variation does, however, reflect the salience of the issues in public debate, and should therefore not present a major problem to this thesis.

⁶ Examples of such documents include inter-ministerial and intra-ministerial reports and circulars, such as the 'Le Sans Fil: Hebdomadaire: Organe d'information et de vulgarisation TSF'; 'Note pour Monsieur le Chef du service central sur un programme des principales améliorations de détail dont la réalisation a été envisagée en ce qui concerne la Direction';

These documents were particularly useful in increasing the contextual understanding of the debates.

Debates and reports relevant to specific legislation were in most cases traceable through nested references from the final legislative document presented in the *Journal Officiel* (France), the *Reichsgesetzblatt* (Germany pre-1945) or the *Bundesgesetzblatt* (Germany post-Second World War). For other archive material, thematic searches were done. The national archives were organised differently in the two countries, but all institutions provided means for thematic document searches.

The first step in researching these archives consisted in identifying important general themes: major legislation, policy development, regulation, and organisational structure and reforms. The major sources of documents were, in addition to the parliamentary and governmental reports, ministerial correspondence and various commissioned reports on the said themes, interventions (letters, research documents) from interest groups and industry, and some newspaper articles that had been seen as sufficiently important at the time of publishing to find their way into ministerial archives. This first phase resulted in the exclusion of several policy areas such as personnel policy, technological areas such as submarine cables, telematics, satellites, and digitalisation, logistics, transport, and most of the field of international co-

‘Zahlenspiegel der Deutschen Bundespost’; ‘Abschrift Verwaltungsvereinbarung zwischen BMPF & Finanze Minister’; ‘Zulässigkeit und Existenz von Söndervermögen’; legislative projects and decrees not debated in Parliament: ‘Projet d’arrêté modifiant la procedure de la Commission centrale d’avancement en ce qui concerne la selection des candidates à certains emplois supérieurs’, ‘Comité institué pour étudier l’ensemble des questions préalables à la mise en oeuvre de la procedure prevue par les paragraphes 2 et suivants de l’article 102 de la loi de finances’.

operation, including, in the case of France, relations between France and the former colonies. The documents archived under these themes mainly consisted of (short-term) administrative decisions and did not shed light on the research question in this thesis.

Subsequent research aimed at identifying documents that might illustrate how the contemporary issues, be they state monopoly, financial reform, corporatisation, or full competition, were perceived by central policymakers, and furthermore, how they were presented to the public. The second selection process entailed consultation of a large number of documents about policy development, regulation, organisational structure and reforms, productivity, budget, and other financial matters, which were subsequently studied in detail. These documents gave increased knowledge about the different issues, but not all were directly quoted in the thesis. The quotes used were selected as examples because they were representative of the debates and because they illustrated central assumptions held by participants. This selection process also implied excluding a large number of documents from further investigation. Purely administrative documents were excluded, as were documents relating to relations between the PTT administrations and end-users (relevant for the post-Second World War periods), most detailed tariff changes,⁷ and also commercial affairs.

⁷ Particularly in the periods before 1960, parliamentary debates about tariff changes were instrumental in identifying how the rationale for the telephone service was perceived among politicians. However, ministerial documents relating to these issues were mostly determining specific levels of tariffs, not adding significant value to the parliamentary debates, and therefore excluded from research.

For example, the case of France showed a clear use of *service public* throughout the 20th century by participants from all parts of the political spectrum, as illustrated by the quotes.⁸ In the case of Germany, where no concept was in a similar position to the French *service public*, the quotes used were chosen to illustrate the nature of the debates and to show that political debates were based on certain fundamental assumptions (that the telephone sector was an ‘industry like any other’ and that the federal state legitimately could use so-called ‘private sector management methods’ to ensure optimal use of scarce resources).

Attention was given to providing a fair impression of the different themes present in the different debates. The quotations used were chosen because they were seen to be representative of the debates concerning policymakers’ presentation of rationale for their policy choices,⁹ and statements by politicians from all parts of the political spectrum were used. For example, in the debates on financial reforms in the 1920s, the quotes used in this thesis were selected not to give an exhaustive account of the different political parties’ and institutions’ views on the details of reform (e.g., on how many members the administrative councils should have), but to show that the essence of the reform outcome (increased financial flexibility) was debated and justified within different frames of reference in the two countries. French policymakers saw it as imperative to emphasise the compatibility between industrial management methods and *service public*, whereas German policymakers saw and presented

⁸ The notable exception was the AIT document from 1963, where no reference was made to *service public* whatsoever, a fact that is also included in the argumentation of this thesis (see chapter 4).

⁹ Occasionally, quotes illustrate how the situation of the telephone service (financial, technological or legal) was perceived, thus aiming at giving contextual understanding of the public debate.

the post-1924 structure as a plausible solution to a pressing problem facing a rational manager, namely the federal state. These characteristics were not specific to any one side of the political spectrum, but pervaded the debates and indicated the underlying assumptions used to argue the continuity of the sectoral state traditions.

Evaluating stability and change

The investigation of the large range of documents selected for more detailed analysis resulted in substantial support for arguments of stability of the sectoral state traditions. The first reading of these documents provided an overall sense of the debate and the issues at stake for different actors. The larger part of the interventions concerned elements and issues not directly relevant to the sectoral state tradition, but which were central for the completion of reforms.¹⁰ It became, however, relatively clear from the general reading what the underlying assumptions were in the two countries. Documents were then re-read both independently and with reference to other material from the same period to ensure a detailed understanding and also to find illustrative quotes to demonstrate the development of the sectoral state tradition.

¹⁰ For example, in the Assemblée nationale's debate on 10 May 1990 on the new law on France Telecom and La Poste, which covers 23 pages in the Journal Officiel, six pages contain information that was judged as potentially good quotes illustrating the development of the sectoral state tradition. Excluded were interventions on the principle of separating France Telecom and La Poste, on the future of the social bonds between employees of France Telecom and La Poste, on how existing debts should be taken on by the two new corporations and how they should be split, and on the potential economic viability of the two corporations. Nevertheless, although not used as direct quotes, these interventions were read to ensure that they did not provide counterarguments that would demonstrate a change in sectoral state traditions.

The three elements of the sectoral state tradition were not all identified in the same way empirically. The most general element, the ultimate authority, was only very rarely referred to in any of the debates investigated,¹¹ and not at all in internal ministerial documents. Stability in the ultimate authority was thus inferred from an absence of challenges to this authority, or absence of any statement or incident that could be interpreted as questioning the ultimate authority.

The public ethos was easily identifiable in France as *service public*, an evaluating stability or change of the public ethos was therefore mostly a question of investigating references to the *service public* concept. The task was made easier by the ubiquitous presence of the concept in all debates and almost all documents. Quotes were chosen because they illustrated the use of the *service public* concept as underlying rationale and justification for policies. The German public ethos was not as clearly labelled as the French, and document analysis to evaluate stability or change therefore emphasised a deeper contextual understanding of the debates. However, quotes were chosen because they were seen to be representative of the general assumptions underlying debates.

Legitimate methods for policymaking concerned who was consulted for new policy proposals and the style of communication between these actors. The legislative process (parliamentary debates and reports, and governmental reports) gave information about the different actors that were consulted, and

¹¹ The exception was France in the 1990s, when parliamentary debate and also France's challenge to the European Commission's authority to issue directives, directly treated and confirmed the ultimate authority of Parliament.

correspondence between the central bureaucracy and different actors, as well as the different actors' reports and also their public statements (e.g., through newspaper articles and interviews) illustrated the style of communication used. Because the sectoral state tradition focuses on public discourse, and this thesis does not aim at explaining policy outcomes, it was not attempted to discover the 'behind the scenes politicking'. Rather, in the case of France, it was clear from ministerial correspondence and from commissioned reports, in addition to parliamentary debates, that the number of actors involved in policymaking was limited until the 1980s and the Prévot commission. In the case of Germany, the formal rules for consultation included a larger number of participants, and letters, commission reports (e.g. the Monopolkommission, the Sachverständigkommission, and the KtK) and newspaper articles indicated the continued involvement of a large number of actors. Furthermore, the different interventions made it clear that these actors were considered as legitimate and knowledgeable participants in the political process.

Weighting of different actors' discourse

It is customary for legislative proposals to be presented to Parliament by the Minister responsible, who as a consequence has allotted more time than other discussants. The Minister's (or Secretary of State, as the case may be) statements are therefore rich in potential empirical evidence, a fact that is reflected in the frequent use of Ministers' speeches and parliamentary interventions in the material presented here. Moreover, governmental reports, which in addition to parliamentary debates have provided primary source material, are also expressing the government's view. During the investigation,

however, care was taken to look at subsequent intervention both from opposition parties and from other representatives of the government parties, as well as statements from the wider policy community in the cases where central parts of the debate took place outside Parliament. To the extent that other discussants questioned the proposed reforms' basic rationale their statements have also been included.

Thesis outline

Chapter 1 presents the theoretical foundations for the development of the object under investigation, the 'sectoral state tradition'. This is followed by five empirical chapters examining the development of the sectoral state tradition in each of the five different periods under investigation, which all brought important economic, political and technological changes in the sector.

The first empirical chapter (Chapter 2) examines the consolidation period up until c. 1900, showing how telephone policy was integrated into existing structures of the telegraph administrations and establishing the origin of a nationally specific coherent political discourse, and thus a sectoral state tradition, about telephone policy.

There follows a chapter on the financial reforms of the 1920s (Chapter 3), when both France and Germany established budgetary autonomy for their PTT organisations, and during which parliaments' role in the decision-making process was strengthened. This chapter shows how internationally present ideas

about ‘modern management methods’ were transformed and adapted to fit each national sectoral state tradition.

The subsequent empirical chapter (Chapter 4) investigates the decades after the establishment of the post-Second World War legislative regimes, characterised by institutional separation in France, and democratisation and transparency in Germany. This period did not see any major legislative or organisational changes, but ideas about state intervention were challenged.

The 1980s and the process of corporatisation of the two incumbent operators is the subject of Chapter 5, which demonstrates how public debates in France and Germany, despite leading to similar formal institutional structures for the incumbent telecommunications operators, showed continuity with their respective national traditions, although certain changes also can be identified.

The last empirical period under investigation is the 1990s (Chapter 6), with introduction of legislation for privatisation of Deutsche Telekom in Germany (1994) and for opening for full competition in the telecommunications sector in 1996 (France) and 1997 (Germany). The chapter shows the continuity of the sectoral state traditions both in France and Germany.

Comparative analysis is undertaken throughout the work. The main conclusions are presented in Chapter 7 (a summary is presented in table 6), showing that sectoral state traditions are highly resistant to change, and that although a certain convergence can be identified between criteria for legitimate decision-

making and discourse in the late 1980s, this thesis does not support a general convergence hypothesis.

Chapter 1

Ideas, state traditions, and political discourse

The sustainability of distinctive national policymaking traditions has recently been questioned in writings on ideas and their role in the policy-making process. This thesis tests the claim that sectoral state traditions change and even converge across countries faced with similar exogenous pressures.

A sectoral state tradition is a set of ideas about political authority and legitimate state action in the relevant sector. Sectoral state traditions are expressed and identified through public political discourse, which is a major vehicle to maintain and develop traditions in policymaking. Thus, the sectoral state tradition is a sub-set of the wider concept of 'state traditions', which itself forms part of the even more general study of ideas and their role in policymaking.

This thesis's major contributions to existing literature are the development of an analytical tool, 'sectoral state traditions', that allows for a long-term comparison of ideas about political authority and legitimate state action, and a substantial empirical investigation about long-term continuity and change in such ideas in a selected case study. The use of 'sectoral state traditions' enables a longitudinal comparison within each country, as well as allowing an evaluation of whether different countries' sectoral state traditions converge.

This chapter comprises four parts. First, it presents an overview of central writings on the study of ideas and state traditions, as well as their major

shortcomings. Second, it argues the case for investigating change in sectoral state traditions. Third, it discusses the role of political discourse in maintaining and identifying sectoral state traditions. Finally, the last part of the chapter defines and details the concept of ‘sectoral state traditions’ as used in this thesis.

The importance of ideas

Over the last decade political science analyses have increasingly paid attention to ideas, as existing models of policymaking were seen to lack explanatory power, “suggesting instead that an adequate model [to explain policymaking and policy change] must also include ideas and institutions” (Majone 1992: 7-8; see also Elster 1989: 168; Schmidt 2001: 6). Rationalist and institutionalist models, which mostly see policies as a result of a process in which rational actors strive for outcomes that match their own preferences as closely as possible, generally do not seek to analyse the role of ideas. However, “even if we accept the rationality premise, actions taken by human beings depend on the substantive quality of available ideas, since such ideas help to clarify principles and conceptions of causal relationships, and to coordinate individual behavior” (Goldstein and Keohane 1993: 5).

Moreover, ideas about what is politically legitimate in a particular national and sectoral setting “affect groups’ perceptions of their interest and foster in them a disposition to explain their positions in abstract terms, to fit their particular concerns into a larger framework” (Dyson 1980: 3). Ideas at this level thus influence the frames within which politics are to be conducted, i.e. rules for

‘what just is and isn’t done’, and they help to identify who are members of a political community (Kvistad 1999: 4). In the political process, commitment to common ideas and purposes is useful because it “creates ‘will’, and widespread agreement produces legitimacy” (Orren 1988: 27).

Ideas are therefore important to policymaking, and deserve attention. Several theoretical approaches exist that include the role of ideas in the policymaking process. Goldstein and Keohane (1993) claim that ideas principally have three functions in policymaking: they serve as road maps; they assist in consolidating outcomes in the absence of a unique equilibrium; and because they (sometimes but not always) become institutionalised, they sustain the influence of actors’ interests even in cases where the actors themselves or their interests have changed.

However, the approach of Goldstein and Keohane, although ambitious, lacks analytical clarity concerning the concept of ‘ideas’. According to them, “[a]dvocates of an ideational approach to political analysis must begin by identifying the ideas being described and the policy outcomes or institutional changes to be explained. We must also provide evidence about the conditions under which causal connections exist between ideas and policy outcomes” (Goldstein and Keohane 1993: 11). Their focus on the *effect* of ideas rather than the ideas themselves, i.e. their assertion that ideas influence policymaking when they fall into one of the categories cited above, complicates (indeed, renders questionable) the task of identifying ideas other than strictly programmatic ones. Ideas, defined by Goldstein and Keohane as ‘beliefs held by individuals’,

affect policy outcome, but the role of these ideas is confused because “choices of specific ideas may simply reflect the interests of actors” (Goldstein and Keohane 1993: 11). It therefore seems difficult if not impossible to separate cases where ideas, as defined and used by Goldstein and Keohane, exert their own independent influence from cases where a traditional interest analysis would provide adequate analysis. Moreover, in addition to the difficulty in showing any causal relationship between ideas and policy outcomes, their approach suffers from great difficulties in defining which ‘beliefs held by individuals’, of which there are many, are relevant to policymaking.

Favell (2001), in his study of French and British integration policies, develops an approach where the question of distinguishing between ideas and interests becomes less prominent. He envisages ideas as systems of meaning. For political debate to be meaningful, actors need to agree on certain basic assumptions. Favell’s ‘official political theory’ is a consistent argument about a political issue that actors adhere to. Such a theory includes guidance on how to interpret basic facts (epistemological claims); causal beliefs about means and ends (explanatory claims); and core values specifying the ideal end-goal (normative claims). An ‘official public theory’, however, is not a theory in a strict scientific sense, but rather a ‘workable compromise’ resulting from the political process. It thus shares important similarities with Hall’s (1993) policy paradigm, “a framework of ideas and standards that specifies not only the goal of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing (...) [which] is embedded in the very terminology through which policymakers communicate

about their work" (Hall 1993: 279). Like Hall's paradigms Favell's 'official political theories' can change, under similar conditions of long-term sub-optimality or political crisis.

Favell's definition of an 'official political theory' is useful because it provides an analytical tool that operates on a 'medium level' of ideas, i.e. his 'official theory' is wider than simple programmatic statements, but because of its quality of 'workable compromise' remains less extensive and less abstract than a fully-fledged political theory.

The 'advocacy coalition framework' (Sabatier 1991; Sabatier and Jenkins-Smith 1993; Jenkins-Smith and Sabatier 1994; Sabatier and Schlager 2000) develops a more detailed concept of ideas, distinguishing between 'core' and 'secondary' beliefs, where the core beliefs comprise elements such as "the proper scope of governmental vs. market activity and the proper distribution of authority among levels of government" (Sabatier 1991: 153). Core beliefs, similar to 'sectoral state traditions' as used in this thesis, are hypothesised to be relatively stable over a decade or more, and form the basis around which policy coalitions are formed. The basic assumption about long-term stability of core beliefs is not tested in the advocacy coalition framework, mostly because the focus of the advocacy coalition framework is on explaining policy output and policy change.

Thus, the introduction of 'ideas' into political science analyses has not always resulted in increased clarity regarding the ideas themselves or their role in

policymaking. There are two main reasons for this, and hence two major challenges for the literature on ideas. A major problem with the body of political science literature concerned with ‘ideas’ is that there is no general agreement as to the *content* of relevant ideas. A wide range of ideas has been studied, from relatively narrow ‘programmatic ideas’, or policy programmes (Jacobsen 1997; Notermans 1998; Woods 1995; Goldstein 1989; Blyth 2001), to broad ideas about the nature of the state and political theories. Studies on narrow, programmatic ideas suffer from an inherent difficulty in distinguishing between the role of the ideas themselves, and the power of their advocates, thus questioning the potential value added to traditional interest based models.¹ The broader concepts of state traditions and political theory, however, are difficult to operationalise in a specific policy setting, and it remains unclear how such broad ideas could be seen to influence either the policy process or the outcome.

The second major difficulty for the literature on ideas is related to how ideas have been studied. Much literature on ideas has been criticised for failing to show what role ideas have in the policy process (Kohler-Koch 2002), which is not surprising, given the imprecise nature of much of the ‘ideas’ under investigation. However, most analyses of ideas and their effect on policymaking use *policies* as an indicator of whether ideas have influenced the policy process, instead of studying the arena where ideas are likely to be used more determinedly by policymakers, i.e. in political discourse.

¹ For example, Hall’s (1986) study of ‘paradigmatic change’ in economic policy in France and Britain in the post-war period has been criticised because it fails to show the independent force of an idea, and rather establishes “an eclectic, though effective, blend of elite and institutionalist analyses (...) the more powerful the sponsors who appropriate ideas, the more powerful the ideas” (Jacobsen 1997: 32).

Recent studies of ideas thus often suffer from a difficulty in identifying and analysing the ideas themselves rather than their probable effect on the policy-making process and on policies. This thesis attempts to resolve this problem by using public political discourse rather than policies as an indicator of sectoral state traditions. Furthermore, the effect of these ideas (the sectoral state traditions) on policy is not discussed, because such a discussion would inherently be fraught with potentially circular arguments, as in some of the approaches discussed above.²

The 'state traditions' concept

Studies on 'state traditions' narrow the range of ideas under investigation, from broad definitions such as 'beliefs held by individuals' to conceptions about the role and authority of state in society. The term 'state tradition' has been used by scholars to emphasise aspects of political life that are directly related to the existence of cognition of a 'state', and as such finds its place in the wider literature on the role of ideas in policy-making. 'State tradition', as opposed to 'national traditions', has an immediate interpretation of 'something belonging to or emanating from the state apparatus', and most analyses involving state traditions emphasise the cognitive aspect.

Dyson (1980) shows the pervasiveness of the concept of 'state' in French and German intellectual tradition by illustrating how it has impregnated all discussions about the state, within, among and through education of state

² This is not to say that such a study would be impossible or without value. However, it seems reasonable to achieve clarity about the continuity and change of ideas themselves before attempting to analyse their effects, a clarity that is currently lacking from the literature.

officials, and outside the state apparatus itself, by political philosophers, jurists, and other intellectuals. His seminal work contrasts 'state societies' (typically found in Continental Europe) with 'stateless societies' (Britain and the US being his foremost examples) and identifies a set of characteristics for 'state societies':

- 'State societies' have a conception of 'public power';
- They deny that the public interest is only the sum of private interests, and so exemplify non-economic, non-utilitarian attitudes to political relations;
- They stress the distinctiveness of state and society, whether in terms of the special function of the state or in terms of the peculiar character of its authority;
- They have a concern with institutions, reflecting legalism and codification, as well as depersonalisation of the public power;
- They display a moralistic view of politics which involves strongly collectivist and regulatory attitudes (Dyson 1980: 51-52).

The 'state' thus functions as a generalising, integrating, and legitimating concept. It is generalising because it combines political society with ideas of collectivity and the general good, integrating because it integrates an array of institutions either through centralism (as in France) or through co-ordination of autonomous units loyal to the federation (as in Germany). Its legitimating aspects imply that institutions and individuals are seen as elements in a political community whose coherence and unity are established by the explicit

articulation, identification, and ordering of certain principles or norms (Dyson 1980: 208-214).

Dyson's study (1980) also outlines a conceptual model to classify states, which focuses on "the character of the authority relations contained within the 'associative' bonds that hold men together in state and society" (Dyson 1980: 50). Here, the conception of legitimate political action is closely connected to the nature of authority in a society. For continental European countries, the 'state' is seen as the "institution of political rule" (Dyson 1980: vii), so that an increased understanding of the nature of the 'state' can be said to increase the understanding of the political processes. In this model, certain elements of the state concept are seen to be common across countries. The state concept "identifies the leading values of the political community with reference to which authority is to be exercised; emphasizes the distinctive character and unity of the 'public power' compared with civil society; focuses on the need for depersonalisation of the exercise of that power; finds its embodiment in one or more institutions and one or more public purposes which thereby acquire a special ethos and prestige and an association with the public interest or general welfare; and produces a social-cultural awareness of (and sometimes dissociation from) the unique and superior nature of the state itself" (Dyson 1980: 206).

The values, institutionalisation of the depersonalisation of power, and public purposes themselves, however, vary between states, and can also vary within states over time. Different regimes, such as the III, IV and V Republics in France, and the German Reich, Weimar Republic and the 'Bonn Republic',

embody different sets of institutions. The thesis investigates whether 'leading values', the 'distinctive character of the public power' and the 'public purposes' in the telephone sector changed or remained stable over the period 1900-1997.

Other authors have applied the term 'state traditions' in their analyses. Grimm (1991) gives an overview of the major political and intellectual events from the sixteenth century onwards as they relate to central characteristics of the state in continental Europe, in which he focuses on the intellectual reasoning and ideas behind state authority and sovereignty in relation to society. Rohe (1993) analyses the German state tradition as political culture, emphasising the existence of three different sub-cultures (dominant, Catholic and Socialist), the relative weakness of '*Gesellschaftskultur*' ('society culture', or the allegiance to the macro-level in society) compared to '*Gemeinschaftskultur*' ('community culture', or allegiance to smaller, club-like entities) and maintains that the problem of mediating between the political system and civil society remains in German political culture. Laborde (2000) reassesses the importance of the concept of state in British and French political thought. Her study primarily argues that the 'statelessness' of Britain is greatly overstated, but it also contributes to the refinement of the picture of the existence of a strong state concept in France. There are other examples of the use of the concept of 'state traditions' in literature. For example, Crouch (1992) used the concept to denote different styles of industrial relations. In his approach, however, the concept is used to refer to commonly agreed-upon (but not necessarily empirically substantiated) prototypes, rather than being studied in its own right.

State traditions therefore, as presented in literature, contribute to the study of ideas a precision of the ideas under investigation. State traditions are thus a specific set of ideas relating to the normative distribution of power and authority in society, and to the institutionalisation of such norms. State traditions are seen to contribute to individual policy-makers' perception of politics, to socialising policymakers and to providing shared norms for a policy community. State traditions confine the range of policy options because of the limits they set on cognitive processes. Policies that are perceived as contradicting the state tradition will be seen as lacking in legitimacy and thus be difficult, or even impossible, to implement, if indeed they are even considered. State traditions are expressed as values in political discourse. However, a state tradition is not necessarily unchangeable and static; it can be manipulated and changed from within, as well as altered in response to exogenous forces.

The major difficulty with analysing state traditions is their level of generality, which complicates the operability of the concept. Ideas on the role of the state and on the ideal distribution of authority and power in society are so vast and so complex that analysis must remain general. This thesis attempts to meet this problem by applying the general state traditions model to a sector-specific setting. The sectoral state tradition concept used here is therefore a sub-set of state traditions that is relevant to a particular sector. It embodies a notion of authority and of who should be the relevant actors in the policy process and what should be their relevant power. It also encompasses public ethos of the state and of sectoral policies, as well as criteria for legitimate decision-making procedures and discourse.

Change in ideas and state traditions

State traditions are not static. The ‘idea of the state’ is by its very nature open-textured (Dyson 1980: 2), and its meaning depends on the context in which it is used. Although the chronological change in the idea of the state is not the major part of Dyson’s work (his main focus being the link between the idea of the state and society), he nevertheless concludes that “a sense of direction [of the development of the idea of the ‘state’] is only likely to be achieved if philosophy is prepared to marry conceptual analysis to a more comprehensive, historical understanding of social and political experience” (Dyson 1980: 287).

Despite this call for further research, he sketches a development where the Western European ‘state’ can be said to experience (in the late 1970s) a sense of ‘crisis’. He illustrates this tendency with growing international interdependence, both economically and politically, partly through the increased sense of the failure of the traditional state to tackle contemporary problems. However, this thesis provides evidence that the leading values and public ethos as expressed in public political discourse of two major West European states remained remarkably stable over a period of more than a century, including the period Dyson considered ‘in crisis’ and the subsequent two decades.

Change is also a recurring theme in the literature on ideas. Although much of this literature has problems defining the exact content of relevant ideas, it is nevertheless frequently claimed that ideas change, particularly as policy changes (either as a prerequisite for, or as a consequence of, change). Hall (1993: 276) attempts to specify the role that ideas play in policymaking.

According to his approach, actors' ideas and preferences can change through a process of 'social learning'. If policy paradigms (defined as a framework of ideas and standards that specify policy goals, the appropriate instruments, and the nature of the problem) are to change, the change is likely to be associated with a process in which the overarching terms of policy discourse radically change. A movement from one paradigm to another is also likely to be preceded by significant shifts in the locus of authority over policy. Since ideas form a major part of a policy paradigm, a paradigm change can be seen to indicate a change in ideas, and potential paradigm changes are thus identified by radical changes in the political discourse, by politicisation of the issue, and by a change in locus of authority (Hall 1993: 279).

Hall's model is of interest to this thesis because it uses discourse as the main indicator of a policy paradigm, and because the ideas he includes in his 'third-order change' resemble those in the sectoral state tradition. It does however remain unclear from his model whether a paradigm shift (and thus change in ideas) is possible without major change among the policymaker individuals, and without a change in the governing political parties. If ideas (paradigms, sectoral state traditions) cannot change while the actors remain constant, it might be impossible to draw conclusions about the independent power of ideas.

'Ideas' are also referred to, albeit less stringently, in a host of studies on policy convergence (Dolowitz and March 2000; Bennett 1991; Peters 1997; Eatwell 1997; Levy 1997). Although the 'ideas' mentioned in these works mostly are not the type of ideas included in a sectoral state tradition, there seems to be a

‘common (mis)belief’ that ways of thinking about the nature of a problem (i.e. ideas) become increasingly similar as policy converges across countries.

Ikenberry (1990), in his study of the spread of privatisation policies, argues that change in policies can indicate either a change in the state’s goals, or a change in what instruments it sees as appropriate to reach its goal (Ikenberry 1990: 92), and that the ‘wave’ of privatisation in the 1980s and 1990s indicated that such goals and instruments converged. “‘Efficiency’ is perhaps the most frequently mentioned reason for privatisation” (Ikenberry 1990: 91), indicating that governments from across the world increasingly valued efficiency as one goal of public policies, although they previously had (supposedly) different ideas about the value of efficiency. This relatively recent emphasis on efficiency across the world can thus be interpreted as a convergence of (certain) ideas.

The argument that convergent policies indicate convergent ideas becomes even more pronounced in writings on ‘globalisation’. “Globalization is not undermining the state system, but it is producing increasingly strong pressures for states to be of a certain sort – open, democratic, flexible, and respectful of the rule of law” (Ikenberry 1997: 2). Ikenberry (1997), holds that “information globalization [distinguished from market and production globalisations...] is helping to create a single global society and culture, or at least one that is increasingly homogenous (Ikenberry 1997: 14-15). Economic imperatives linked to an open world economy imply that “the opportunities that participation in the world economy produces, also create great constraints on governments. The choices are fewer. Certainly, the choices about how to interact with the world system shrink. Policies that once were driven by political ideology and societal

coalitions are now economically irrational. (...) The policy dilemmas are second tier: how to adjust, how to mitigate, how to facilitate" (Ikenberry 1997: 24).

'Globalisation' is also seen to be a driving force behind policy convergence because states face increasingly similar socio-economic environments (Eatwell 1997: 252-269), or because of facilitated communication and interaction between interest groups through trans-national networks that constitute common pressures for change across nations (True and Mintrom 2001). Alternatively, politicians and bureaucrats can potentially play a similar role: "New constellations of interests are being built up by politicians and bureaucrats in their interaction with transnational pressures and interests, resulting in the state itself becoming a major collective agent (...) and creating (...) a complex new set of opportunity structures rooted primarily in the search for competitiveness" (Cerny 2000: 449). Globalisation, promoting change through economic and industrial interdependence, is thus seen to foster not only similar solutions across countries, but indeed similar policy goals, such as economic efficiency and international competitiveness.

Studies on policy transfer and 'mimetism' emphasise the role played by new rapid means of communication between policymakers from different countries to opt for convergent policies. Policy transfers are thought more likely in cases of geographical closeness, or linguistic and cultural similarities (Wolman 1992: 33). National policymakers are seen to have less power to determine their own agenda in face of growing international economic dependencies, and

supranational institutions such as the EU³, the World Bank and the IMF are fostering policy convergence through their demands. “These changes, by subjecting countries to similar pressures and expanding the amount of information available to policy-makers, have meant that policy-makers increasingly look to other political systems for knowledge and ideas about institutions, programs and policies and about how they work in other jurisdictions” (Dolowitz and March 2000: 7).

Thus, although only rarely explicit, studies on policy convergence have shown a tendency to assume that convergent policies indicate convergent ideas, not only about policy measures, but also about goals for state activity. However, this assumption has not been subjected to a long-term historical investigation. This thesis will therefore provide important information to studies on convergence.

Discourse as indicator of sectoral state traditions

Political discourse is an important vehicle for the communication, maintenance, and development of state traditions. As Dyson (1980: 1) comments, “[l]anguage is part of the social and political structure; it reveals the politics of a society”. Language is an active tool in the political process. The way in which issues are approached, and what concepts are employed, helps to determine the ensuing politicking, the issues’ chances of reaching the agenda of a particular institution, and the final outcome (Rochefort and Cobb 1994: 9). “Issue definition is central to studies of (...) politics (...) because different definitions generate different

³ The term EU or European Union is used throughout the work to denote what has been known as the European Communities, the European Community, and the European Union, unless there are strong reasons to do otherwise.

cleavages in society. Public debate and policymaking concerning important policy issues rarely consider all elements of an issue at once" (Baumgartner and Jones 1994: 50).

Discourse is therefore a good indicator of sectoral state traditions. Although political discourse should not be taken *prima facie* as expressing the 'true' beliefs and values of the speaker, or be seen to be solely produced (as a cynic might suggest) in order to manipulate the policy community or the general public into accepting prominence of certain interests, it nevertheless reveals the speaker's perception of the environment's requests for legitimate behaviour. A long-term historical investigation into public political discourse makes it possible to determine the sectoral state tradition's sustainability and development.

Using 'discourse' as an indicator of sectoral state traditions is, however, not limited to study of the concepts used in public debate, which essentially (although not exclusively) focus on public ethos. The *form* of discourse is a good indicator of the relative power of policymakers. In her analysis of how discourse impacts on the political process Vivien Schmidt (2002; 2001; 2000) distinguishes between two main types of discourse: the communicative and the coordinative. The former is prevalent in states where policymaking is predominantly centralised, determined among an inner group, and communicated to the public only when the decisions have been made. The communicative discourse is, therefore, directed mainly towards the general public. Conversely, the coordinative discourse is more common in countries

where policymaking is more dispersed, and where larger parts of the population are involved in negotiating reform. Coordinative discourse is mainly aimed at knowledgeable co-deciders, and tends to be more technical than communicative discourse. Thus, a public discourse of either of these types indicates how policymakers perceive rules for legitimate decision-making. A communicative discourse indicates that policymakers are confident that policies, once agreed upon by the relevant actors (which, because of the communicative nature of the discourse, excludes the general public), are legitimate. A co-ordinative discourse, however, points to greater dispersion of power among the relevant actors, and (ideally) greater possibilities for the general public to participate.

Discourse is thus used to indicate the way in which policy-makers frame the issues at hand. Sectoral state traditions operate partly at a sub-conscious level and discourse is therefore used to decipher (hidden) assumptions, what is taken for granted and what remains unquestioned by policymakers. To the extent that state traditions are explicitly known and expressed, policymakers can deliberately manipulate the framing of emerging issues and certain preferred solutions in such a way that they are adhering to the principles of the state tradition, thus increasing their perceived legitimacy in a policy community.

The role of institutional reform

The thesis studies sectoral state traditions through public political discourse about institutional reform. Institutional reform opens up opportunities for a change in the formal set of relevant actors in a policy area, as well as in their

formal relative power (Hall 1993; Kohler-Koch 2002). There is therefore a good case for using periods of debate about major institutional reform as empirical cases.

The thesis does not attempt to explain institutional reform, nor does it use the reform outcome to indicate stability or change in sectoral state traditions. The reform periods themselves therefore provide the occasions for debate where change in the sectoral state traditions are most likely, because of the issue's presence in public debate.

In addition, the formal institutional framework provides a natural setting within which debate takes place. Moreover, one period's institutional reform often provides the starting points for debates about reform in the following period. For these reasons, brief descriptions of the major points of reforms implemented are therefore included in chapters.⁴ However, it must be emphasised that the thesis does not attempt to explain why these reforms were undertaken. Rather, its focus is on discourse about reform in order to analyse the continuity of sectoral state traditions.

Analysing sectoral state traditions

Having presented the theoretical foundations for the development of this thesis's major empirical tool, the object under investigation, *sectoral state traditions*, will be defined and outlined in greater detail. The establishment of

⁴ The exception is the descriptions of the reform outcomes in the late 1990s. Although not central to the argument, they provide a natural end point to the empirical study.

this object will enable an analysis of the persistence of ideas in national policy-making in the telephone sector. Three aspects are of particular importance if sectoral state traditions are to be of analytical use: First, its essential elements, i.e. the types of ideas present in a sectoral state tradition. Second, the original sectoral state tradition must be established to give a starting point for analysis of change or continuity. In this thesis the original sectoral state tradition is defined as the one in place when telephone policy had been consolidated in the two countries (c. 1900). Third, a method for identifying change must be established.

Defining sectoral state traditions: Central elements

A sectoral state tradition is a sub-set of state traditions relevant to a particular sector. The constitutive elements are chosen based on the theoretical works outlined earlier, in particular the elements identified as belonging to the (Continental European) state tradition by Dyson (1980). However, this study's focus on a particular sector has necessitated certain adjustments to Dyson's model. The notion of authority remains central for sectoral state traditions, as does the public ethos. Moreover, the ideas about state as legitimating concept, and its implications for practical decision-making procedures and political discourse, are included in a sectoral state tradition. But, because the level of study is sectoral, all elements are interpreted with respect to the particular sectoral setting. This does not imply that the sectoral state traditions would contradict the general state traditions, but rather, that the level of detail regarding actors, institutions and legal framework is greater in this study than if general state traditions were being studied. Furthermore, similar studies of

different sectors might require further adjustments to capture essential sectoral characteristics. The list of elements presented here is therefore not necessarily exhaustive for all possible empirical cases, but should provide sufficiently general to be of use in cross-national, as well as cross-sectoral, comparisons.

A sectoral state tradition includes:

- A notion of authority and of who should be the relevant actors in the policy process, and an institutional framework delineating power structures between these;
- A public ethos of sectoral policies;
- Criteria for legitimate decision-making procedures and discourse.

Origin of a sectoral state tradition

Identifying a point at which a sectoral state tradition is consolidated is central to the question of whether such traditions remain stable over time. The search for state traditions, and for explanations of social organisation and state structures, can be drawn far back into the past.⁵ However, practicalities necessitate limiting empirical research: For telephone policy the limitation is relatively easy, the starting point being 1876, when the telephone was invented and brought to the attention of policy-makers in both France and Germany.⁶

⁵ E.g., Barrington Moore's (1966) study on the 'routes to modernity', and Bendix's (1996 [orig. 1964]) on the process on nation-building, both trace the origins of modern regimes back to medieval times. Dobbin (1994), in his study on industrial policy paradigms in the railway sector in France, the UK and the US, draws on developments from the nation-building phases in each of the three cases. All these works, therefore, establish important links between existing social structures and the first institutions of a 'modern' society.

⁶ It could be argued, because the telephone was initially viewed as a special case of telegraphy and handled by national telegraph authorities, that one should trace the institutional roots back

The consolidation of a sectoral state tradition is expressed through the establishment of a language common to all interested parties, through which problems are perceived and solutions defined. In the case of telephone policy, the period up to c. 1900 (when both countries had basic telephone legislation in place, telephone services were institutionalised as an integral part of state services, and the principal actors in the policy-making environment were defined and established) is seen as the 'consolidation phase'.

Determining change in sectoral state traditions

Sectoral state traditions are ideas about political authority and legitimate state action in a specific sector. Identifying change can be difficult, because the identification in many cases must depend on subjective measurements (ideas, norms and values, are in most cases implicit rather than explicit). To minimise the risk of subjectivity in the process of determining change in sectoral state traditions (although it would be impossible to eliminate it altogether) certain parameters should be used as a 'checklist' to indicate stability or change. The parameters used in this study are:

The notion of authority, relevant actors, and their relative power

The formal institutional framework for the sector partly determines both relevant actors and their relative power. However, ideas about who should possess

to the first telegraph legislation in the 1840s (see Schneider 2001). However, although some 'institutional baggage' from the pre-telephone era is discussed here, telephone policy clearly emerged as a separate policy area with a relatively solid body of special legislation around 1900. Subsequent impact of telegraph policy (as well as the initial institutional challenges connected with the merging of telegraphy with the postal administration) has been covered in the relevant chapters.

ultimate authority are not necessarily corresponding to the *de facto* power these actors have in practical policymaking. Because the essential elements of a sectoral state tradition are ideas about the ideal distribution of power, expressed in public political discourse, potential changes to such ideas must be evaluated by how policies are presented, rather than by how they were practically formed. The empirical investigation will show that the notion of authority remained stable throughout the period studied, but that the set of perceived relevant actors and what powers they should have changed, particularly in France in the 1980s.

Public ethos of sectoral policies

Common agreement on the identification of the sector's product is crucial to the maintenance of the state tradition. It establishes a common language for all interested parties and frames the relevant questions and issues in the sector based on shared values. If this consensus is questioned and a new consensus appears, the sectoral tradition can be said to have changed. It is, however, important to distinguish between the public ethos and its implications for policy instruments. A change in the latter (e.g., from direct state service provision to regulation of private service providers) does not necessarily imply change in public ethos, which depends on how the (new) policy instruments are legitimated in public political discourse.

Criteria for legitimate decision-making and discourse

Legitimate methods for policymaking involve formal and informal rules about who is consulted for new policy proposals and about the style of communication between these actors. The nature of the public discourse changes if central

concepts identified in previous time periods are no longer in use, or are used significantly less, or if new concepts are given prominent place; if the set of participants in the public debate changes; or if new technological possibilities are couched in terms different from existing ones. Examples of such changes include the focus on 'efficiency' and 'modernisation' in the immediate post-war years (concepts that became prominent only after the Second World War and which had not been in consistent use in previous time periods) and increased attention to 'managerialism' and 'cost-effectiveness' in the 1920s, and again in the 1980s in Germany.

The empirical cases – French and German telephone policy debates

The use of French and German telephone policy debates as empirical cases allows for a 'most similar systems' approach. France and Germany are both characterised by Dyson as 'state societies' and can therefore be expected to place great emphasis on their respective state traditions. They are of relatively similar size and economic and political importance, and have followed comparable paths of economic and technological development.

A study of the telephone policy sector potentially provides significant information on the strength of sectoral state traditions in an area where convergence, according to literature presented in this chapter, could be expected. The French and German telephone policy sectors experienced similar exogenous pressures (technological changes, increasingly interdependent economies, supranational legislation) and similar institutional frameworks throughout the period (ministerial bureaucracies, separate budgets, corporatisation, regulation of full compe-

tition). Despite these similarities, national debates showed significant differences with reference to the elements of the sectoral state tradition throughout the 120 years from 1876 until 1997.

The periods chosen as foci for the empirical research correspond with periods of fundamental institutional reform, when changes in ideas expressed through public political discourse are assumed to be most likely. The chapter on the post-Second World War period is an exception, but is included because ideas about the role of the state were generally challenged in this period.

Having presented the case for the empirical investigation, and having established the main elements of a sectoral state tradition and a set of parameters within which to evaluate change, it is time to identify the original form of the sectoral state tradition in telephone policy in France and Germany. The task is undertaken as an empirical investigation of the period 1876-1900, and is presented in the following chapter.

Chapter 2

Consolidation of State monopolies – the first 25 years of telephone service provision

As argued in chapter 1, analysis of change or continuity in sectoral state traditions necessitates knowledge about the sectoral state traditions in their original form. This chapter therefore aims at analysing public debates around the state's monopolisation of telephone service provision to identify the initial elements of the sectoral state tradition: a notion of authority; public ethos; criteria for legitimate decision-making and discourse. The result of this analysis will form the baseline against which change or continuity is evaluated in the next chapter.

This chapter shows that the sectoral state traditions were consolidated at the turn of the century. By then legal frameworks were in place defining telephone service provision as a state monopoly. The ultimate authority of Parliament in the case of France, and of legislation in the case of Germany, was unquestioned in the telephone sector. Moreover, the period 1876-1900 consolidated the set of actors perceived as relevant to policymaking, as well as ideas about how much relative power they should have.

Public debates in the consolidation period illustrated the differences in French and German responses to a similar problem: How to justify a state monopoly in telephone service provision for it to be in line with contemporary views on the role of the state in the economy? The two different responses form the origin of

the public ethos in the two countries: the 'general will', and continuity and equality of service in France, legal circumscription of federal rights and cost-based tariffs (as indication of economic efficiency in infrastructure provision) in Germany.

The case of France

This chapter will show that the first 25 years of telephone legislation in France were marked by agreement on the formal ultimate authority of Parliament, despite the wide *de facto* discretionary powers of the P&T administration. The actors perceived as relevant to policymaking at the end of the consolidation period were essentially Parliament, the P&T administration, and, once budgetary unity was introduced in 1892, the finance ministry. In 1887 a consultative commission was established to provide a continuous link between the central administration and Parliament, but the empirical evidence does not suggest that this commission was perceived among the relevant actors in the policy area (Bulletin Mensuel des Postes et des Télégraphes 1887). Private enterprise was excluded from the policy-making arena when the telephone service was nationalised, and industry was given no formal representation in the decision-making process.

The French public ethos in telephone policy at the turn of the century consisted of quality (continuity) and equality in service provision, and budgetary unity. The licence conditions from 1879 and 1884 provided a certain protection of the consumer through territorial equality of tariffs, and from 1884 onwards they

included an obligation to provide a service. Both territorial equality and obligation to provide service (subject to local financing of necessary investments) were integrated in the public ethos once the telephone service was nationalised. (Continuity and equality would subsequently be integrated in the concept of *service public* in the early 20th century, whereas budgetary unity would disappear.)

Legitimate decision-making procedures focused on the role of Parliament and the public administration, and emphasised procedural correctness as the basis for legitimacy. The introduction of budgetary unity in 1892 cemented telephone policy's position within the state bureaucracy to the detriment of external influence. Industry and the general public had no place in the policymaking environment, and discourse was of the communicative type, coherent with expectations of V. Schmidt's model when political decisions are taken among a closed group of state officials, and subsequently communicated to the public.

Telephone policy and the state: 1876-1900

Before investigating the first two decades of telephone service provision in greater detail in order to identify the original sectoral state tradition more clearly, it is necessary to first set out the principles of the role of the state in the late 19th century.

Two intellectual problems proved particularly significant for political thinking relevant to the telephone issue in 19th century France. The first was the inherent

tension between Parliament as the representation of the ‘nation’ and its ability (or lack thereof) to control the executive branches of government, reflecting the problem of sovereignty and *de facto* power. Second, the founding principles of the Republic – liberty, equality, and fraternity – posed the problem of upholding individual liberty through minimal state intervention vs. the promotion of equality through positive government action. For telephone policy, this problem translated into the debate on competition vs. monopoly of service provision.

Sovereignty, the government, and societal interaction

The state was established as a fundamental legal concept in France by the early seventeenth century. The idea of the state, “connote a territorial unit ruled by a single sovereign; the continuity of royal government and its vast apparatus of offices apart from the mortal life of the king; and a community enjoying a unity of sentiment as a consequence of living under a common sovereign” (Dyson 1980: 27-28). After the Revolution, the conception of sovereignty was allocated in the abstract ‘nation’. The sovereignty of the nation and the democratic principle of direct representation meant that the legislator as the highest and most legitimate representative of the ‘general will’ was all-powerful. The administration was the machine that implemented parliamentary decisions (Rosanvallon 1990).

The government possessed wide discretionary powers. Parliament could allow government to issue decrees (governmental decisions without parliamentary debate) about specific matters, whilst retaining the right to repudiate such

decisions *ex post* (Cole 1960: 202). Early telephone legislation (before nationalisation in 1889) was in the form of decrees or arrêtés (ministerial decisions). The initial treatment of ‘the telephone’ as a special case of telegraphy gave the Post and Telegraph (P&T) Ministry large discretionary powers in the policy area. As long as Parliament did not protest, which the young institution did not do because it had more urgent political problems (Leroux 1987), the P&T Minister and his bureaucrats could continue their pragmatic policies relatively undisturbed. On the occasions when they presented telephone issues to Parliament, as, for example, in the demand for extra-budgetary resources in 1882 and the renewal of licence in 1884, the political discourse was, as will be shown, in line with contemporary views on legitimacy of state intervention (e.g., Parliament’s ultimate authority, ideas on monopoly vs. competition, and the (potential) superiority of state provision over private enterprises).

The particular role of Parliament in the definition and expression of the general interest led to other channels of interest mediation and communication, such as the bureaucracy and political parties, being downplayed. Government ministers were perceived to be corrupt (Gildea 1996: 12-15), and political parties were seen as ‘inappropriate’ and a ‘source of disorder’ (Bastid 1954: 148). These factors strengthened the relative autonomy of the P&T ministry in the policymaking process, which in practice rendered the ministry the sole public institution interacting with private potential service providers, who had, themselves, no direct access to the legislator. The actors seen as relevant to

policymaking at this early stage, therefore, were Parliament and the P&T administration.

Liberty or equality, competition or monopoly

Another fundamental source of tension in the idea of the state at the time of the invention of the telephone was the founding republican principles of Liberty, Equality and Fraternity. Those advocating 'liberty' as the main aim of government sought to limit governmental authority, whereas those emphasising 'equality' valued positive governmental action to "keep certain individuals or groups from oppressing weaker individuals" (Cole 1960: 191). The telephone policy issue linked to this debate was whether to establish state monopoly over telephone service provision, and the idea of equality rendered the state capable of legitimately monopolising certain scarce resources that the markets could not be trusted to distribute fairly, such as the telephone and telegraph infrastructure (Rosanvallon 1990).

Those in favour of 'weak government', in the sense of minimal administrative machinery, were supported by liberal economists. According to Jean-Baptiste Say, an influential political economist in the late 19th century, the best measure of governmental quality was economic efficiency (Leroux 1991: 25). "It is by the nature of the public expenses that one can know if a nation is represented or not, if it is well administered, or not" (Say, quoted in Rosanvallon 1990: 59).

Thus, demands for a reduction in the number of public officials did not generally originate from a desire for less governmental intervention, but from a

belief that a large bureaucracy was a sign of a mal-functioning direct government. Political economists tended to advocate a 'one-way liberalism', i.e. as little state intervention as possible unless national industry directly benefited, for example through protectionist measures.¹ "[T]he most famous among [the economists] held as principle that everything that could be undertaken by private initiative should be forbidden [for the state]" (Picard 1906:451). A (state) monopoly, according to the liberal credo, would result in neglect of the consumer, excessively expensive products, low quality, and indolent producers.

At this time, economists distinguished between 'natural' and 'legal' monopolies (Leroux 1987: 26-29). A 'natural' monopoly would occur if it was impossible for more than one actor to efficiently provide a certain product or service. This might be because of some specific characteristic of one actor, such as unique excellence or talents, or unique access to material or natural resources. 'Legal' monopolies were of two sub-categories; those based on certain 'general interests' (such as education), and those whose sole purpose was to increase state revenues ('fiscal monopolies', such as the tobacco and matches monopoly, see Citroën 1925). Of these two main types, only the 'natural' monopoly was considered legitimate (Leroux 1987: 26). If, however, the monopoly served a purpose in the 'general interest', the situation was somewhat different.

For a [state] monopoly to be completely legitimate, it must have as its objective a service that could not be undertaken by an individual or by a collection of individuals left to themselves, or that the service demands certain security measures which could not be brought about from private

¹ "For [Jean-Baptiste] Say, it would be crazy to believe that good State action was equal to not doing anything bad. (...) an enlightened government supports industrial experience in order to improve the conditions of production; (...) the government has to ensure property rights, through diffusion of the Lights (*Lumières*) without which economic activity cannot prosper" (Steiner 1998: 30).

actors. In one word, the monopoly is legitimate only to the extent that it is established and operated in the interest and to the benefit of the community.

Rousseau 1882: 7

To legitimise a monopoly in telephone service, the government invoked the general interest and used its superiority as service provider in a 'natural monopoly' such as communications. Fundamentally, the state held a monopoly right to transmit communication from 1837 onwards, a right it had never renounced.

Early telephone legislation

Telephony was initially viewed as a special case of telegraphy – a 'talking telegraph' (Siemens 1879) – and placed under the authority of the P&T ministry. The telegraph service had after lengthy discussions been merged with the postal services to form a common administration in 1878, finally achieving the status of a separate ministry in 1879 (Aufavre 1871; Blavier 1872; Bulletin Mensuel des Postes et des Télégraphes 1879a: 62). However, this organisational merger resulted in latent conflicts between postal administrators and telegraph engineers (Bertho-Lavenir 1989). The postal monopoly had been institutionalised under Napoleon in 1804, because it provided a source of considerable income to the state,² whereas in the case of the telegraph services, national security was given as the main reason for a public monopoly (Coe 1923: 3-4), although the services were also profitable.

² The letter service had been subject to competition in the 18th century, but this was ended in 1804. The pecuniary importance of the postal services was in the order of a 50 per cent profit margin. According to Heinrich von Stephan, the German Reichspostmeister, the French postal profits were the highest of all European postal administrations (Stephan 1859: 630).

After a devastating war, the Treasury must concentrate on fecund tasks that will have as little impact as possible on transactions, private income and manual work, and simultaneously contribute efficiently to the material and moral well-being of the country. The post and telegraph services seem to reunite these precious advantages.

Aufavre 1871: 1

One of the most remarkable measures in French telecommunications legislation was the general wording of the state monopoly in signal transmission from 1837. The Law of 2 May 1837 stipulated that “[w]hoever transmits, without authorisation, signals from one place to another, by telegraph machines or by any other means, will be punished with imprisonment” (Law of 2 May 1837 §1, emphasis added). The reference to effect (transmission of signals) rather than technology implied that the state’s general rights in telephone service were never questioned, contrary to the situation in Germany, where earlier legislation referred directly to telegraph technology. The law of 1837 placed legal responsibility for telegraph services within the P&T administration, who had large discretionary powers regarding the establishment of new telegraph lines, tariffs for both public and closed private networks, and the expropriation of telegraph lines.³

Even if the state’s initial rights in telephone matters were secured, it did not follow that it would or should undertake provision of the service. Legislation

³ For ‘telegraph lines of private interests’ the state could either construct and maintain its own lines, which remained connected to the public network, or it could in the case of private, closed networks allow licensees to construct and maintain the lines. All lines with access to the public network were subject to state tariffs, and for private networks a special *arrêté* determined the tariff to be paid to the state (Bulletin Mensuel des Postes et des Télégraphes 1879b). The state was not responsible for acquisition and maintenance of terminal equipment for ‘private interest telegraph lines’, except in the case of lines serving local public offices. It did however retain the power to control communication on these lines, and, if and when evaluated ‘useful’, to integrate private lines into the public network. (Bulletin Mensuel des Postes et des Télégraphes 1879c). These provisions illustrate the large discretionary powers of the Ministry. No measures existed to protect private investors from state expropriation or to ensure any return on investments.

from 1851 opened the way for private operating licences for telegraph services but only for a limited period of time. Telephony, because it was considered a case of telegraphy, came under the same legislation. Private operating licences did not remove the legal monopoly of regulation from the state, but instead, paved the way for alternative forms of provision in addition to direct state production (Law of 24 December 1851, *Bulletin Mensuel des Postes et Télégraphes* 1881a).

The French administration did not believe in the profitability of the new means of communication, and refused to allocate time and resources to a system whose future was highly uncertain.

It was difficult at that time [in 1879] to be aware of this new and marvellous application of electricity, to suspect the place it would take in everyday life, and finally to calculate the expense that the telephone network would entail. From that moment, the administration could not imagine to immediately take charge of such exploitations. (...) One thought that, while totally preserving the state's monopoly, one had to let private industry undertake this enterprise of which it was impossible to measure the results in advance.

Projet de loi sur concessions des réseaux téléphoniques 1884,
quoted in Belugou 1888: 39

Existing legislation, however, did place responsibility for telephony within the

telegraph administration, which the latter had no reason or wish to avoid.

Private sector interest in providing the telephone service necessitated clarification of public policy, and because of economic constraints and scarcity of resources, the public administration did not have the capacity to undertake provision of a project whose future was relatively uncertain, and whose costs and benefits at the time were unknown. It chose therefore to issue operating

licenses to private service providers.⁴ Separate licence conditions for telephony appeared in June 1879.⁵

License conditions

For ten years, until nationalisation in 1889, the centrepiece of telephone legislation was the *arrêté* of 26 June 1879, outlining the licence conditions for the telephone service (Bulletin Mensuel des Postes et des Télégraphes 1879d). The central points of the conditions were:

- The licence was given for five years only;
- External lines, i.e. all cabling with the exception of those inside a building and its connection to the outside cable, should be installed and maintained by the P&T Administration, at the expense of the licensee;
- The state should control the operation of the service through:
 - approval of terminal equipment (while allowing for competition in its supply);
 - setting of tariffs, on an equal basis for all subscribers;
 - ensuring that price reductions were given to public offices;

⁴ The licence conditions were given in answer to “diverse demands for obtaining the authorisation to establish and exploit a telephone communications system in Paris and the larger cities.” (Bulletin Mensuel des Postes et des Télégraphes 1879d: preamble).

⁵ The telegraph authorities also used problems with electric induction to argue their control of telephone installations: “the use of telephone needs to be specifically authorised because lines originally intended for use with other instruments can be used with telephones only when they are completely isolated, and it is for the state to verify whether the lines fulfil the necessary conditions. Installation of underground cables for private telephone connections can take place only through the telegraph service.” (Bulletin Mensuel des Postes et des Télégraphes 1881b: 789). Aerial lines were used only to a limited extent in France, and the proximity of trajectories of telephone and telegraph lines necessitated measures to avoid induction and noise. Such measures were best provided for through centralisation in one office, and the telegraph authorities were given this task.

- determining that the city of Paris would receive an allowance for the right to pass telephone cables through the sewer system;
- giving public officials the right to at any moment enter the licensees' offices for controls;
- 10 per cent of annual total income should go to the Treasury, with a minimum of 5.000 Fr for Paris and 10.000 Fr for provincial networks;
- The government could at any moment buy back the concession as well as the equipment. If the parties were unable to agree upon a price the matter was to be settled by 'independent experts';
- The State had no responsibility, economic or technological, for the quality of the operation of the service;
- The telephone service was for personal use only and 'third persons' were not allowed access to the service (thus closing the possibility for commercial telephone offices competing with the local telegraph).

The first license conditions thus left the state with much freedom and little risk.

Technological conditions were unsophisticated, and no specific regulation existed for different kind of networks. Telephone connections were only local; the first inter-city connection, between Rouen and Le Havre, took place in 1885 (Libois 1983). There was therefore no need for specific regulation for different kinds of networks and more care was taken to defend the state's economic interests than subscribers' rights. The telephone, with its low penetration rates, was considered a toy for the few rather than a basic public good so that the telegraph filled the role of providing individuals with a means for long-distance communication, without unnecessarily putting state finances under pressure.

In addition to granting licenses, the P&T administration retained the right to operate its own telephone service. The approach of the P&T administration was purely demand-driven; the customers paid all costs related to the extension of the network themselves, they carried all costs of terminal equipment, and the administration took no responsibility for the functioning of either lines or equipment. The public authorities claimed the right to control the communications over their networks (Ministère des Postes et des Télégraphes 1882).

Even under these relatively unfavourable conditions, three companies applied for a telephone service license in the late 1870s. Of the three companies, two merged early 1880, and in December 1880 the remaining two entities joined forces and established the *Société générale des téléphones* (SGT). The contemporary lack of interconnection increased the disadvantages of having more than one network, and so from 1881 onwards there was only one private telephone service operator in France.

The 1880s – principles and pragmatism

Despite having issued three licences to private telephone operators, from 1881 the P&T administration found itself with only one private provider; the SGT. The public administration, however, had itself built a telephone infrastructure in larger industrial centres, financed through supplementary budget credits from 1882 (Belugou 1888: 43; Bulletin Mensuel des Postes et des Télégraphes 1882). The P&T administration's hands-on experience helped to temper the state's

initial reluctance to engage in telephone service provision, and it became gradually more positive to undertake provision itself.⁶ Opponents of a telephony monopoly would, in order to strengthen their argument, point to the 'bad industrial record' of the state in other monopolised industrial sectors. Public administrators fought to refute these criticisms through public reports showing the state's success in managing industrial sectors.⁷

The state's continued tight control of the telephone sector and the incapacity of the SGT to determine its own cost structure (because tariffs were set by the public administration) reduced the SGT's incentives to extend the network in rural areas. The P&T authorities were able to promote themselves as the only operator not driven purely by capitalism but by concerns for citizens' welfare (Bertho-Lavenir 1988: 161). The state's advantage in this socially beneficial but economically dubious segment was used to argue its *de facto* superiority as a service provider throughout the territory. This would prove to be politically important when the state's legitimacy was increasingly based on the outcome of state actions and their benefits to citizens, rather than on a 'simple' unique right to violence and maintenance of public order (see Chapter 3). The P&T administration could thus claim to be the sole guarantor of territorial equality of users, which formed part of the public ethos at the end of the consolidation

⁶ There is little evidence about this debate, both because it took place mainly outside of Parliament (the Ministry being responsible for implementation of the law of 1851 and the succeeding telephone legislation), and because ministerial archives were destroyed during a flooding of Paris' official archives around 1910.

⁷ Leroux (1987) shows in her study, based on numbers from Brault (1890), that for the first two years of the subscription the prices of the SGT's and the state's services were approximately similar. For any longer period, however, the P&T Ministry's services became economically advantageous (Leroux 1987: 19). However, the central administration's continued tight, short-term regulation of the telephone service provider created important differences in incentives to invest. An unstable regulatory environment implied an uncertain rate of return on investments,

period, and which would increase in importance with the development of the concept of *service public*.

However, the state was not in a position to view telephony as a basic public good. The idea of the welfare state was only in its inception and telephony was not yet characterised a *service public*. It was therefore central for the public administration to demonstrate its industrial capabilities.

One can rest assured, that sacrifices made to develop the post and telegraph offices, like couriers and telegraph communications and also the improvement of the personnel, will bear fruits (...) The Posts and Telegraphs services have lost their fiscal character and ought therefore to follow the rules and norms for industrial exploitation: increase, improve, ameliorate their instruments, every day increase the public's satisfaction, hence augmenting the turnover by the growth of circulation, which directly corresponds to the commercial development of the country. The postal service can be compared to a factory that produces with ca. 20 per cent profit.

P&T Minister Cochery 1884, cited in Musso 1987:61

SGT's first licence ended after five years, and although a renewal could have been given directly by the Ministry, the P&T administration used this occasion to prepare Parliament for future necessary investments. The P&T administration, reporting to Parliament in 1884 concerning renewal of the licence, viewed direct state provision in principle as a feasible alternative to a licensing regime, but considered it premature at this stage. The central reason for a continued license regime, according to the Ministry, was the uncertainty involved for state finances.

The results of these early tests [of telephone service operation] are so far satisfactory, but the experience is still not sufficiently complete for us to ask Parliament for the credits necessary to exploit all the networks in

which rendered the P&T administration's numbers questionable. Moreover, much of the costs were hidden within the larger national budget.

France. The necessary expenses would be impossible to find at present, and one would also be exposed to a situation with lack of educated personnel.

Ministre des P&T 1884: 1015

However, the Ministry clearly preferred direct service provision by the state once the financial risk could be determined and dealt with.

The rights of the state, however, are absolutely reserved. No monopoly rights are conceded, the administration can at any time license competing companies or operate the service itself.

Ibid.

The new SGT licence, granted for a further five years (Cahier des charges pour l'établissement, l'entretien et l'exploitation de réseaux téléphoniques du 18 July 1884), revealed a mood change in the state administration. The licence regime of 1884 was more detailed than the previous one and introduced significant new measures, which can be read as a pragmatic compromise between the conflicting obligations of the state. The germ of universal service provision was introduced, which forbade the licensee to refuse a potential subscriber connection in their license area unless the ministry expressly allowed it (§1).

During the first five years of telephone service provision, the network had developed to include 'suburban networks', and tariff regulation was introduced for connections between the different types of networks (§§18-19).⁸ The demand for equal treatment of users entailed the need for centrally fixed tariffs, to prevent private service operators exploiting their market power. The new licence conditions thus strengthened the P&T administration's control over telephone service operation, but it also reduced the potential profitability of the

⁸ This measure was a means to facilitate access to a so-called 'principal network' for smaller communities close to urban areas, especially to the benefit of local smaller enterprises. Communications within a network was paid for through a flat-rate subscription rather than call-by-call, and this new measure reduced the licensee's potential profit of operations in suburban areas, reducing the attractiveness of smaller network licences.

SGT. Equal treatment of users became an important part of the sectoral state traditions public ethos.

The 1884 licence conditions and the P&T administration's report to Parliament were strong signals of the public administration's appetite for eventually taking over service provision. The SGT's reaction was to put forward a proposal in March 1886 to create a limited company. This *société fermière des réseaux téléphoniques de l'État* would be given the right to operate the telephone service for a period of 35 years before handing the networks over to the state.⁹ Under this law, any town with more than 30 demands for telephone connections would have the right to a network. Furthermore, the state would own the networks throughout the period, but without investment obligations (Belugou 1888: 56; Leroux 1991: 29). The proposal, however, was rejected by Parliament. A similar law proposal was put forward less than a year later, but again rejected on the grounds that the envisaged concession would break the absolute monopoly of the state in telephone service matters, which was considered to be untenable (Ricard 1931: 81-82). The obligation to provide service (when financial difficulties were resolved), however, would be incorporated in the public ethos by the end of the consolidation period.

The SGT's lobbying activity had strengthened telephone policy's place on the political agenda, and changing administrative structures from 1887 indicate increased politicisation of the issue. For example, in 1887, the Ministry for

⁹ The State could, with a certain financial compensation to the company, buy back the networks at any time after the 15th year of operation

Posts and Telegraphs was transformed back into a Directorate General and placed under the Ministry of Finance (Décret du 30 Mai 1887 portant suppression du Ministère des Postes et des Télégraphes); the open credits of the former ministry were transferred to the Ministry of Finance (Décrets du 2 Juin 1887 rattachant au Ministère des Finances les crédits ouverts en 1886 et en 1887 au Ministère des Postes et des Télégraphes), and new financial control measures were introduced (Ministre des finances 1887). Awareness of the financial potential and the importance of funds involved also increased. In addition, the laws proposed by the private operator had made the need for a strong state monopoly in telephone service provision, as well, quite explicit, underlining the need for Parliamentary authority and control.

The case of Limoges – administrative solutions to financial challenges

The financial uncertainty that had led the P&T administration to postpone direct state provision in 1884 was resolved in December 1888 in an arrangement made for the establishment of a telephone network in Limoges and the concurring financial arrangement. The convention, confirmed by law on 21 December 1888, obliged Limoges to pay for the initial network construction, i.e. the central switch and connection to the national network, whereas the State would lend money to the city in order to facilitate subscriber access to the network. The State remained owner of all lines, and was also responsible for invoicing and collecting contributions from the subscribers (Chaperon 1889). It was clear that this arrangement was intended as a general measure, soon extended to other cities and municipalities.

To ensure the execution of the convention between the P&T administration and the city of Limoges (...) the following measures have been adopted (...) as much for the adopted convention as for similar ones that might intervene at a later stage.

Bulletin Mensuel des Postes et Télégraphes 1889: 440

The Limoges network was local, and hence no prime responsibility for the central administration. However, by using the local administration (Limoges) as a 'lender' and simultaneously holding onto rights of invoicing as well as operation, the P&T administration gave itself direct access to the telephone service subscribers whilst decreasing its financial risk. In this way, the state directly provided its citizens with a telephone service, which was politically advantageous, and the local organisation played a legitimising and risk-reducing role towards Parliament.

Once the problem of legitimising the financing of investments was solved, nothing blocked the way for the P&T administration to take full responsibility for the operation of the telephone service, which was nationalised in 1889. The central piece of legislation was the Law of 16 July 1889 (Loi qui autorise le Gouvernement à traiter avec les villes pour l'établissement de Réseaux téléphoniques d'intérêt local et à emprunter à la Caisse des dépôts et consignations les sommes nécessaires pour effectuer le rachat des réseaux exploités par la Société générale des Téléphones), which placed responsibility for telephony service provision with the Government.

[The government is] authorised to accept (...) payments to the Treasury (...) of the amounts necessary for establishment, maintenance and exploitation of urban telephone networks and to provide the products that have been paid for in this way, without any further engagement on behalf of the state.

Law of 16 July 1889, Art. 1

Nationalisation

The Law of 16 July 1889 gave the Government responsibility for providing telephone infrastructure to communities that found the financial means to do so. In the same year, the P&T administration was transferred to the Ministry of Commerce and Industry (Decree transferring the administration of posts and telegraphs from the Ministry of Finance to the Ministry of Commerce and Industry 9 January 1889; Decree on the open credits 6 January 1889), and the P&T office was given responsibility for administering the telephone service following nationalisation. Furthermore, the government was given authority to buy all of SGT's telephone networks for FrF 10 million, and place them under state ownership (Law of 16 July 1889, Art. 2; see also *Revue générale d'administration* 1889).

The biggest changes due to nationalisation were on the operational side: The licensee lost its right to operate, and service provision was brought under the auspices of the ministry. A functional division was introduced for service provision, with postal, telegraph and telephone services organised as different offices. The law of 16 July also established the first separate budget for the telephone service,¹⁰ so that telephone service accounts would be treated separately from the postal service's, which protected the postal service's finances from risk associated with the telephone.

¹⁰ Art. 4: "During the budgetary years of 1889 and 1890, the necessary credits will be opened under the general budget of the Ministry for Commerce, Industry and Colonies." Art. 5: "As from 1891, income and expenses for the telephone service will for a budget annexed to the general state budget." See also Musso 1991: 62.

The telephone service's perceived financial risk must however be assumed to have diminished rapidly after nationalisation, when the telephone was increasingly used as a telegraph substitute.¹¹

Thanks to this innovation [of telephonic transmission of telegrams] the municipalities can economise on the installation of a [telegraph] office, because the price compared to the profit for the telephone apparatus is lower than that for the telegraph. It also presents greater ease concerning personnel.

Revue Générale de l'Administration 1889: 372

During 1890 and 1891 the number of telephone networks throughout the French territory (including the colonies) grew rapidly, and the importance of the new technology augmented (Annales Telegraphiques 1892). The innovation also inspired visions of a future central place for the telephone:

It is therefore allowed to envisage the day when all persons physically away from a rural agglomeration, business manager, farmer, owner, through limited expenditure could possess, even within his home, an instrument to connect him to the local telephone network and, via this, to the general telegraph network.

Tirard 1889: 5299

Budgetary unity vs. industrial activity – the 1890s

According to the developing doctrine of *service public*, the unity of the state was absolute; the body of administrative law was intended to ensure that all state action served the general interest, which was the only legitimate reason for infringing on individual liberties. The implication of this idea for organisational structure was that a state entity, undertaking all action in the general interest, should operate one unitary budget – the 'doctrine of budgetary unity' (Jèze 1926: 3-27). This doctrine led to the abolition of the separate telephone budget from 1892, after which the P&T services had to get parliamentary approval for

¹¹ French regulation of this service appeared in 1889, much later than in Germany (Tirard 1889).

investments that required extra-budgetary resources (Law of 28 December 1892, cited in Musso 1991: 62). This situation would entail great practical difficulties for investment programmes, and was used in the 1920s to argue the need for financial reform.

The conflict between those who saw the telephone as a vital part of the country's infrastructure, at the service of economic enterprise, and those who regarded it as an integral part of state administration, did not disappear with nationalisation, but was translated into a dispute about financial regime. Those viewing telephone service provision as an industrial activity advocated financial flexibility, whereas their opponents favoured budgetary unity.

The P&T administration was divided between the two views. The potential benefits of greater financial flexibility were not ignored by the administration (Revue Générale de l'Administration 1889; Mir 1899), whose arguments emphasised the importance of higher quality and lower prices of telephone services, vital both to inter-regional and international business:

These communications [that are neither purely local nor national] are meant to link either an existing urban network to its suburbs, or several urban networks in one region, in order to increase the facility of correspondence between actors with similar industrial and commercial interests.

Bulletin Mensuel des Postes et des Télégraphes 1890: 709

One must [through the increased financial control of the telephone service] avoid useless expenditure (...) that would have as result to deprive the public of facilities to which it has right, or that would leave the French businesses in an inferior situation compared to its foreign competitors.

Rouvier 1887: 143

However, the debate continued on the assumption that the state monopoly was irrevocable, thus emphasising the view that the telephone service was an integral part of the public administration. Strong criticisms of the quality of service in the late 1890s never led to suggestions that the service should be taken out of the public service. Improvements were needed, it was agreed, but they should take place within the ministry structure.

Regarding the telephone service in the North of France, it is a unanimous concert of complaints. (...) [but]the number of phone connections have doubled since the beginning of the year (...) does this prove a malfunctioning service? I do not think so (...) and it would be unfair to be too hard on ourselves because of some few irregularities, which I certainly regret, but which are difficult to avoid completely.

Sous-sécretaire d'Etat [P&T Minister] debate Sénat May 1899

Monopolisation and nationalisation of the service constrained subsequent debate and decision-making in the sector. The state had consolidated its supremacy over telephone service provision, which would not be challenged for 70 years, and it would take almost another three decades before the monopoly would be broken. However, the nascent concept of *service public* and the problematic relationship between a *service public* and an industrial activity led to debates in the early 20th century. This conflict remained central until the financial reform of 1923 and resulted in several parliamentary reports, as well as repeated law proposals aimed at increasing the financial flexibility of the telephone service (Musso 1991: 62; Berenger 1923; see chapter 3). Rather than eliminating debate on the optimal institutional framework for telephone service provision and financial flexibility, nationalisation ensured that subsequent debates assumed the state monopoly to be irrevocable.

The case of Germany

The empirical material from the first 25 years of telephone service provision in Germany shows that the notion of authority in the German system was closely linked to legislation. “The *Rechtsstaat* is the state governed by the law of reason, the state that realises, in and for human coexistence, the principles of reason embodied in the theoretical tradition of the law of reason” (Böckenförde 1991: 49). Legislation also provided circumscription of federal rights. However, the invincibility of legislation was less directly expressed in German debate than the ‘general will’ was in French discussions.

The relevant actors in German telephone policy making were the Reichspost- und Telegraphenverwaltung (RPTV), the Bundesrat, industry and the *Länder*. The public monopoly delineated power structures between central actors, but the large set of relevant actors implied a complex institutional cadre regulating interaction in the policy-making process. The close relationship between state and industry clearly created strong circles of power into which it was difficult for outsiders to penetrate.

Due to the requirement for self-financed services and the need to make a positive contribution to federal finances, as well as needing to position itself among several strong policy actors, the telephone administration was obliged to provide economically sound management. This translated into cost-based tariffs, which indicated a public ethos of economic efficiency in infrastructure provision.

Regarding criteria for legitimate decision-making, non-infringement of individual and organisational rights by the Reich was paramount. Unless special powers of the federal administration were specifically founded on legislation, they were challenged in the courts, which illustrated the conflict-solving role and the ultimate authority of legislation. Decision-making took place between several strong, knowledgeable actors, which led to a coordinative type of discourse, also seen by the high level of technical detail.

The telephone and the state: 1876-1900

The German political-administrative entity of 1871 consisted of three separate layers of political decision-making and influence: the *Reich*, the *Bundesstaaten* (*Länder*), and the local municipalities (*Gemeinden*). The relations between them and their respective areas of competence were regulated by law, and the legitimacy of the federal state was contingent on the policy areas of the *Länder* not being infringed upon. The right to local self-determination was central and legislation created clear boundaries between the powers of the *Reich* and local levels.

This structure became important in the sectoral state tradition for telephone policy because of conflicts arising particularly over the issue of rights-of-way. Disputes between federal and local authorities were settled through specific legislation, which showed the ultimate authority of legislation. The conflicting areas of competence also implied a larger set of relevant actors than was the case in France.

In Imperial Germany, “political power [was] legitimated chiefly by a deliberate policy of state intervention which [tried] to correct the dysfunctions of the economy, in particular the disturbances of economic growth, in order to ensure the stability of the social system” (Blackbourn and Eley 1984: 130). This made for a ‘managerial’ state whose performance should be judged on efficiency and policy results, rather than on appropriateness of political process, incorporated in the public ethos of the sectoral state tradition by the end of the consolidation period.

Legitimate telephone policy would, therefore, ideally benefit the whole of the economy, distributing the economic growth ensuing from access to rapid communication systems equally throughout the territory. Accordingly, communication systems, including telegraphy and telephony, were seen as part of the public infrastructure and a prerequisite for a functioning economy. Thus, a proactive federal state was not only an efficient way to implement a national communications system; it was a means to further economic development.

[The state’s] authority was necessary to clear many of the obstacles in the way of economic development ... [the state] stepped in more positively when a first generation of entrepreneurs hesitated through lack of confidence ... Above all, through institutional reform, changes in communication and educational provision the state helped to establish the possibility and desirability of a new kind of *homo oeconomicus*.

Blackbourn 1984: 178

The nature of the telephone monopoly

The post and telegraph administration, the *Reichspost- und Telegraphenverwaltung*, the RPTV, which was established in 1876 when the former *Generalpost-*

amt and the *Generaldirektionen der Telegraphen* merged (Feyerabend 1927: 154), was a constitutionally regulated direct *Reich* responsibility (Verfassung des Deutschen Reichs'). According to article 48 of the 1871 constitution, post and telegraphy were to be administered as an *einheitliche Staatsverkehrsanstalten*; i.e. a 'centralised Imperial communications institution' (see Herrmann 1986: 92). Under article 50, the post and telegraph services were placed directly under the organisation of the Chancellor so that the Post and Telegraph authorities were answering directly to him and not to the Reichstag. The Chancellor was "entitled to decide the regulatory provisions and general administrative arrangements, as well as the exclusive performance of the relations to other Post and Telegraph administrations" (Art. 50 §2). Public officials "had the duty and the right" to ensure unity of bureaucratic organisation and service provision (Feyerabend 1927: 154).

Such unity in bureaucracy and service implied that all citizens should be offered access to the telegraph service without territorial discrimination. In other words, the service offered should be equal throughout the German Reich (Verfassung des Deutschen Reichs Art. 50; see also Buol-Berenberg 1891: 1958).

Operational responsibility did not logically ensue from defining post and telegraph services as centralised Imperial undertakings but was legislated for separately. Prior to 1892 the state held a monopoly in telegraph services, but the legal texts referred specifically to telegraph technology rather than to 'transmission of signals', as in France. A public telephone monopoly was therefore not given, so that service provision was theoretically open to would-be

private service providers. After 1879, several private enterprises did express an interest in providing public telephone service and the American International Bell Telephone Co started to construct a network, but was stopped on the grounds that foreigners were not allowed to operate telephone services (Schneider 1998). The threat of competition provided an impetus for the federal telegraph administration to extend public service provision. Moreover, the RPTV wanted a monopoly for economic reasons; the RPTV should “support the Reich’s fiscal independence from the federal states” (Thomas 1989: 4) and any private network operation would diminish state revenues.

The RPTV’s response when the state monopoly was challenged clarifies the nature of the public monopoly that was consolidated around 1900. Whereas the French monopoly was based on the belief that the state was the only institution capable of providing the telephone service, whilst at the same time respecting important values, such as territorial equality and tariff homogeneity, the German monopoly was seen as the most rational way to avoid multiplicity of networks and efficiency loss for users. The German monopoly was theoretically not opposed to private industry; it provided a communications service that, because of classical regalia rights (*Postregal*), should be administered (regulated) by the *Reich*, but that in principle could be provided by private enterprise.¹²

Although the state was the only operator of telegraph and telephone services, Parliament was reluctant to call the regime a ‘monopoly’. The telegraph

monopoly was neither a fiscal nor a protectionist measure, but rather a communications institution (*Verkehrsanstalt*) emanating from the old *Postregal*.

The legislation was no 'sovereign right' (*Hoheitsrecht*) in that it did not instigate domination over land or people, but rather an (almost) exclusive right to operate the service.

There can be no doubt that the [telegraph monopoly] is not about a sovereign right, because we are not talking about a domination over land and people. Rather, we are considering an exclusive right of the Reich to operate a communications institution; this right is not even necessarily exclusive, and §§2-3 regulate cases in which the right to operate could be shared. (...) One has called what is to be regulated a telegraph monopoly, but the concept of monopoly is not well chosen. It concerns neither a financial nor an industrial monopoly, only a communications institution. (...) Concerning the necessity of the legal regulation of the telegraph Regal, one must acknowledge that the state needs to control the telegraph administration. (...) §48 of the constitution only stipulates that the post and telegraph should be administered as a centralised Imperial undertaking; it does not exclude all competition.

Reichstag 1891: 1958

The *Regal* established that the *Reich* administration was to provide communications services throughout the German territory, enhancing national security, and further economic prosperity. In the context of German cameralism in the 18th century, the *Regal* concept had been modified to include only services that were paid for (Lindenfeld 1997: 15).

The telegraph and telephone service administrations belong to the state. That the telephone is included in this exclusive right is not absolutely necessary, since it is a local means of communication with numerous private interests. In any case will local telephone communications (analogous to the post) be excluded from the 'Postregal' if the communications are free. The regal hence comprises only community-wide communications that are paid for.

XVI. Kommission 1890-91

¹² The impossibility of denying private persons the right to erect private closed networks was first established by an Imperial court on 20 September 1881 (RPTV 1885: 131). These conditions were later confirmed in the *Telegraphengesetz* §§ 2 and 3.

The threat of competition suggests that the RPTV competed for power with other economic and political actors, such as regional and local authorities, large industrial firms and business associations. The telephone service was rapidly utilised by private enterprise, larger as well as smaller firms. Banks, stock exchanges, and business associations, exerted pressure on the RPTV to initiate network expansion to new areas, so that an even broader spectrum of the commercial community started using the telephone service (Holcombe 1911; Carré 1990; Reinke 1988; Von Stephan 1896). The *Reich* authorities legitimised its actions through high quality services and a willingness to serve all geographical areas and through exposing itself to a threat of competition. In cases where the state administration did not want to undertake service provision, private operators could provide the service.¹³

Private networks would not only mean a breach of the Imperial monopoly; they would also mean a loss of income to the state administration. Loss of revenues would lead to more difficulties in extending the communications network to all corners of the German Reich, which was one of the public administration's explicitly stated goals.¹⁴ The public authorities therefore faced strong incentives to install telephones (RPTV 1885: 131-132). A strategy whereby the public administration would also provide telephone service to less profitable areas reduced demand for alternative service providers rather than legally excluding any possible competition.

¹³ First established through Imperial court ruling of 20 September 1881, later verified through Telegraphegesetz §2

¹⁴ The German telegraph service was supposed to be self-financing, and although excessive state revenues were criticised as possibly hampering German industry, it was important for the public administration to show that the service was not loss making. The telephone was cheaper to

In the 1870s the RPTV enjoyed a position of relative discretion over policy-making. Interference from interest organisations and Parliament was limited. As head of an office with close ties to the Ministry of War that was more interested in a functioning system of command than in reducing state expenditures, the Director of Posts (Generalpostmeister), Heinrich von Stephan, was able to instigate a modernisation programme for telegraph services (Thomas 1991).

The programme aimed at,

- increasing the stability of the service;
- geographically extending the network;
- lowering the price and increasing the speed of the service.

Hence, state intervention in the telegraph sector was legitimated through efficiency and high quality of service, an element that became part of the public ethos for telephony. The Generalpostmeister's programme would meet the demands of existing users for improved quality of service, as well as creating new users and increasing the income potential for the state. Furthermore, communication between different parts of the Reich was fundamental to the political, industrial and social integration of the country. The short-term aim for the service might have been to facilitate long-distance communication, but the state benefited politically in the process of unification.

install and use than the telegraph, in particular training costs for personnel approached zero, obviously beneficial for the state service (Podbielski 1899c).

Early drivers of network expansion

The telegraph monopoly played an important role in the consolidation of the new Reich in that the associated bureaucracy, central to the establishment of the new state, also acted as a unifying element for the complex collection of *Länder* with their different histories. Access to a communications network that could ensure territorial coverage at low cost also had high political value. In order to compensate for the lack of specific telephone legislation in the late 1870s, and to ensure that telephony was covered by the telegraph monopoly, the public authorities initially treated telephony as a form of telegraphy. At this time, telephones could only be used in local networks, as long-distance telephone lines were not yet developed. Since the functional responsibilities of the German Empire did not extend to local matters, viewing telephony as a form of telegraphy made it possible to argue that telephony fell under the RPTV's competencies.

The case of Germany is characterised as pioneering the public network through its extension to rural areas (RPTV 1894; Schneider and Werle 1991: 100-101). The rationale for this and the rapid integration of the telephone into the existing telegraph monopoly was the early recognition by the public authorities of the telephone's potential as administrative and economic instrument, although its potential for private households was perceived as less important.¹⁵

¹⁵ The telephone was in the beginning not promoted for private households. More than a decade after the introduction of the telephone, the then Secretary of State for Post and Telegraph, Podbielski, concluded that: "for the telephone, however, only a restricted number of citizens will possess one. Nor in the future will the telephone be connected to all private households" (Podbielski 1899a).

The longer the telephone connections are in operation, the clearer it becomes that places with access to the telephone system have a significant competitive (economic) advantage compared to places where the citizens are not connected to the public telephone network.

Reichskanzler 1899a: 1034

The simple operation and low price of the telephone compared to traditional telegraphy (due mainly to low expenditure on education and training) made it the ideal substitute and supplement in a telegraph network that formed an important part of the unifying strategy of the young German Reich. The RPTV had a double set of incentives to promote network expansion: socio-political obligations to stimulate macro-economic development and provide infrastructure; and internal obligations to be economically self-sufficient and, preferably, to contribute to state finances. This latter point also meant that private service provision was perceived as a potential loss of income, which made it paramount for the RPTV to further extend its networks. Therefore, as early as the end of 1879, 788 German villages and smaller communities, too small to be profitable for a regular telegraph service, had been granted this new means of long-distance communication (RPTV 1894).

The initially relatively weak judicial basis for the telephone service had provided the RPTV with few powers within which to enforce the necessary restrictions on the environment to ensure a stable and high-quality service. Conflicts arose over rights-of-way, as a direct consequence of the lack of legislation in a system where it was necessary to secure the Reich's powers over local authorities and individuals through legislation. Another conflict arose between the RPTV and providers of electricity and other services depending on electric cables, such as tramways, because of electrical induction between

cables. These shortcomings led to the passing of the *Telegraphengesetz* (Telegraph law) of 1892 and later the *Telegraphenwegegesetz* (Law on telegraph lines) of 1899. The two conflicts illustrate the pervasive existence of legislation as conflict-solver, and the existence of several strong actors in the policy-making environment, both important elements in the sectoral state tradition.

The 1880s – legislative confusion and political neo-mercantilism

From 1880 onwards the RPTV's power was threatened by a new set of actors that included the *Länder*, the Reichstag and organised private business interests. The initial enthusiasm from Generalpostmeister Von Stephan, envisaging that one day, each citizen of Berlin would have his own telephone, gave impetus to the idea of telephone networks in smaller communities (Matschoß 1916: 535). However, the early attempts to build local networks in Berlin failed, officially due to lack of demand, but also because of conflicts between the different decision-making layers. The Imperial authorities did not have rights of way in Berlin, and the Berlin police opposed the installing of over-earth cables, which made von Stephan drop the project. The tight financial regulations for the RPTV left it with little room for manoeuvre in economically risky situations, such as building networks in smaller communities.

The legislative framework of the German telephone service provision gradually emerged during the 1880s and 1890s. As already noted, the early part of this period saw a solution to the local problem of rights-of-way by the passing of the

Telegraphengesetz in 1892, and other, unsolved issues (particularly concerning long-distance infrastructure) led to the passing of the Telegrafenwegegesetz and the Fernsprechgebührer-Ordnung, both in 1899. These three laws together consolidated the *Reich*'s monopoly.

The weakness of the federal judicial framework for telephone service provision had created complications in Wurtemberg in 1880, when the American Bell Company had started constructing telephone lines without the appropriate licences but stopped because the telephone service could not be operated by foreigners. The lack of interconnection would, however, have implied that a Bell network and its customers would remain isolated from the national communications network, which was against the official policy of the telegraph authorities. Generalpostmeister Heinrich von Stephan therefore stated in October 1880 that "the erection of telephone connections as *Verkehrsanstalten* (i.e. means of communication for the general public) by other than the imperial postal authorities, or those to whom the latter should assign their rights, was forbidden" (quoted in Holcombe 1911: 28). The Generalpostmeister, however, had no strict legal basis for this statement, but nevertheless calculated that such legislation would be forthcoming from Parliament when it was confronted with the practical difficulties arising from the contemporary state of affairs.

These events must be seen in connection with the general political developments at this time. In the mid- to late-1870s, the majority in the Reichstag shifted from supporting liberal, pro-free market economic policies, to being dominated by conservatives and Catholics, who promoted neo-mercantilism.

Economic history of Germany prior to 1870 was to a large degree based on domestic demand for industry, and the financial crisis of 1873 led important actors in the public debate to press for protection. Economists, politicians (not only conservatives but also to some degree the liberals) and industry, therefore supported protective measures for industry (Ramm 1973: 341-342). “Absence of empire also meant absence of international trading connections. German industrialisation had been more dependent on the domestic market than the industrialisation of France or Britain” (Milward and Saul 1973: 428).

The conflict between economic liberals and neo-mercantilists mirrored diverging views within the RPTV. The liberals opposed detailed regulation of telephony, on the grounds that the technology was immature and regulation could stifle technical innovation. The neo-mercantilist fraction, represented by the leader of the legal department in the RPTV put forward two main arguments for state monopoly and control over telephony. Firstly, the economic risk would be reduced if telephony remained under the auspices of the public administration. Secondly, private networks would not be secure enough in times of severe political crisis and war (Thomas 1995: 71). The neo-mercantilistic position, therefore, was the one that came closest to the sentiments of the majority in the Reichstag.

Bismarck, the Chancellor of Germany at this time, was known for his skill in reading public opinion, from which he had undoubtedly benefited. Therefore, when von Stephan approached Bismarck concerning the installation of telephone networks in the cities, he was told that they “should be constructed by the

imperial administration. Concessions should not be given" (von Stephan quoted in Thomas 1995: 75). The main argument that convinced the Chancellor seems to have been that it would be cheaper for the State to construct networks from the beginning, rather than to buy them back from private entrepreneurs at a later stage. If private investors were allowed to profit from the burgeoning telephony industry, an eventual nationalisation would be more expensive for the public finances.¹⁶

The Telegraphengesetz of 1892

The law of 1892 (*Telegraphengesetz*) was effectively the first substantial piece of political legislation regulating the provision of the telephone service in Germany, by formally extending former telegraph regulation to the telephone service (Duch 1991: 125). "The rights to erect and operate telegraph installations belong to the Reich. Telegraph installations comprise telephone installations" (Reichskanzler 1891: 2103, §1). Its most salient feature was to retain the status quo in the sector, establishing a legal basis for what was already implemented in practice (Schneider and Werle 1991: 101). Hence, the state monopoly found a judicially strong base – although not invincible, as developments showed less than a decade later.

The government's proposal emphasised the view that state monopoly in the sector could be justified by concerns for the 'general good', social order, and

¹⁶ Nationalisation of Prussian railways at the same time provided a good example of a non-successful policy. See Thomas 1991: 256

the functioning of the communications system. Intervention was also legitimated through the need for efficient management of public infrastructure, all indicating the emerging sectoral state tradition for telephone policy.

The question of a legal basis for the Regal has in recent times gained in practical significance, especially with the growing importance of telephone communications. (...) §1 expresses the exclusive right of the Reich to erect and operate telegraph bureaux [including telephones]. (...) It is extensively accepted that in the interest of the general public as well as public order, and in line with earlier communications practice, the telegraph service should be treated as a Regal. (...) It is especially prohibited, in the interest of the public communications systems, to allow private operation and commercial exploitation of telegraphy, since this would unavoidably mean several parallel systems and it would be impossible to uphold a well organised and well-functioning telegraph system.

Reichskanzler 1891: 2104

The parliamentary discussion on the 1892 law showed that equalising the telephone and the telegraph posed no problems for the parliamentarians.

“Telegraph and telephone will at present be treated absolutely equally, even if it at a later stage might be advantageous to separate between the two” (Buol-

Berenberg 1891: 1957). Extending monopoly rights to the telephone service

was justified with reference to other countries: “the German Reich cannot be

without this monopoly, just as the majority of other countries have a system of

telegraph monopoly” (Buol-Berenberg 1891: 1959); by the need to legalise

what was already in practice: “in order to ensure the extension of the ‘Regal’

postal rights to telephony I believe we can all be in favour of the base of this

law” (Kurtz 1891: 1961); and through the need to avoid parallel networks:

“without this monopoly the users [of the telephony service] might choose never

to connect to and make use of the public network at all” (Kurtz 1891: 1961).

The legislation of 1892 ensured that no other telegraph or telephone network would compete with the public one, as long as service exploitation was economically viable. The central points were:

- The state monopoly over provision of telegraph infrastructure and services was formally extended to comprise telephony (§1).
- Private networks with public access were authorised to the extent that the public administration did not undertake operation (§2).
- Private networks internal to an enterprise, administration or transport system (closed circuits) were authorised without a licence (§3).
- All persons were entitled to access to the telephone service and to connection to the network upon payment of a service charge (§5).
- Local circuit subscribers could demand connection to the public network (§6).
- All tariff increases needed legal approval in the Reichstag (§7).
- Communications over telegraph and telephone connections were allowed secrecy under certain conditions (§8).
- If two electrical installations causing induction for each other had to pass along the same lines, the costs of insulation were to be carried by the last to be installed (§12) (Telegraphengesetz 1892; see also Thomas 1991: 262-263).

The law thus mostly retained the *status quo* and gave it a firm legal base.

However, the public administration's powers were curbed on one point: the setting of tariffs. Tariff increases were to be approved by Reichstag, which introduced the Parliament as a new and important actor in the policy-making

arena.¹⁷ The Reichstag was not particularly strong in Imperial Germany, and the country's regime has been accused of displaying "backwardness and aristocratic dominance (...) expressed in a number of institutional ways: the executive power of the King-Kaiser, the autonomy of the military, (...), and the limited powers of the Reichstag" (Eley 1984: 128; see also Smith 1982). In the case of telephone tariffs, however, the Reichstag acquired formal powers that would prove real and important in the policy-making process. Since the setting of tariffs was the only point where the institution had regular, formal power, the annual (and sometimes more frequent) tariff debates would prove an arena for expression of general comments and feedback on the service.

The *Telegraphengesetz* also changed the status of telephone users. Whereas they previously had been under the jurisdiction of private law, and hence 'subscribers' to the system, the new legislation put the regulation of the relationship between the RPTV and the users under public law (through §§ 5, 6 and 8), which gave the user status as 'participants' (Thomas 1995: 127-128).

With relatively low household penetration, the majority of telephone users outside public administration were private enterprises, organised through trade chambers and other regional organisations to provide a voice in telephone policy.

Hence, 16 years after the appearance of the telephone, Germany had a law-based state administrative and operational telephony monopoly. Two conflicts

¹⁷ Theoretically, the RPTV had also been responsible to the Reichstag before 1892, but practice from the Bismarck era had rendered this responsibility non-significant in practice (Holcombe 1911: 39).

had been particularly important for its emergence. First, private actors were interested in operating the service in competition with the RPTV, and second, former legislation was based on technology rather than function. Although the telegraph monopoly was well consolidated through law, specific texts were necessary to regulate telephone technology. The law of 1892 excluded private operators in practice and included telephone technology in existing legislation.

The Telegraphenwegegesetz of 1899

The 1892 law soon proved to be insufficient for solving conflicts that arose between the Imperial and local authorities when long-distance telephone lines were extended. Consequently, two areas of difficulty arose, each with their own set of opponents to the RPTV.

The first of these difficulties stemmed from the federal structure of Germany and the continuing problem of the division of legal jurisdiction over the German territory between the *Reich* and local authorities. For example, in 1894, the city of Breslau brought a case before the courts to determine the limits of the *Reich* administration's powers to erect telephone infrastructure on *Länder* territory.

The court ruled against the Imperial authorities, thereby providing impetus for a new 'Law on telegraph lines' (*Telegraphenwegegesetz*) from December 1899.

The law was seen to "relieve the insupportable situation which had been produced by the law of 1892 and the subsequent judicial decisions, and laid the foundation for good working relations between telephone and power-circuit interests and between the telegraph and local authorities" (Holcombe 1911:

104). Again, the legislation was asserted as the ultimate authority in telephone policy. Moreover, contrary to the situation in France, legislation did not diminish the set of actors relevant to policymaking. Although the state monopoly was gradually consolidated through law until 1899, there is ample evidence that participation from a large set of actors was considered the legitimate basis of policymaking in Germany.

The public administration emphasised the need to formalise the RPTV's right of way in its effort to equip the German territory with telegraph and telephone lines. Whereas during the first years of telephone operation – when the emphasis was on inter-city connections – the RPTV had been able to use public thoroughfares or other traffic ways without legal difficulties (mainly erecting its lines along railway lines), the spread of the telephone to smaller communities had rendered the situation more complex.

Through conflict between certain interested parties, a telegraph line erection – crucially important in the interest of the communications system – can be more difficult or outright impossible.

Reichskanzler 1899b: 1256

The administration admitted that the use of public thoroughfares might conflict with private interests and private rights, (Reichskanzler 1899b: 1258) and argued that this conflict, together with the RPTV's overarching goal to extend the telephone service to smaller communities, could only be solved through new legislation (Podbielski 1899b).

The other main reason for the law of 1899 was the problem of induction on telephone connections from high-voltage electricity lines. In the late 1880s,

high-voltage currents were used in the development of public tramways, street lightning, and later, in industry in general. The electricity infrastructure distorted the transmission of the telephone signals and a conflict arose between the telephone and telegraph authorities on the one hand, and industry (users of electricity) and municipalities (suppliers of electricity infrastructure and local transport) on the other. Both latter groups had influential supporters in the Reichstag, as well as among the media and interest organisations, and their views therefore carried much weight.

The law of 1892 had settled a compromise between these groups and the RPTV, by deciding that the owner of the last installed electric lines should pay for the insulation of the telephone lines to avoid induction. This, however, proved difficult to manage and the same conflict arose before the 1899 legislative debates. The spread of telephone lines to smaller communities, the growth of high-voltage lines both over and under ground (due to growth in the electricity industry), and the development of electrical public installations, such as tramways and street lighting, all contributed to deepening the conflict (Reichskanzler 1899b: 1257).

Through the *Telegraphenwegegesetz* (1899) the RPTV gained the right to establish subterranean and aerial telephone lines throughout the German territory, with certain constraints regarding private landowners' use of the space.

The telegraph administration is authorised to use communication paths for telegraph lines serving the public, as long as the common use of these paths are not unduly constrained thereby. By communication paths is meant

aerial and subterranean space of public roads, places, bridges and waterways. 'Telegraph lines' includes telephone lines. (§1)

(...)

Planting of trees on communication paths should ideally be avoided. (...) The telegraph administration has to give landowners a certain time of warning before it can install new lines. (...) In case of damage, the telegraph administration is responsible for carrying the costs. (§4)

(...)

The telegraph administration is authorised to establish aerial telegraph lines over territory not included in the 'communication paths' as referred to in this law, as long as the use of the territory in question is not unduly constrained. (§12)

Telegraphenwegegesetz 1899

At a time when several laws were passed to create German unity in practical matters (Penal Code from 1871, Mass and Weight Law from 1872, Monetary Law from 1873), the RPTV achieved a homogenous regulatory regime throughout the German territory (Thomas 1995: 133). Moreover, the Imperial administration's obligation towards the 'general interest' of the German economy gave it preference over regional authorities. However, the relations between different legal strata in the Empire made it imperative to found the authority and the limit of its competencies on solid legal ground.

The conflict between the RPTV and the suppliers of high-voltage networks (such as street lights and tramways) was also solved through the *Telegraphenwegegesetz* of 1899. The burden of insulation expenditures was laid on the public telephone administration.

If the maintenance of the communication paths is complicated through the telegraph authorities' use, then the latter will carry all extra expenditure. (§2) (...) If, after the erection of a telegraph line, the common use of a communication path is restricted, (...) the telegraph line should be changed or removed altogether. (...) In all cases, it is the telegraph administration's responsibility to carry the costs of such changes. (§4)

Telegraphenwegegesetz 1899

The legislation put the entire economic burden on the public administration, to the benefit of landowners, regional public authorities and heavy industry. This arrangement indicates that regional and sectoral pressure groups carried much weight in the Reichstag, and that the public administration's powers were curbed. It furthermore illustrates the strong position of individual (enterprises or local communities) rights vis-à-vis the bureaucracy of the Reich. Were the federal administration to infringe on the formers' scope of action in any way, it was considered legitimate that they carried the costs.

The Fernsprechgebührer-Ordnung from 1899

The financial burdens added to the RPTV's responsibilities through the *Telegraphenwegegesetz* were one of the main reasons for the introduction of a new tariff model at the end of the 19th century, thus presenting an idea that would become part of the sectoral state tradition, namely the idea of cost-based tariffs.

The costs of insulation against interference from other electrical equipment added serious expenditure to the administration, which therefore proposed to restructure the subscription tariff system. The new regulation, the Fernsprechgebührer-Ordnung [Telephone tariff regulations] of 1899, whose novelty lay in the differentiation of tariffs and subscriber models, was first proposed to Parliament in April 1899 (Reichskanzler 1899a). Whereas previously there had been one unique, flat tariff for a telephone line subscription, the RPTV now suggested varying the price according to the

number of participants in a local loop, so that access to a large local loop would be more expensive than to a small one. The rationale behind this was to make subscriptions cost-based, in line with the principle of an economically self-sustaining service.

If the tariff rate shall be in line with the rest of the Reich administration's performance, two factors must be incorporated (...). The one is the costs of establishing and maintaining of the technical equipment both with the customers and the [public] switching offices. The other is the cost of establishing the actual connections. The first (...) is larger the greater the number of subscribers to the local network. (...) The second (...) increases with the number of communications.

Reichskanzler 1899a: 1036

The RPTV argued that the previous flat subscription rate meant that urban areas (where connections were more costly for the operator, due to the increased complexity of the network) enjoyed subsidised access rates to the detriment of subscription rates in rural areas and smaller networks. Since one of the principal goals of the RPTV was to "extend the telephone to smaller communities and rural areas", it followed that this system, whereby "undoubtedly some are burdened more heavily than others" should be stopped (Podbielsky 1899a).

The new tariff regulation (Fernsprechgebühren-Ordnung) was finally passed in December 1899, although Parliament had made some important changes to the original draft. Instead of a compulsory model, whereby the subscription was paid through both an access fee and a rate per connection, subscribers were given the possibility to choose between two main models. Either they could pay a higher access fee and enjoy free local calls, or they could pay a lower access fee plus a charge per connection (at the time a novelty in Germany). The system meant neither gain nor loss for subscribers to very small networks on either of

the two models, whereas subscribers in larger networks would be able to save substantial sums of money with the appropriate model. The principle of cost-based tariffs was to play a significant role for the German telephone provider throughout the next century.

The political beneficiaries of this system were the Social-Democrats (SPD), industry and their representative Chambers of Commerce (Thomas 1995: 136). The Chancellor was given the right to lower tariffs without asking the Reichstag (§6), to set conditions for use and access to the system, and to agree to certain 'special' tariffs (i.e. night time taxes, fees for those living more than 5 km away from a main switch, prices for transmission of telegrams over the telephone, and – within certain restrictions – international tariffs (§10)). However, on 1 April 1900, when the *Fernsprechgebühren-Ordnung* was enacted, the policymaking environment of the telephone service policy in Germany was relatively settled, and the Chancellor had only a limited role to play.

Conclusion: Consolidated sectoral state traditions in the telephone sector in France and Germany

This chapter has examined the first 25 years of telephone service provision in France and Germany to identify the original elements of the countries' respective sectoral state traditions. The investigation showed that despite similar institutional structures (in both cases the original telegraph administrations were extended to include telephone policy, and the established state monopolies were both central ministerial bureaucracies with ministers responsible to Parliament),

public political debate and their justification for the state monopoly were different. The findings are summarised in table 1:

	France	Germany
Ultimate authority (UA), relevant actors (RA) and their relative power	UA: Parliament as the embodiment of the general will. RA: Parliament, PTT administration (much discretionary powers). Ministry of Finance through budgetary unity.	UA: Legislation – Parliamentary output as opposed to the temporary assembly of representatives of a ‘nation’. RA: PTT administration, Reichstag, Länder, industry.
Public ethos	Continuity and territorial equality of service, budgetary unity	Correction of economic dysfunctions. Economic efficiency in infrastructure provision (cost-based tariffs).
Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Bureaucratic correctness. Coordinative discourse.

Table 1: Summarised findings from the consolidation period

In France, justification of the monopolisation of the telephone service centred around the state being the only potential service provider that was guided purely by general interest and not by a search for profit. Parliament's ultimate authority in the late 19th century was based on it being the embodiment of the general will, which was seen as the sole reason to infringe on individual liberties.

Ultimate authority in Germany rested with legislation (i.e. parliamentary output, rather than the physical (temporary) assembly).

The relevant actors in France comprised the P&T administration, Parliament, and the finance ministry because of budgetary unity. Parliament obtained important powers particularly on the issue of tariffs, although the P&T

administration undoubtedly remained the central policymaker. Despite the public administration's wide discretionary powers, however, policies were legitimated with reference to the final authority of Parliament, which indicated that, ideally, the role of the bureaucracy should be to execute Parliament's will.

In Germany, the set of actors perceived as relevant to policymaking was wider than in France, comprising the RPTV, the Reichstag, the *Länder*, and industry (individual enterprises as well as their representative organs such as Chambers of Commerce). The public administration was not legally obliged to provide 'universal service' and thus faced some level of threat of competition to drive network extension. The fundamental rationale for a state monopoly was not to exclude private enterprise from service provision because of a lack of trust but, rather, because a public monopoly was perceived as the only possible solution for reaping the growing benefit of the network. The industry's legitimate participation in policy-making was greater in Germany than in France, indicating a more equal distribution of powers between the relevant actors than in the French case.

The French public ethos at the turn of the century comprised continuity and equality of service, and budgetary unity. Economic growth and efficiency were not central to justification of state actions. Thus, whereas very early the German telegraph administration emphasised the benefit of public communications services to firms and to the economy in general, the French telegraph service was perceived a tool for the public administration that the public could benefit from only as long as it did not interfere with the state administration's own use.

However, nationalisation of telephone service provision was justified with reference to the state's 'proven' superiority in quality (continuity) and territorial equality of service provision.

In Germany, the public ethos was economic efficiency in infrastructure management. The telephone service was initially perceived as a direct competitor to the publicly provided telegraph service, and telephone tariffs were required to be based on costs of service provision. This corroborates the view of the German administration as a managerial institution whose legitimacy of intervention was based on it correcting economic dysfunctions rather than on providing social goods to the public. This view did not necessarily exclude private service operators, if they could provide the telephone service throughout the German territory. The practical problem, however, was the lack of interconnection, which rendered communication from one network to another impossible. The *Reich* administration's task was to provide telegraph services throughout the German territory. The service included communication with any other point in the public network, which was possible for all telephone customers only if there was no more than one network. Moreover, the RPTV's obligation to contribute positively to the federal bureaucracy's financial situation, or at least not to deteriorate it, made it possible to claim that direct telephone service provision was the rational choice of responsible bureaucrats. Individuals' rights and the protection of citizens against undue *Reich* actions implied that this choice had to be consolidated through law to ensure clear boundaries between federal and local authorities. Legitimacy of state action through bureaucratic correctness can, therefore, be argued to be fundamental for early German telephone history.

Debate in France after nationalisation often referred to the basic legitimate values for state intervention (the pursuit of the general interest, continuity and equality in service provision) and to the principles for budgetary unity. Public records show almost no debate on technical issues such as technology, operational guidelines for the public administration, or tariff models, as were found in the case of Germany, and which to a certain extent had been debated before nationalisation in connection to the licence conditions.¹⁸ A ‘communicative’ discourse model fits these facts well (predominantly centralised policymaking, determined among an inner group, and communicated to the public only when the decisions have been made).

In Germany, the debates around the three main laws from the 1880s and 1890s showed a stronger emphasis on the coordinative discourse (more dispersed policymaking, larger parts of the population involved in negotiating reform, discourse aimed at knowledgeable co-deciders, tends to be more technical than communicative discourse): the set of policy-making actors were broader, the RPTV’s powers were relatively weaker than those of the French public administration, and the different actors all had technical expertise and power to engage in discussion with the public administration.

Thus, despite leading to similar institutional outcomes, telephone policy debates in the late 19th century in France and Germany displayed significant differences regarding sectoral state traditions. The two countries’ organisational models,

¹⁸ It is necessary to condition this statement because of the incomplete archives from this period, but no reference to such debates was found in official parliamentary minutes.

their modes of argumentation, and their different forms of discourse, would all be challenged by the financial difficulties following the First World War but, as will be shown in the next chapter, the monopoly structure was never seriously questioned in the 1920s. Rather, the initial elements of the sectoral state tradition would be refined and adapted to contemporary needs.

Chapter 3

The reforms of the 1920s

The investigation of the consolidation of the public monopolies in the 19th century resulted in identification of important principles in the different sectoral state traditions in France and Germany: parliamentary control, quality and continuity of service and territorial equality in France; economic efficiency and cost-based tariffs in Germany. Economic difficulties following the First World War, and new demands from the public in the 1920s, engendered debate about organisational form and particularly modes of financing.

In the international ideational environment private enterprise management methods were held up as the most important remedy to increase efficiency in industrial organisations, including public administrations of commercial or industrial activities. Financial flexibility and managerial autonomy were perceived as necessary conditions for a well-functioning industrial enterprise, whereas political decision-making structures were seen to hamper efficiency and the organisation's capability to deliver and meet public demand.

Despite the occurrence of common ideas about 'modern management', which the empirical analysis shows were present in both countries' parliaments, the public debates in the two countries differed significantly. Within each country, there were important similarities with previous national policymaking. This chapter, therefore, illustrates that similar ideas (as they were coming from the same international trend of 'scientific management') were interpreted

differently in different national settings, and that these interpretations correlated with existing sectoral state traditions.

The case of France

By the mid-1920s, the French sectoral state tradition had been challenged by new concepts emerging in public debate since the turn of the century. '*Service public*' was to be the most central of these new concepts, but also concepts inspired by private enterprise management methods, such as 'flexibility' (both financial and managerial), 'commerciality', and 'modern management', were frequently used.

The ultimate authority of Parliament was not questioned in the 1920s, despite reform proposals to give the telephone service provider increased managerial and financial flexibility. The set of actors perceived as relevant to policymaking remained constant: Parliament continued its powers of control; the PTT Ministry increased its role as political centre of telephone policy; and the Ministry of Finance tightened its control over the services' finances. The 'new' administrative council, introduced at the same time as the financial reform of 1923, was left without real powers.

The public ethos changed in that budgetary unity was abolished and *service publics* were no longer perceived to be incompatible with industrial management methods, thus opening up for the establishment of a separate budget for the PTT services, the *budget annexe*. The two other elements of the public ethos

from the consolidation period, namely territorial equality and continuity of service, were incorporated in the nascent concept of *service public*. This development made the *service public* concept ubiquitous in French telephone debate, and remained the central rationale for a sustained state monopoly in service provision, prohibiting competition from private operators.

Criteria for legitimate decision-making in French telephone policy were challenged by proposals to establish an administrative council who, together with the ministry and the government, would gain some degree of financial and managerial discretion, to the detriment of parliamentary intervention. The debate showed, however, that the ideas about Parliament's ultimate authority and the needs to safeguard the general interest were not changed.¹ Criteria for legitimate decision-making did therefore not significantly change between 1900 and 1925. Discourse remained communicative.

The French sectoral state tradition's most important development in the early 20th century was therefore the growing importance and increased precision of the *service public* concept, effectively incorporating the earlier elements of continuity and territorial equality of service (while discarding budgetary unity), as well as the new 'fashionable' ideas of financial flexibility and modern management. The development therefore extended and reformulated earlier traditions, rather than changing them.

¹ The reform outcome seriously watered down initial proposals and left an administrative council with virtually no powers.

The reform process of the 1920s in France can thus be seen to corroborate the view that sectoral state traditions modify new ideas to fit old ones. The radical new ideas, although globally fashionable, as well as attractive both intellectually and economically, were, as will be shown in this chapter, in the end rejected in a French setting where the appropriateness of political process in the name of democracy and the general interest was more important than the immediate economic profitability of state activities.

French telephone policymaking in the early 20th century

The consolidation of the state monopoly in telephone service provision had institutionalised principles of territorial equality and continuity of service. After nationalisation, the telephone service was consistently argued to be in the general interest of the nation, as well as of the national economy, but disagreement remained on the optimal form of state intervention in the sector. The nationalisation of 1889 had removed the private telephone service operator, but proponents of private service provision were still present in the policymaking environment, albeit without a parliamentary majority.

The debate preceding the 1923 reform was principally a discussion on the basic character of the telephone service, in which defenders of budgetary unity (who insisted on viewing the telephone service as a *service public*) opposed advocates of financial autonomy, who emphasised the industrial nature of telephone

service operation. The reform outcome was a *budget annexe* that allowed the PTT services to borrow money through issuing state bonds.²

When the 1923 reform and subsequent political debate are looked at in detail, it can be seen that principles about territorial equality, continuity of service, and parliamentary control as safeguards of the general interest, were all adhered to throughout the process on both sides of the political spectrum. However, it is also clear that ideas about financial and administrative organisation (reflecting both legitimate decision-making methods and, implicitly, the distribution of power among the relevant actors) were seriously challenged. Several issues were at stake:

- i) Was the telephone service mainly a *service public* or an industrial activity? The answer was crucial for the next two questions:
- ii) Which control mechanisms and administrative/management tools were optimal to safeguard the general interest?
- iii) What financial instruments were best adapted to promote the principles of territorial equality, continuity and quality of service and financial viability?

Service public

The issue of whether telephone service provision should be perceived as a *service public* or an industrial activity was at the heart of French telephone policy debates around the financial reform of 1923. At the turn of the century

² The 1923 reform included the establishment of an administrative council and was paralleled by an important investment programme, but the *budget annexe* remained the most significant element of the reform.

territorial equality, continuity of service, and parliamentary control were central elements in the sectoral state tradition for French telephone policy to which policymakers across the political spectrum adhered. However, social and political developments in the late 19th century provoked new ideas about the state in France. The growing importance of socialist ideas and industrial development spurred demands for a more active, interventionist state, increasingly focusing on the social justice of the outcome of state actions rather than on the appropriateness of minimal state interference.

However individualist one is, one has to realise that society's reaction is not sufficient in economic matters. From the beginning we claimed that social science should be individualist, in the sense that it considered the action as the individual's fact, but that this individual action always called for a collective reaction. This collective action is named intervention. Society must intervene to hinder exploitation and injustice of individualism in cases where it would compromise national territorial equality. However, in our era, the need for intervention is evident. There is too much competition, too much overproduction, too many commercial and monetary crises (...) there is in industry, in the large businesses, in capitalism and in mechanics, in the relations between managers and workers, quantities of relations which are not organised; the socialist movement of this century is only a symptom of this need for social organisation.

Hauriou 1896: 556-557

State intervention was given a legitimate basis through the development of the *service public* concept, whose origin dates back to the latter half of the 19th century, and whose definitions varied between professional groups. In the beginning it was dominated by the conception of jurists who applied it to establish a *raison d'être* for a unified body of administrative law. A *service public* was a public administration with special legislative instruments attached to it (Guibert 1956: 19; Demichel 1974: 5) and since it required a unique set of laws and regulations, its content was defined first and foremost by its organisation. Early notions of *service public*, therefore, can also be described as

‘organisational’, in that they concentrated on the organisation of the service provider: “A *service public* is a public organisation with powers, competencies, and norms which undertakes the function of providing to the public, in a regular and continuous fashion, a specific service, under the auspices of ‘police’ in an enlarged meaning of the word” (Hauriou, quoted in Guibert 1956). Such an organisational conception of *service public* would rapidly include *all* public administrative actions, whereas private actors by definition could not undertake *service public*, even if their output were undoubtedly in the general interest.

The concept achieved a clearer meaning from the turn of the century, systematised by the law scholar Rolland around the principles of continuity, equality and mutability (Chevallier 1997: 20). The systematisation and development of the concept rendered it more than a juridical classification, it touched upon the basic values of the regime of administrative law, establishing that public administration worked in the interest of society, and not according to particular privileges (Chevallier 1997: 20). The doctrine was further developed by another law scholar, Duguit, who used *service public* as ‘supra-political’ criterion for state action to supplant the former much-criticised notion of sovereignty (Laborde 2000: 545-546). In 1920s juridical debate, public administration action became equated with *service public*, ensuring the execution of the general interest to the benefit of individual citizens and of the society as a whole (Laborde 2000: 545-546).

The *service public* concept also contributed to delimitate legitimate action on behalf of the state through establishing constraints on public agents and public

actions. The role of the state was no longer to dominate its citizens, but to serve, and to serve as efficiently as possible. “[An] honest manager, a loyal servant; the power transforms itself accordingly, the ‘right to command’ becomes ‘obligation to administer’” (Chevallier 1997: 22). The change of emphasis from the policing state (*État-gendarme*) to the welfare state (*État-providence*) where the state was increasingly seen as provider of public goods at the expense of its exercising some unique power, gave state monopolies increased legitimacy (Musso 1997: 272). A public monopoly was legitimate because its basic motive was not that of accumulating profit, but the general interest. The state should therefore not engage in profit-seeking enterprise: “It is today generally accepted that the PTT services should not be organised so as to generate revenues by government. A loss-making operation is completely justified” (Jèze 1926: 44).

Service public, as it encompassed the general interest of the nation (and thus required Parliamentary control), remained the central rationale for a sustained state monopoly in service provision, prohibiting competition from private operators. The concept did not oblige the state to provide individual households, municipalities or other institutions with a telephone service, unless they themselves arranged ways of financing it.³ The introduction of public phone boxes and new services (wake-up calls, extended directory enquiries and separate lines for taxi services (Machet 1923)) did, however, signal a

³ “The establishment of main lines should be in part paid by the subscriber: In Paris: 1.000 francs for the line on Paris territory, 80 francs per 100m aerial or underground cable (...) A subscriber providing her own telephone is responsible for maintenance and possibly modification if the Adminsitration deems the instrument no longer workable within its network.” (Bulletin des Postes, des Télégraphes et des Téléphones 1930: 225, 228). The principle of contributing to connection to the network, so-called access charge, remained used throughout the 20th century, but social policy considerations about the importance of access to a network and the extension of a modern telephone network resulted in standard access charges not based on distance from the nearest switch.

willingness to make services more attractive and is a sign that the principle of territorial equality present in the sectoral state tradition influenced PTT Ministry decisions. The lack of public resources to fund such extensions and the pragmatic search for alternative financial methods is not exceptional in the history of French *services publics*: “The public powers’ choice between different administrative methods [operation, licensing, infrastructure provision to limited companies, direct service provision] for *services publics* vary over the decades. For each epoch, the choice is the result of a compromise between technological developments, social demands and collective resources. In particular, the wish to reduce public financial participation to a minimum often leads the public powers to change financing formulae” (Stoffaës 1995: 50).

Budgetary unity

The sectoral state tradition from the end of the ‘consolidation period’ comprised budgetary unity. The principle of budgetary unity⁴ was contested in Parliament on several occasions after the separate budget had been abolished in 1892.

Proposals to separate the PTT budget from the general budget appeared as early as 1900, when the PTT minister suggested that

the material and moral status of the P&T services should be reported in writing every year. This document, which would inform the national representatives about the needs of the service, would allow Parliament to take knowledgeable decisions.

PTT Minister Millerand 1900, quoted in Musso 1991: 60

⁴ As seen in Chapter 2, ‘the doctrine of budgetary unity’ was a corollary to the theory of the unity of the state: The unity of the state was absolute; the body of administrative law was intended to ensure that all state action served the general interest, and a state entity, undertaking all action in the general interest, should operate one unitary budget.

The conflict over budgetary unity paralleled the conflict of whether telephony principally should be considered a *service public*, which would strengthen the case for a unitary budget and was the opinion of those viewing the telephone service first and foremost as a state administrative tool; or whether it was an industrial activity, in which case modern management methods (as opposed to traditional public bureaucracy) and flexible financial instruments were necessary.

Immediately after the turn of the century both the P&T administration and Parliament were divided on the issue. Proposals to recreate a separate budget for the PTT services were put forward first in 1904, and the *Commission des Finances* reflected that

there are two kinds of budgets and ministries. On the one side the administrative ones, on the other side the industrial. There might be reasons for some budgets, such as for posts and state railways, to acknowledge the industrial character of revenues and expenditures.

Commission des Finances, 1906 budget, quoted in Musso 1991: 63

However, advocates of budgetary unity again referred to the sectoral state tradition to argue their case. For example, during a debate on the budgetary status of 'productive state services' in 1906, then Finance Minister Poincaré claimed that,

[through establishment of a *budget annexe*] we would enter onto a road that is diametrically opposed to that which has been followed for fifteen years, (...) and which until now has been met with approbation from the republican majority, that is, budgetary unity.⁵

Poincaré 1906, quoted in Musso 1991: 64

⁵ One should note, however, that Poincaré, as Minister of Finances, wanted to achieve soundness of the state finances in order to support welfare reforms, and the PTT services had until this point in time shown considerable profit (Keiger 1997: 73-111).

Proponents of budgetary autonomy stressed the economic benefits for the state and citizens of PTT services' implications for economic prosperity, tax revenues, and the development of democracy.

These services constitute the life of the nation (...) The effect of the PTT services for commercial prosperity, and, consequently, for tax income, its influence regarding the development of the deep and increasingly general penetration of democratic ideas, constitute for the State the first and most important of 'benefits'. The profits indicated in the budget are only secondary. (...) [T]he state should concentrate less on direct profitability of the postal system and more on the indirect profits resulting from lowering tariffs and reducing the transportation time, i.e. be a service for the national commerce and industry and give them all necessary means of correspondence.

Steeg [MP] 1910: 509-510

In face of plummeting revenues after the First World War, the *service public* aspect of telecommunications was downgraded and the industrial character of the sector highlighted in political debate. According to the early conception of *service public* a state bureaucratic organisation was the guarantor of territorial equality of service provision. 'Budgetary unity' was, however, easier to defend when the PTT services contributed positively to the state finances. Economic difficulties increased policymakers' willingness to give the PTT services responsibility for their own debts, i.e. 'financial flexibility'. In 1920, the poor state of public finances resulted in references to the state's obligations to keep all *services publics* under one budgetary heading being replaced with confirmation that "the methods of exploitation of the PTT services need to be modified, and they should be perceived as industrial and commercial services" (Commission des Finances 1920a: 984). Emphasising the industrial qualities of the sector, therefore, represented a solution to the political dilemma of increasing the financial flexibility of a *service public*.

Changing views of the end-user

The industrial character of the PTT services remained central to the debate on financial organisation. A legislative proposal put forward in 1910 provides an interesting list of elements considered inherent to the industrial character of a service, and which made it different from purely administrative state activities, such as security and education.

Today, the posts, telegraphs and telephones, the latter removed from a private enterprise in 1889, constitute an immense industrial enterprise comprising the fastest means of communications. They utilise a complex set of constantly changing tools, and they provide multiple services; transport and transmission of all sorts of correspondences, and a financial service manipulating impressive sums of money.

Steeg 1910: 509

Rapidly changing technology and complex services, even though they necessitated large sums of investments, would not, however, be sufficient criteria to characterise an industrial activity. What was essential was the character of the services provided, together with the relationship between the provider and the users. A parliamentary report of 1910 (Steeg 1910) talked about the PTT administration's *clients*, which implied that users were no longer viewed as mere recipients of a standardised product, but rather as people in a position to make demands in return for payment. Tariffs, which under the doctrine of budgetary unity had been seen as a form of indirect taxation, were increasingly viewed as payment for services, which again emphasised the changing relationship between the state and its citizens. Users who paid for a service did not have the same relationship to the service provider as citizens who paid general taxes and received security and other public goods.

The principle of budgetary unity and universality responds to what one might call an accounting emphasis: the science of finance fixes a certain set of financial rules which allow the state to avoid having to borrow money at the end of the year for expenses that normally should have been covered by general tax income. (...) But the question that arises is exactly whether the revenues from the PTT services are economically speaking state revenues. They have until now been treated as such; it seems to us that at this moment they have no longer this character. The stamp tax, for example, is no longer perceived as a tax paid for a service rendered by the state to a citizen, it is first and foremost the remuneration of costs undertaken by the public administration for transporting a letter. The public want, vulgarly speaking, value for money, and oppose that postal revenues be used for military or educational purposes.

Steeg 1910: 510

The changing view of the relationship between the state and its citizens and the industrial nature of the PTT services would be instrumental to re-orienting the debate on telephone policy in post-First World War France. It was furthermore coherent with the general development of ideas on the welfare state, "whereby society stops seeing itself as a 'body' (*corps*) and starts conceiving itself as a market" (Rosanvallon 1986: 25). However, until the outbreak of the war, PTT services had a positive contribution to the state coffers, and no parliamentary majority existed to legislate a new financial or administrative regime for '*les Postes*'. This situation would change after the war.

Financial and technological deterioration

After the First World War the PTT services changed from being a net contributor to the state coffers to one accruing huge deficits. In particular, up to 1914, they had been a source of revenue for the Ministry of Finance. During and after the First World War revenues plummeted and the situation for state finances in general was deplorable (Musso 1991). The question on the political

agenda was, therefore, no longer whether autonomy should be given to the PTT, but just how much autonomy it should have.

In the early 1920s there was a general consensus on the worrying state of affairs of French telecommunications. First, the First World War had had disastrous effects on the state of affairs of the French telephone network.

Derailed through five years from its normal goal, deprived of a major part of its professional personnel. Equipment ruined in all of the northern and eastern parts of the country, dilapidated and outdated in the whole country. Absolutely insufficient to assure the needs resulting from the rapid economic upturn. Financially out of equilibrium.

Le Troquer [PTT Minister] 1924a

Second, customer complaints remained rife, the major concerns being low quality of communications and slow connection⁶, – problems which largely stemmed from the late automation of the network. Whereas in the US, automatic switches had been installed as early as 1892, in the French capital they were still manually operated in the 1920s.

For Paris, the problem is more complex [than merely too few circuits]: the expenses necessary to improve the service will no doubt be very high. With today's telephone technology, the completely legitimate customers' demands, and the increase in the number of customers, which, despite the bad functioning of the service continue to grow, it is indispensable to give higher priority to the material element than to the human one. Paris should have, as so many large cities abroad, this system which is the 'latest fashion' in technological perfection, that is, the automated telephone.

Sous-secrétaire d'État [PTT Minister] 1923

The PTT administration did not have in-house equipment manufacturers and consequently approached private firms to provide the necessary technology. In

⁶ Senator Hirschauer remarked in parliament in 1923 that he once had demanded a call to his home in Versailles from his Paris office, then got in his car, and when reaching his home, the connection from Paris was established (Hirschauer 1923).

order to enhance national autonomy it was vital not only to equip the country with well-functioning telecommunications systems, but also to retain and develop technological knowledge in French hands. Therefore, a programme for technological improvement was launched at the same time as the financial reform of 1923, and was seen as complementary to the latter.

Parliamentary debate

The bad state of affairs for French PTT services induced consensus on the necessity for a separate budget and drastic change in management methods. The Finance Commission's report on the PTT budget proposal for 1920 criticised contemporary practices and advocated profound change, reiterating proposals from former PTT officials and ministers.

The complaints about the management in the PTT administration have reached a considerable number, and it seems that (...) the administration is passing through a crisis period. This situation is particularly serious for the telephone service (...). The operating methods for the PTT services must be modified and should be conceived of as commercial and industrial activities. (...) This project [the *Commission des Finances*' examination of the 1920 budget proposal] essentially retraces the previous proposal of M. Clementel, then PTT minister (...). One of its essential propositions is the constitution of the PTT budget as a *budget annexe* (...). Another concerns the finance minister's possibility to issue state bonds to increase the revenues of the PTT separate budget (...). I limit myself, as did my predecessors, to insist on the prompt discussion and adoption of a reform whose principle is generally agreed and which firstly should give financial autonomy to the PTT services, to exempt them from the general budget, to give the possibility to obtain funds necessary to renew and modernise their equipment, and secondly should conceive management methods as commercial and industrial as possible within existing limits.

Commission des Finances 1920a: 984

The *Commission des Finances*'s proposals for 1920 were never implemented.

Only eight months after their damning report its budget proposal for 1921

upheld budgetary unity and renounced proposals concerning new investment both in employees and in equipment because of the sad state of French finances.

In a letter to the Minister of Finance dated 5 November 1920, the honourable president of the *Commission des Finances* formulated the policy to be implemented as follows: The Commission, he wrote, shall obtain that everyone in public administrations have the sentiment that an expense that can be postponed, or the development of a service which is not absolutely and urgently necessary, are inadmissible at this present hour.

Commission des Finances 1920b: 442

The principal criticisms and recommendations on the state of affairs in the PTT administration, however, were upheld in the December report (Commission des Finances 1920b), which emphasised the advantages of creating an administrative council to supervise the actions of the public administration, as well as assisting the minister. Furthermore, public ownership *per se* was not seen as an obstacle; the recent problems would have been just as disastrous for a private enterprise as they had been for the public administration.

Administrative methods in the sector were also perceived to be in need of change. If financial deterioration, economic difficulties and technological devastation led policymakers to wish for change, it was the strong emphasis on the industrial aspect of all PTT services in public discourse that made change legitimate to the public. Giving budgetary flexibility to any *service public* would necessarily, because of the doctrine of budgetary unity, be open to the criticism that the state had renounced its responsibilities in times of financial hardship, which was unacceptable. Equipping an industrial activity with appropriate financial and management tools and procedures, however, was not. And because of the novelty of these management methods, it became all the

more important to emphasise the continued parliamentary control of the sector as a safeguard of the general interest.

The possibilities of long-term financial planning under the system of budgetary unity were perceived to be insufficient for a complex, high-investment technological area like the telephone sector. The guidelines for a reformed system, therefore, originated in private enterprise management's methods for financial planning. An administrative reform was seen as a "necessary corollary to the financial reform" (Ministre des travaux publics 1922: 1854) and the substance of the proposal was inspired by the contemporary 'management gurus', notably Taylor of the USA and the Frenchman Fayol.⁷ The French government particularly emphasised

the principal conditions for the prosperity of an enterprise are in particular the possibility to foresee the future, unity and continuity, stability and competence of the management, and initiative and responsibility at all levels of the organisation.

Ministre des travaux publics 1922: 1854

From the early 1920s both government and Parliament increased their focus on the technical services and their personnel. The proposed administrative reform from July 1922 emphasised the need for reinforcement of the technical staff as well as their contribution in management if a financial and administrative re-organisation inspired by industrial management methods should succeed (Ministre des travaux publics 1922: 1857).

⁷ Fayol had characterised the PTT administration as 'the archetype of public industrial incapability' (Fayol 1921), and criticised the French state for being incapable of long-term planning: "The annual forecasts (budgets) are seldom finished early enough to be of much use, long-period forecasts are rare, and in this vast undertaking, which calls for exceptional foresight, we appear to be working rather from hand to mouth. What is the reason for this? Its immediate cause is the instability of our present ministerial system. (...) Stability is essential" (Fayol 1930: 41).

In July 1922 the government proposed an administrative reform of the postal and telegraph services, including the telephone service. A new financial structure could only be put in place at the start of a financial year. Therefore, so as not to lose another year before implementation, the government launched the administrative reform in 1922 to be able to incorporate it in the *Loi des finances* of 1923 (Ministre des travaux publics 1922: 1854). The three main motives for reform were:

- ◊ The PTT administration would have to be ‘depoliticised’ – because the PTT had taken on a clear characteristic of an industrial activity and its services could no longer be seen as the political instrument they once had been;⁸
- ◊ Although the basic principles for state activity in the sector made it possible to classify the service as a *service public*, public opinion was seen to have changed, and the general interest remained the sole legitimate reason for a *service public*;⁹

⁸ “The primitive conception of the PTT services: political and local institution. (...) An economic revolution has taken place. The railway, the car, the plane have replaced the diligence. Progress in electricity has created the telegraph, the telephone and radio communications. All sorts of exchange have developed, the diffusion of credits and of commerce have created new needs. (...) It is therefore the satisfaction of the clients’ needs who must be the ‘raison d’être’ for a commercial service such as the PTT” (Ministre des travaux publics 1922: 1854).

⁹ “The idea is that of *service public*, but at the same time, the ideas and the morals have developed. It is no longer the ‘reason of the state’ or the ‘regent’s wish’ who justify governmental action, but only the general interest. It is in the general interest that certain services, considered indispensable for social life, are exempted, whatever their mode of operation, from simple individual initiative to be ensured with special guarantees about continuity and impartiality” (Ministre des travaux publics 1922: 1854); “The minister’s role is to be able to, at any moment, and under his responsibility, to put forward the national will” (Ministre des travaux publics 1922: 1856).

- ◊ The complexity of the services offered called for modern management and administrative methods, for a focus on commercial principles and for financial long-term equilibrium.¹⁰

The government admitted that a public administration had particular needs and concerns that made it impossible to implement management methods identical to those in a purely commercial enterprise. Social considerations, the fact that a public administration was not profit maximising, and above all the supremacy of the general interest, which implied continued parliamentary control, all contributed to limit the extent to which private sector methods could be applied.

One cannot wholly copy the organisation of private firms to establish the future administrative statutes for the PTT services. The management of private enterprises are focused on one unique goal: that of maximising profits. This is not the case in a *service public* such as the PTT services, which is established not with a fiscal motive but in the country's general interest.

Ministre des travaux publics 1922: 1855

A 'Board of Management' was proposed. In a private enterprise the Board represents the link between the managers and the company's shareholders. In the case of the PTT services such an institution, named an 'administrative council', would represent the link between the managers (i.e. the government and the ministry – in particular the minister, – which remained solely responsible towards Parliament) and the 'shareholders', i.e. the citizens. The proposed administrative council would consist of

¹⁰ "The management of large industrial enterprises have recently been the subject of serious studies, undertaken particularly by Taylor in the USA and by M. Henri Fayol in France. These studies show that the principal conditions for the prosperity of an enterprise are in particular the possibility to foresee the future, unity and continuity, stability and competence of the management, and initiative and responsibility at all levels of the organisation. Such conditions, let us admit it right now, do not exist in the PTT enterprise" (Ministre des travaux publics 1922: 1854).

- ◊ 15 representatives of 'the general national interests', chosen among the *grands corps*, chambers of commerce, the media, some representative for the rural population, and a management expert;
- ◊ 4 representatives of the PTT Ministry staff;
- ◊ The *directeur du budget* in the Ministry of Finance and the *inspecteur général* for the PTT services.

The proposed council would be a consultative organ, and therein lay the biggest dilemma of the proposed organisation. The inspiration for the new structure was evidently drawn from private enterprise but:

Having such completely different goals, the public and the private enterprise cannot be administered in the same way. However, from the profound study of the management of private enterprise, a doctrine is emerging whose administrative principles have general value. It is necessary to apply to the *services publics* the principles and exploitation methods that have shown their usefulness in industry.

Ministre des travaux publics 1922: 1855

Recognising the fundamental differences between public and private enterprise to be the lack of profit-maximising stakeholders in the public sector, as well as the complicating yet overriding importance of the 'general interest' in the public services' operation, the government opted for a medium-level solution regarding the new structure's autonomy. The *service public* status was not questioned, and the minister in charge of the PTT portfolio, who had final responsibility for both the technological and the financial side of the services, remained answerable to Parliament. In addition, since the administrative council was not itself responsible to Parliament, and as the PTT budget remained an

annual parliamentary decision, full financial freedom in the hands of the council was impossible.

Despite these restrictions, it was emphasised that the council needed 'independence' and 'integrity' (Ministre des travaux publics 1922: 1855). This was to be achieved by making the council a non-political organ, in the sense that its 21 members were to represent national economic and general public interests, and not be elected through traditional political channels.¹¹

The function of a member of the administrative council is incompatible with holding a parliamentary seat in either of the two chambers. No member of the administrative council can at the same time be administrator of an enterprise receiving subventions or being controlled by the PTT administration, undertaking work or supplying goods to the administration under any pretext.

Art. 2, Ministre des travaux publics 1922: 1858

Integrity was also to be ensured through compulsory consultation with the minister. If the minister and the council disagreed, the minister was obliged to hear the council a second time before taking a decision. However, because the final responsibility for decisions would according to parliamentary principles lie with the minister, who was solely answerable to Parliament, this 'extended right to pronounce its views' was as far as government was willing to go to give rights to the administrative council.

In order to give the administrative council all the necessary integrity, without conflicting with our fundamental constitutional principles, the project estimates that the minister cannot take a decision contrary to the advice of the council without inviting the latter to look into the issue once more.

Ministre des travaux publics 1922: 1855

¹¹ In this respect although not in others, it was echoed 55 years later in 1996 with the establishment of the regulatory body the Autorité de régulation des télécommunications.

Technological, managerial and economic expertise was assumed to be the most important features of the council. However, a certain corporatist arrangement can be traced in the proposition, since the *grand corps* and chambers of commerce were among those organisations stipulated to nominate members. Both PTT service users (mainly industry and governmental bureaucracy) and employees were to be represented, whereas the equipment industry was completely left out. Here, the situation differed from that of Germany.

Reform outcome – the Loi de Finances of 1923

The law of 1923 was the result of a compromise between conflicting interests so that the much sought-after profound organisational reform of the internal administration of the service in the PTT Ministry didn't happen. The *Loi de Finances* of 1923 did, however, bring changes for the telephone service regime in France, especially in that it instigated the 'new' administrative council.¹² The financial reform did not give full autonomy to the PTT Ministry, even if it formally increased the financial flexibility of the PTT administration; and the technological programme was given fewer resources, and lasted for a shorter time period than initially proposed by the government. The debate of 1920, which brought to the fore ardent opposition to a possible profound administrative re-organisation of the PTT model, had limited the scope of feasible options for the government (Musso 1991: 70-74). Parliament finally voted in favour of a 'mixed system' solution, which gave increased financial

¹² A council had been in place, albeit less formally, to advise the minister, from 1919, and the 'invention' of 1923 was hence strictly speaking not a novelty (Pelisse 1923: 1200).

autonomy and flexibility to the PTT services, but retained the PTT administration under ministerial control.

The *Loi des Finances* of 1923 brought the following changes to the regime:

- ◊ The new article 69 confirmed that PTT services were placed “under the high authority of the minister for the PTT, who administers with the assistance of the directors and a council”. The council had 28 members: the minister; 6 representatives appointed by the minister from among technicians and bureaucrats in the service; the *directeur du budget au ministère des finances*; the *contrôleur des dépenses engagés*; 6 employees; and 13 representatives of ‘the general interest of the nation’ (i.e. *Conseil de l'Etat*, business interests, agriculture, different administrative levels, and the press).
- ◊ Article 69 also regulated the use of potential profits from the service. Highest priority was given to the reimbursement to the Treasury of deficits from former operation. Second came depreciation of capital debts prior to the budgetary reform. Further profits would be transferred to a reserve fund, until this reached 150 million francs. Any other surplus would go to the general budget.
- ◊ The new article 72 established three permanent funds; equipment procurement; depreciation of installations and equipment; and ‘unexpected events’.
- ◊ The new article 75 gave the PTT Minister the possibility to borrow by issuing state obligations running for maximum 30 years.
- ◊ Article 80 instituted a separate budget added to the general budget, the two subject to the same procedures.

Loans (the issuing of state obligations) were to be used only for new installations, and were not meant as a means for easing the general financial situation of the PTT services. The poor financial situation and the incapability of the state to find sufficient means of investment for new installations left loans as one of very few options to improve the situation of the PTT services (Allix 1923; Ministère des PTT 1939: 4). Albeit reluctantly, the *Commission des Finances* of the Sénat recommended the government's solution under the condition that the loans remained interest free and that they were handled outside of financial market structures, such as banks.

[The *Commission des Finances*] does not much like the politics of loans, but still, when it recognised that with annual credits and the legal difficulties connected with transferring such credits from one year's exercise to another's, it was impossible for the postal administration to implement its programme and to find the necessary means to defend itself from sometimes violent complaints from the public opinion, then the *Commission des Finances* deliberately entered into the government's system.

Rapporteur, Commission des Finances 1923

The Treasury's 'loans' to the PTT budget would hamper investments in technological improvement for decades. The administrative reform was also watered down even further compared to initial proposals, the depoliticisation of the policy-area proved unattainable, and the administrative council was left with no real powers. The working period for members of the administrative council, the *Conseil supérieur des postes, télégraphes et téléphones*, was initially proposed for six years, but was finally set to two years with possible re-appointment (Ministère des travaux publics 1923). Such short mandates compromised the possibility to engage in long-term planning. The independence that had been put forward as a precondition for the council to be able to function as in a private enterprise was hampered because the PTT and

finance ministries were responsible for the nomination (and hence approval) of members, after receiving proposals from the interested parties.

The compulsory consultation by the Minister, which had been seen as a guarantee for the council's integrity, was in the final law reduced to “[t]he council must be consulted for all matters concerning the general organisation of the services (...) The council gives, in addition, its opinion on all questions put before it by the Minister” (Ministère des travaux publics 1923: preamble). Moreover, the minister was solely responsible for the council's agenda, which treated “only those questions designated in the agenda” (Ministère des travaux publics 1923: Art. 8). Thus, the Minister was no longer obliged to re-consult the council in cases of disagreement. The council therefore had little scope for long-term planning, no financial authority, no agenda-setting powers, and no right to be consulted in case of disagreement with the Minister. It was however an organ whose existence and functioning was in accordance with central political democratic procedures, and thus politically legitimate.

The financial and administrative reforms were supplemented by a programme of technological improvement, with economic resources to underpin larger programmes aimed at extending and improving the national network. The National Assembly initially proposed 1.2bn francs for programmes running over a ten-year period, but this was later reduced to 756 million francs to cover developments in the period 1923 to 1928 (Rapporteur Commission des Finances 1923: 1201; Musso 1991: 75-78). Rapid technological development was seen as the major reason for keeping the programmes within a five-year period. In

reality, what it did do was safeguard Parliament's regular control of the public administration's economic plans.

1923 thus saw an institution aimed at improving the PTT services by giving policymakers and administrators greater financial flexibility and the possibility to plan financially over a longer period. The inspiration was taken from private enterprise, budgets were to be balanced and obligations, i.e. capital from (private) investors, would form the economic basis from which to implement the desired technological improvement of the French telephone system.

Despite private sector inspiration, *service public* remained the core justification for state activity in the telephone sector, providing continuity of the sectoral state tradition. In May 1924, the president of the administrative council ensured that the PTT services in general, and the telephone service in particular, were firmly defined as *services publics*, and that the new financial tools changed nothing of this core element. The minister wanted to couple healthy economic management with the basic sectoral principles of territorial equality and justice.

Profoundly convinced of the necessity that a service such as the PTT service should be managed in the interest of all because it is, in the strongest meaning of the term, a *service public*, I believe that there are no reasons why it should not be managed as well and with methods as healthy and modern as any well-managed large enterprise. (...) Regarding the telephone, we [the PTT Ministry] have calculated that it was not possible to purely and simply augment taxes that are already prohibitive for the majority of small urban users and all rural subscribers. One should first remedy the injustice of the current division of charges between subscribers (...). This is not only an act of justice; it is also good commercial and industrial management.

Le Troquer 1924b: 2, 7

The case of Germany

Throughout the period studied in this chapter, the notion of authority in German policymaking remained with legislation, whose role as conflict solver was again illustrated through the passing of the Fernmeldeanlagengesetz from 1928, which arose as a result of the conflict over rights-of-way between the DRP and the *Länder* due to the budget balancing requirements.

The set of actors perceived as relevant to the policy area remained largely constant. The general powers of the Ministry of Finance were increased in the Weimar republic, and a Verwaltungsrat was established in 1924. The Verwaltungsrat's composition (representatives from the two parliamentary chambers, the Ministry of Finance, PTT employees, and the 'general economy'), together with the fact that the council itself was central in post-1924 policymaking showed that interaction with a broad group of interest was important for the legitimacy of policies. Subsequent debate illustrated the continued presence of a multitude of actors including the different *Länder* and industry.

Regarding the public ethos, it has been observed that the principles of commercial undertakings were early on important for German telephone policy (Feyerabend 1927: 186), and the reforms of the 1920s can be seen as a continuation of this trend. Some new concepts appeared during the reform process, notably 'autonomy' (for the RPTV) and 'consultative councils' as proxy for private enterprise management methods. During the debate of the

Reichspostfinanzgesetz calls appeared for institutional separation of business and politics as a response to the administration's need for greater flexibility (Kühn 1971: 13), but such changes were not legislated. The concept of 'enterprise' (Unternehmen) was used in connection with the public telephone service provider for the first time. The new concepts were a logical continuation of the already existing idea of commercial management of telephone provision. From such an angle, the developments tie in with the strengthening of cost-based tariffs and budget balancing.

Criteria for legitimate decision-making did not change in Germany in the 1920s. The RPTV was one of several powerful actors in the telephone sector. Although it remained the most powerful, because of its agenda-setting powers and the legal monopoly in telephone service provision, it faced a set of opponents and co-deciders to consult for policy decisions to be legitimate. Discourse remained coordinative. The German debate from 1900 until the 1924 reform focused on tariffs and financial arrangements more than on the political role of the PTT services.

Telephone policy in Germany in the early 20th century

In Germany, following the consolidation of the legal state monopoly around the turn of the century, telephone policy debate was characterised by a firm legal foundation that delimited the Reich's powers over both *Länder* and individuals. The telephone service, alongside the telegraph, was perceived as a vital part of the infrastructure supporting German industry, and the principal aim for the

Reichspost- und Telegraphenverwaltung's (RPTV) telephone policy was to provide telephone and telegraph services to the industry throughout the German territory.

The basis of modern industry is transport. First after the freeing of humankind from its binding to the local environment and the change this freeing caused for the individual's perception of its environment, can we speak of a modern national and global industry. (...) The telephone is certainly the origin of a fundamental alteration in the means of exchange of news and a profound redefinition of interpersonal communication.

Feyerabend 1927: 197

The sector-specific characteristics of network effects and the importance of territorial coverage were used to defend a state monopoly, without excluding competition in principle. The public administration would only operate a politically legitimate monopoly to the extent that it succeeded in meeting customers' demand for communications services, which entailed a rapid extension of the network, whilst simultaneously ensuring that state finances were not burdened. Cost-based tariffs and demands for financial viability of the public telephone service were thus early institutionalised.

The debate leading up to and culminating in the 1924 reform reflected the constrained role of the Reich authorities, notably that the by then well-defined policy arena comprised several strong and powerful actors with technical knowledge (in particular the electro-technical industry) and the *Länder*, who had regional authority over both territory (the right-of-way issue) and provision of public goods. Three questions were particularly central to the debate preceding the financial reform:

- i) What degree of autonomy should the RPTV have over a sector perceived as crucial to the health of the German economy?
- ii) What financial regime would fulfil the conflicting criteria of providing good and cheap communications services to the German industry, being socially acceptable and at the same time enhancing financial viability of the telephone service provider?
- iii) Should the RPTV continue to carry all costs connected with conflicting interests between telephone and the electrical industry when the two used the same trajectories for their installations?

Economic and technological difficulties, particularly after the First World War, added to the urgency for reform, and although the communications administration's role in 'social and cultural matters' was acknowledged, the financial viability of what was to become the public enterprise 'Deutsche Reichspost' remained the principal preoccupation of the legislators, acknowledging the public ethos of efficient management of infrastructure provision.

The investigation will show that the telephone continued to be perceived mainly as infrastructure for the economy, as a communications institution similar in importance to other transport institutions. The Deutsche Reichspost (DRP) was officially named an enterprise (*Unternehmen*). Contrary to the situation in France, the telephone service's industrial nature and hence the appropriateness of management methods similar to those used in profit-seeking companies were never questioned in Germany. Although the concepts of 'autonomy' (for the

RPTV) and 'administrative councils' (used as proxy for private management methods) were included in the debate, they enlarged the existing sectoral state tradition rather than broke with it.

The situation prior to reform

The main issues in the institutionalisation of a telephone service monopoly in Germany had been the legal foundation for extending the telegraph monopoly, rights-of-way, and tariffs. The rights-of-way problem concerned the conditions under which Imperial authorities could erect telephone and telegraph masts and run cables on German territory, where the *Länder* authorities traditionally had final rights, except in cases of vital interest to the *Reich*. The question, therefore, directly concerned the limits of the *Reich*'s legitimate sphere of intervention, circumscribed through legislation.

The tariff question became the technical issue that embraced social and political questions, on numerous occasions highlighting the view within the public administration that the role of the *Reich* authorities was to provide an infrastructure for the economy in general, and to secure its own diffusion through efficient communication methods. Questions concerning the social aspects of telephone service (and communications in general) seldom merited their own headings, but were discussed through the issue of tariffs. The basic principle of cost-based tariffs strengthened throughout the early parts of the 20th century.

Changing power structures – the Weimar republic

Following the war, the Weimar republic (1919-1933) brought some minor changes to the power structure of the telephone sector in Germany. The new constitution implied only minor changes to the institutional make-up of the decision-making system. However, for the first time, all the telecommunications authorities throughout the Reich formed one common institution when the Bavarian and Wurtemberg organisations were merged with the Reichspost in 1920 (Feyerabend 1927: 174). Thus, the *Reichspostminister* was the highest authority of the telecommunications administration and directly accountable to the Reichstag. Nevertheless, as the institution's finances were part of the national budget, the Reichspost could not operate autonomously in financial markets. Borrowing was also prohibited, and any budget surplus went directly to the Ministry of Finance.

The biggest change to the institutional landscape for telephone policy in the Weimar republic was the strengthened position of the Finance Minister. No decision implying state expenditure could be taken without his approval, and if the Minister of Finance disagreed with another member of government, the latter was

free to seek the decision of the government, as long as the issue is of constitutional or otherwise utmost importance. (...) For a decision to be taken against the vote of the Finance Minister, more than half of the total number of Reich Ministers, in the presence of the Chancellor, is needed.

Reichspostministerium 1920

The situation also gave the Ministry of Finance important powers regarding telephone policy, which further strengthened the emphasis on tariff issues. In order to reach a balanced budget, "increased expenses must be met with higher income" (Reichspostminister 1920), and tariffs were the only source of income that could be increased, since borrowing was prohibited. Tariffs and other central changes had to be based on legislation, thus involving Parliament.

Hyperinflation, however, required a much more flexible decision-making system if the budget was to be balanced, and this problem contributed greatly to the perceived need for reform in 1924.

Public debate

After the legal consolidation of the state monopoly telephone policy debate focused on the degree of autonomy of the public telephone administration. Subsequently, as the financial situation deteriorated and the principle of cost-based tariffs forced tariff increases, the model of flat-rate tariffs came under scrutiny, as did the system whereby the public administration carried all costs to insulate telephone and telegraph lines from other electrical installations.

The initial growth in the German telephone network was impressive compared with the situation in France and other European states but it did not prove sustainable.¹³ Once the economic costs of expanding the network started to

¹³ The number of telephone connections in Germany had reached 1.2 millions in 1914, i.e. 2 per 100 inhabitants, whereas the same rate of penetration was not reached in France until 1927 (Petzold 1990; BMPT 1957).

increase, politicians paid increasing attention to telephony expenditures.¹⁴

Growing political control negatively influenced the availability of investment capital, and as a consequence growth rates of telephone penetration declined, especially from 1914 (Duch 1991: 127).

Network developments during the First World War were naturally affected by the extraordinary conditions:

Network extensions and new constructions could generally be provided only if they were immediately necessary for warfare, stocked equipment had to be given up for military means, (...) numerous workers were drawn from the telegraph services so that only the most basic maintenance could be executed.

Reichspostminister 1921a: 5

Consequently, after the war the German telephone system was in a bad condition, and network capacity was not sufficient to meet demand.

RPTV autonomy

The Telegraphengesetz of 1892 (§7) required Reichstag approval for tariff increases. As cost-based tariffs meant that the telephone was not to be financed through general taxation, the Reichstag was reluctant to spend public resources on the extension of the service. The RPTV, therefore, had to rely on its customers funding network extension through subscriptions and communications fees. Consultation with business interests provided a link between customers' demands and the administration's activities:

¹⁴ Price increases in the telephone sector during the war years (from 1914 until 1920) were estimated to around 4000 per cent for equipment and more than 500 per cent for salaries (Reichspostminister 1921a: 7)

[S]ome administrations have [because of the enormous growth and complexity in traffic] for years consulted business interests on important questions concerning the public resources, which for them are of utmost importance. (...) Also the Imperial postal administration has (...) consulted representatives from trade, industry and agriculture on issues of general interest.

Berlin Chamber of Commerce 1909

At the turn of the century, however, business was not formally represented in the decision-making structures of the RPTV, unlike in other public utilities. The public administration should consult industry about issues of central importance, but it retained the power to set the agenda, and no formal representative organ of business interests existed. The Berlin Chamber of Commerce therefore suggested the establishment of a permanent consultative council "that when needs be, and at least twice annually, would meet" (Berlin Chamber of Commerce 1909). The suggestion was met with criticism from other Chambers of Commerce on the basis of experience in other transport sectors:

It is known that the consultative councils in the transport administrations have limited influence and only a decorative character, even in transport administrations (railway councils, waterways council) where the businesses' viewpoints are of vital interest.

Handel und Gewerbe 30.10.1909

The Berlin Chamber of Commerce thought that 'decorative' measures would be a waste of time and resources if the outcome was only marginally influenced. However, although the real power of business representatives was doubted in some quarters, there was a growing opposition to the wide degree of discretion in the hands of the RPTV.

The demand that certain of the government's services interested parties should be heard, is in several public administrations rightly implemented.

Our waterways and railway policies lean on co-operation with experts' opinions. Why should the Reichspostamt, whose services touch almost everyone, have a monopoly on decisions?

'Deutschland: Ein Postbeirat' in *Kölnische Zeitung* 18.8.1909

The suggestion for a consultative council was launched just months before the law on tariffs of 1909, and with direct reference to the tariff setting regime.¹⁵

The tariff law proposal, however, did not at any point discuss these suggestions (Reichskanzler 1909), although it would re-emerge some years later and form the basis of institutional structures in the financial reform of 1924.

Budget balancing

As a result of economic difficulties following the war, the RPTV had increasing problems balancing its budgets. Unlike in France, where a deficit in PTT services would be covered over the general budget, a German PTT deficit had to be met with increasing revenues, decreasing expenditure, or both.

Tariffs were the major source of revenue and were therefore frequently debated.

The 1899 tariff regime had been adopted to promote the extension of the network and to redress the unbalanced economic burdens between customers.¹⁶ Small customers subsidised large users, which was perceived as socially unfair as well as economically unsustainable. Nevertheless, flat-rate tariffs (fixed

¹⁵ "Some decisions have been taken without prior consultation with affected business interests, which have learned about these decisions through the press. This was the case for the increase in postal tariffs from July 1906. (...) We are persuaded that our proposition [to establish a consultative council] would be in the interest for the state finances as well as for the health of industry" (Berlin Chamber of Commerce 1909).

¹⁶ The proportion of customers paying an access fee to flat-rate customers grew from 29 per cent in 1900 to 79 per cent in 1907. The effective fee per communication in 1907 for flat-rate consumers was on average 4.5pf, vs. 17.3pf for customers paying per communication (Reichskanzler 1909: 4, 6).

periodical amounts entitling unlimited calls in the period), which effectively worked as a discount to large customers, had been important to increase telephone utilisation. By 1909, however, the RPTV considered flat-rate tariffs unnecessary and unjust.

One should not be surprised that well organised interest groups (...) vigorously support the current tariffs. They argue that trade and industry have got used to flat-rate tariffs and have organised accordingly. It is however impossible to deny that today's tariff regime unjustly favour the high-consumption clients to the detriment of low-volume users.

Reichspostminister 1921b: 11

Abolition of flat-rate tariffs strengthened the perception that telephone tariffs were payment for a service, an element that was vital to the German sectoral state tradition. As telephony grew in importance and reached larger parts of the population, it became paramount to balance the need for increasing revenues against the social acceptance of higher tariffs. The long-stated requirement of cost-based tariffs could, in the current economic situation, legitimately be maintained only if the cost-covering principle extended to each consumer.

Budget balancing through cost cutting could be achieved by shifting responsibility for the extra cost of insulation in cases where telegraph and telephone cables conflicted with cables from other electrical infrastructure. The Telegrafenwegegesetz from 1899 stipulated that the RPTV should carry all costs related to extra insulation of telegraph and telephone cables against problems of induction, amounting to 11.000 Mark in 1900, 558.000 Mark in 1914 (Reichspostministerium 1924: 5). The political problem with these costs was not only the large sums involved in financially difficult times, but also that they effectively subsidised private capital interests:

The use of §6 of the Telegraphenwegegesetz [stipulating that the public administration was economically responsible for maintaining cable trajectories and insulation] has therefore taken a direction whereby large industrial concerns do not contribute their share of maintenance costs, but rather benefit from public expenditure to further their own development. The result is that the Reich is charged with ever increasing unproductive costs, (...) and private capital has added to its expense.

Reichspostministerium 1924: 11

The RPTV thus tried to transfer the costs to the electricity operators by calling on an 'emergency jurisdiction' (*Notverordnungsrecht*), whereby the Reichspost achieved higher judicial priority than other utilities. It was therefore proposed that the unequivocal obligation to cover all costs of insulation was changed in favour of the general public interest.

[T]he change or repositioning of a telegraph line to benefit a later electrical installation can be requested and paid for by the public administration only in cases where the new installation is in the public interest, particularly for the national economy or for transport.

Reichspostminister 1924b: 2

The Prussian government, however, opposed the proposal, which was said would lead to increased costs for the *Land* as electricity supplier (Preussische Minsiterpräsident 1924: 1). Conversely, the Reichsrat supported the government's proposal because of the financial impossibility of maintaining the former regime.

The government has departed from the principle that if a later installation creates disturbance for installations already in place, the public administration's duty to cover all or parts of the costs of insulation and maintenance depends on the particular installation's legal, industrial and technical value. (...) The duties laid upon the RPTV by §6 TWG [Telegraphenwegegesetz] will cost no less than one million Goldmark per annum. The size of this cost in addition to the administrative costs from keeping the system, would weigh so heavily upon the public administration that not changing the law is an impossibility.

Reichspostminister 1924a: 2, 4-5

Before the war Germany had been the largest economic power in Europe, and the state had played an active role in its industrialisation (Bookbinder 1996: 162). Industry therefore played a significant role as legitimising power for the state machinery, and was not likely to approve of a new telephone financing regime that increased their economic burden. However, penetration rates remained low, and it was politically not acceptable that a service for the few should be paid for by general taxation.

For tariffs charged by a public enterprise, there are in principle three forms to be considered:

11. The state provides the service free of charge, using public means;
11. The costs of the enterprise are paid by the immediate beneficiaries of the service;
11. The enterprise is managed according to principles from private enterprise, i.e. the state attempts to extract the greatest possible utility (...)

Hence, for the telephone, income should cover costs, (...) since the users are relatively limited and the service should therefore not be paid for by the general taxpayer.

Reichspostminister 1921b: 4

This early focus on cost-based tariffs is in stark contrast to the French case, where PTT tariffs traditionally had been classified as an indirect tax rather than directly linked to the service provided. It is true that tariffs were increasingly perceived as payment for service also in France in this period, but the point never reached the same significance in French political debate as in Germany. Rather, in France, social justice and affordability became important elements in the setting of tariffs, because the state provided telephone service to citizens in the general interest, ensured by Parliament's supervision. In Germany, social and cultural issues as well as affordability were important, as shown by the states argument for cost-based tariffs because the service did not extend to the

whole population. Even so, the level of tariffs were always ultimately linked to production costs (Reichspostminister 1924c: 3).

Commercial management principles

The German telephone service has from the beginning been administered according to commercial principles, it shall keep itself; that is, its total operational costs shall be covered by its revenue.

Feyerabend 1927: 186

The problem that posed such difficulties for the French policymakers – i.e. whether the telephone policy should be treated as a *service public* or as an industrial activity – was never an issue in Germany. The industrial character of the telephone service was recognised from the very introduction of the telephone, and commercial principles of budget balancing were inherent in the German view of the necessary tools for managing the sector. Early legislation had, however, put certain administrative routines in place that hampered the possibilities for rapid decisions, particularly the tariff-setting powers of the Reichstag and the Minister of Finance in the Weimar republic, a problem aggravated by hyperinflation.

One of the main reasons for the deficit is, in addition to the disadvantageous economical conditions [hyperinflation, lack of personnel, repercussions from warfare], that the RPTV is judicially dependent upon the Reichstag, the Reichsrat, and partly the Minister of Finance, and does not possess the possibility to manage its service according to enterprise management principles.

Reichspostminister 1924c: 3

Thus, although the huge gap between costs and revenues in the early part of the 1920s constituted the main rationale behind the financial reform of 1924, its solution would logically be found in implementing means of private enterprise

management into the state administration for the telephone service. One important new institutional feature was an administrative council that would assist the Reichspostminister in his work. The proposed administrative council would have 25 representatives from the two chambers of Parliament, the Ministry of Finance, civil servants from the PTT administration, and independent experts with competence in industrial and transport matters.

The nature of the tasks of the administrative council is such that when electing its members, the emphasis must be on personal capability, because of their knowledge and experience, to promote the DRP's commercial viability.

Reichspostminister 1924c: 5

The council could, therefore, be seen to fulfil tasks similar to those of a board of management in private enterprise, a model clearly copied by the public authorities.

Reform outcome – the Reichspostfinanzgesetz of 1924

Reform was perceived necessary because of economic difficulties and cumbersome legal procedures that restrained economic flexibility, particularly through the setting of tariffs, and it is in this context political debate and discourse must be evaluated. First and foremost, the government proposed to reduce political control of the telephone service administration.

The *Reichspostfinanzgesetz* was a balancing act between commercial and political constraints whose most important feature was the creation of a separate budget for what was to be the public enterprise named *Deutsche Reichspost*.

The government embraced the implementation of private sector management methods in what it saw as a commercial sector. Increasingly throughout the 1920s, telecommunications were perceived as so important to the economy that they should be treated like other transport sectors.

The new form of communication must today be considered as just any other form of communication. The concept of communications beneficial to the community (*gemeinnützigen Verkehrs*) cannot any longer be restrained to news and the transport of persons and goods, and they must therefore result in the Reichspost's administration being given the character of a private undertaking.

Preussische Ministerpräsident 1924

Any ideas of privatisation were held off by reference to the *Postregal*, which had been important in consolidating the monopoly in the 19th century, and to 'cultural duties', which in Germany signified territorial equality of service provision (as explained in Reichspostminister 1924c on §1).

The task the RPTV will be given through the partitioning [of the budget], namely to balance costs and revenues in its own budget, is in the long run only possible if the administration has extensive management authority over its dispositions. (...) The reform does not open up for a privatisation of the postal and telegraph administration. Its important public duties, such as its role in defence, in providing equal infrastructure for enterprises, in transporting public information, and in taking care of cultural matters, can only be achieved through a public enterprise. However, within these frames the RPTV must accomplish its many duties as well as protecting its business interests, and hence needs a certain amount of flexibility and room for manoeuvre.

Reichspostminister 1924c: 4

The view that political and business issues should be separated was aired for the first time during the parliamentary debate in 1924. Such separation could be accomplished only through a reduction of political intervention in the daily management of the organisation, which would meet the need for managerial

flexibility in the hands of the administration. However, the Reichspost remained under direct state control (Kühn 1971: 13).

The 1924 law introduced the following main changes into the policymaking environment of the telecommunications sector in Germany (Reichspostminister 1924c; Scheda 1932):

- An autonomous public enterprise, the *Deutsche Reichspost* (DRP) was created, administered by the Reichspostminister assisted by an administrative council (*Verwaltungsrat*).
- The DRP's budget was separated from the national budget and established as a separate entity, a *Sondervermögen* (special fund), whose resources could not be affected by other obligations of the State.
- The *Sondervermögen* was required to balance, resources could not be transferred from the general budget, and loans should be used for network or equipment expansion only.
- The administrative council was responsible for conditions and tariffs related to use of the telephone service. It consisted of a maximum 40 members, representing the Reichsrat (10), the Reichstag (10), the Ministry of Finance (1), the PTT Ministry's staff (7), and 'the general economy and experts' (12). The twelve representatives from the economy at large were also to be drawn from different parts of the country.¹⁷

¹⁷ This composition of the council was confirmed in a lecture by the Ministerialrat in 1926 (Andersch 1926). The number of members was originally proposed to be maximum 25, in later drafts of the law extended to 31. The final council, however, counted 40 members.

- Part of the income (between 6 and 6 2/3 per cent) should be transferred to the Ministry of Finance, and means should be set aside to cover earlier debts.

§1 of the law stated that “The Post and Telegraph Service of the State is an autonomous enterprise with the designation of ‘Deutsche Reichspost’. It is managed by the Minister of Posts and Administrative Council according to the regulations of the present law” (L’Union Postale 1924). This is the first time the concept of ‘enterprise’ (*Unternehmen*) is used in relation to the PTT services.

The DRP was not a free commercial enterprise (it remained part of the state administration regarding organisational and personnel matters), but its legal provisions went far in placing responsibility for economic viability with the Minister and the DRP itself, rather than with Parliament.

This rendered the DRP somewhat of a novelty in the state administration. The unit was “not a trade unit, not a business unit, but a department under the sovereign state authority in transport and communication matters” (Scheda 1932: 12). As part of the transport sector, the DRP was under obligation to provide its services throughout the German territory. It was not formally a non-profit organisation, but profitability was not its main goal. Tariffs should be kept as low as possible, but the budget should balance; conditions that left little room for commercial manoeuvre (Scheda 1932: 13).

The *Sondervermögen* separated the DRP’s budget from the national budget. A savings account of up to 100 million Reichsmark was established to cover

possible deficits, and the money was to be held in cash or as assets (Finanzgesetz §8). Between 6 and 6 2/3 per cent of the profit should be transferred to the Treasury. The wording of the paragraph concerning the special funds was changed twice between 1924 and 1926: initially relating to the broad expenditures of the DRP it was changed to specify 100 million Reichsmark in July 1926. A fixed amount to cover deficits would create no incentives within the Reichspost to maximise profits (Scheda 1932: 35). Although the DRP was theoretically granted some autonomy in financial matters, the country's economic difficulties and the Treasury's tendency to demand increasingly more money from the DRP severely limited the Reichspost's room for action. The Reichspostfinanzgesetz came into force on 1 April 1924 (DRP 1924: 8).

Policymaking after 1924

The Reichspostfinanzgesetz was introduced to give the telephone service provider increased financial and managerial flexibility to make it more akin to a private enterprise. Subsequent debate and actions from the Ministry and the administrative council – the *Verwaltungsrat* – focused on the financial situation, particularly in relation to tariffs, on the infusion of business spirit to all employees, and on increased efficiency through modern management methods. The administrative council was established by Parliament to oversee daily operations of the DRP, in particular to ensure sound financial behaviour.

Through the Law of 1924 the Ministry of post and telegraph was given both political (regulatory) and operational (managerial) control of the DRP. The

Verwaltungsrat's tasks were threefold: It should *advise* the Minister in his work, *decide* in certain matters, and *supervise* the DRP's activities (Andersch 1927). It was assigned many of the regulatory tasks previously undertaken by the Reichstag, including "the Reichspost's budget, user regulations, tariffs, personnel, wages and salaries, borrowing, and other areas of administrative policy" (Duch 1991: 132). The council was an invention in the structure of the DRP, inasmuch as it was one single regulatory organ. The minister retained the possibility to call on the government's opinion whenever he saw potential conflicts between the council and political considerations and in this way the DRP remained a state administration in practice as well as in principle.

The extent of the administrative council's powers was contested by certain *Länder*.

The question of a fundamentally correct interpretation of the limitations of the Verwaltungsrat's responsibilities weighs heavy upon me. (...) The Verwaltungsrat's actions are limited by the legislator's decision. According to the Reichspostfinanzgesetz the council's tasks comprise the supervision of the law's correct implementation. (...) However, the council's supervision is necessarily limited to that of written material. This implies that unwritten rules and administrative practice are not being supervised. (...) The Reichspost is an autonomous enterprise. This requires broad competencies within its organs, the Reichspostminister and the Verwaltungsrat. (...) Should one's views however conflict with those of the DRP's organs, the Reichspostfinanzgesetz will not provide a satisfactory channel. This might shake the weak agreement on the legislation. Such a result is not in Bavaria's interest.

Reichspostministerium Abteilung München 1924

The Bavarian authorities' reactions to the limitations of the administrative council's competencies was not only a recent adherent's worries in face of a new system, it was also a sign of the conflict between the two levels of government in Germany. In the Weimar republic, as well as under earlier

regimes, the Länder authorities held considerable powers, and legal provisions were put in place to ensure that Reich authorities stayed within their boundaries.

In 1925, the council expressed concern about the DRP's revenue policy:

The revenue policy was in 1925 a subject of continued worry for the administration. The DRP is not a typical financial institution; it is a transport company, whose main tasks make it an instrument for the national and global economy. (...) As a transport institution intimately linked to the general industry, the Reichspost must be prepared to change and improve its installations. In performing this task the Reichspost must minimise its outlays and rationalise its organisation. (...) The Reichspostfinanzgesetz requires the Reichspost to implement a policy of revenue whereby income will cover costs. It is therefore allowed to keep tariffs as high as required to meet this demand. (...) The institution is 'inundated with debts' and can therefore not raise tariffs. (...) When it is demanded that the DRP on the one hand lowers tariffs, and on the other hand increases revenue through a decrease in management tasks at the same time as transport and management instruments should continuously be improved, then the managerability of the DRP becomes an industrial impossibility.

DRP 1925: 92

The DRP remained a public entity and part of the public administration, but its role was different from that of any other part of the central bureaucracy. Its non-political nature and importance to the economy in general were both central values for the policy sector, which resulted in clear guidelines for the setting of tariffs.

The Deutsche Reichspost is established as a public transport enterprise to the benefit of the circulation and distribution of public economic goods. It is after the railway and the marine the biggest transport company. (...) The Reichspost is in the service of the general community; it knows of no limitation of its customer base. Its nature is non-political and it has no political boundaries.

(Reichspostministerium 1928: 3-4).

According to the Reichspostfinanzgesetz the Reichspost must follow an income policy that ensures covering of operational costs by business revenues. Thus, as the complete infrastructure for the general economic interest, it is obliged to keep its tariffs so high that they unconditionally

cover the considerations of the posts activities, not higher, but also not lower.

Andersch 1927: 31

Although the DRP was not a profit-seeking enterprise and thus had to find a socially and politically acceptable level of tariffs, it still had a clear obligation to deliver high-quality technical installations and continuity of service, both of which would have to be covered by tariff revenues.

One should also remember, that the principal aim is not that of low tariffs, but the highest possible development of technical installations and no interruptions in the operation of the installations. It would not be possible to defend keeping tariffs low if this were to the detriment of the quality of instruments and installations. Then the whole general economy would profoundly suffer.

Andersch 1927: 32

Modern management and rationalisation measures

Following the implementation of the new financial regime, public documents illustrate the importance of 'objective' financial methods. Increasing the financial strength of the DRP was perceived as the administration's main task, whereas political considerations were left to Parliament. Hence, a priority list of the DRP's tasks from 1925 includes:

0. Implementation of business policy of the DRP. (...)
0. Evaluation of the results of the general economic activity and the connections with the DRP.
0. Frequent business reports. Publication of economic results of the DRP.
0. Continuous examination of the economic results in all parts of the organisation, implementation of business-economic principles.
(...)
9. Participation in basic questions on tariffs.
(...)

These business tasks extend hereafter to all parts of the administration, operations and technical service.

Reichspostministerium 1925b

The Minister emphasised the need for the 'business spirit' to penetrate into all levels of the organisation, "so that the discussion of general business considerations will prevail", in order to make in the DRP "a stronger and generous adaptation of the spirit and the infrastructure to the modern society's requirement, which the economy, industry, people and Reich rightly demand" (Stingl 1925: 385-388).

'Adapting the spirit' of the DRP within existing bureaucratic structures was seen as problematic. If the Reichspost was to behave like a true commercial enterprise, and thereby respond to its clients' needs, it would have to change its institutional form and accommodate the new needs.

The Minister's program cannot be implemented through bureaucratic measures alone. An institution is needed that can allow personal initiative and at the same time know the requirements from the general economy.

Andersch 1926: 2

Certain institutional changes were introduced to the DRP in the aftermath of the Reichspostfinanzgesetz: Contemporary administrative practices were seen as too cumbersome and decentralisation was introduced to ease the situation. This resulted in the central management bureaux (*Oberpostdirektionen* and the PTT Ministry) being released from

all tasks that [were] not constitutionally assigned to the ministry, and [regional and local offices] turned into independent final entities with their own responsibilities.

Andersch 1926: 2¹⁸

¹⁸ see also Reichspostministerium 1925c

At the same time, 'simplification measures' were introduced both in its organisational design (e.g., the merger of smaller organisational bureaux into larger units) and accounting practices (DRP 1927: 13). The DRP staff numbers were reduced by over 40.000 employees in the period 1924-1926 to ameliorate economic results (Reichspostministerium 1928: 3; Reichspostministerium 1925a). These measures were also seen as a necessary precondition for the DRP to fulfil its ultimate goal, namely to "be a servant for the economy and communications" (Reichspostminister 1925).

Relations between the Reich and the Länder – the Fernmeldeanlagengesetz of 1927

The practice introduced after the change in the Telegraphenwegegesetz of 1924, whereby additional insulation costs for telegraph and telephone lines resulting from new electrical installation were not entirely paid by the RPTV, was abolished by the Reichsrat on the insistence of the *Länder* authorities. The *Fernmeldeanlagengesetz* (FAG) of 1927 was introduced to solve the conflict (Thomas 1994: 218-219). The FAG gave the *Reich* monopoly powers over the construction and operation of telecommunications networks, including telegraph, telephone and broadcasting equipment (§1). The monopoly covered networks, services and terminal equipment. The Reichspostminister had the right to delegate his powers on a case-by-case basis. According to the FAG exemptions to the network monopoly could be granted for closed networks, such as within the public administration of a *Land* or within transport

companies (§3). Furthermore, owners of parts of land no more than 25 km apart could construct private telecommunications networks within their own territory.

However, the Telegraphenwegegesetz from 1899 had granted the telegraph authorities rights-of-way along the lines of other public utilities such as electricity and water. Since this regulation had been made also to cover the telephone networks, the effect of the TWG was to further reduce the exceptions to the federal monopoly introduced in the FAG (Werle 1990: 73-74). Therefore, in the late 1920s the RPTV enjoyed something very close to full legal monopoly in the area of telecommunications.

Conclusion: Stability and change in sectoral state traditions during the 1920s

This chapter has shown that public debates on the reforms of the 1920s were shaped by existing ideas and practices for the telephone service both in France and Germany. Despite new administrative arrangements in both countries, which bore a certain resemblance (e.g., separate PTT budgets and administrative councils were introduced in France in 1923, and in Germany in 1924), the sectoral state traditions remained largely the same as they had been at the turn of the century in each country. The findings are summarised in table 2:

	France	Germany
Ultimate authority, relevant actors and their relative power	UA: Parliament. RA: Ministry of Finance seen as increasingly relevant because of industrial nature of telephone service.	UA: Legislation. RA: Ministry of Finance increased its powers in the Weimar republic. Establishment of a <i>Verwaltungsrat</i> .
Public ethos	<i>Service public</i> , comprising continuity, territorial equality of service, adaptability, was no longer inherently contradictory to 'efficient management' and financial and managerial flexibility	Principles of economic efficiency continue. 'Autonomy' and 'consultative councils' (proxy for enterprise management methods) specify organisational implications of public ethos. 'Enterprise' used for the first time.
Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Bureaucratic correctness. Coordinative discourse.

Table 2: Summarised findings from the 1920s

The notion of ultimate authority was not questioned in either case, remaining with Parliament in France, and with legislation in Germany. The set of relevant actors and their relative power changed slightly through the financial reform as a result of the strengthened position of the Ministers of Finance, and the establishment of a *Verwaltungsrat* in Germany. The members of the latter, however, were representatives of actors already seen as relevant to policymaking during the consolidation period, and can therefore be argued to be a strengthening of existing actors relative to an autonomous Reichspost, rather than a new actor in the policymaking arena.

In France, the public ethos principles of territorial equality and quality/continuity of service from the consolidation period was incorporated in the concept of *service public*. The doctrine of budgetary unity was abolished in favour of a

budget annexe, which was made possible by the idea that a *service public* and industrial management methods were not incompatible. In Germany, principles of economic efficiency in infrastructure provision remained central to the public ethos, as indicated by the strengthening position of the idea of cost-based tariffs. ‘Autonomy’ and ‘consultative councils’ were used to specify the organisational implications of the public ethos rather than changing it.

Thus, despite meeting similar practical challenges (economic as well as technological difficulties), and similar international ideational trends (modern management and efficiency of commercial enterprise management methods), and despite implementing similar financial structures for their respective PTT services,¹⁹ the justification for the final reform outcome differed significantly in the two countries.

The French response to ‘modern management’ ideas was initially a proposal to transfer decision-making and financial authority to an ‘independent’ body (albeit with certain political connections), in line with the new ideas. The political process did however water down the proposals to the extent that the new council had no real powers, and financial flexibility was non-existent. The state’s obligations, social and otherwise (the state’s lack of profit as sole motive for action; the ‘general will’ as ultimate rationale for state intervention also in *services publics*, and the need for parliamentary intervention to secure this general will), impeded complete implementation of pure commercial management methods.

¹⁹ Budgets separate from the general national budgets, special financial tools for the industrial activity of telephony, and administrative councils to ensure a link between the organisation’s management and stakeholders.

In Germany, however, the 'failure' to create a commercial enterprise was perceived as a result of the tight financial regulations imposed on the telephone service provider, partly because of national economic difficulties, rather than a necessary consequence of political need for parliamentary control over a public service provider.

The respective national debates and argumentations in each country thus retained close links to previous national debate and ideas, supporting stability in the sectoral state traditions.

Chapter 4

The post-war regime

This chapter investigates telephone policy debates after the Second World War until c. 1970. The main question remains whether the French and German telephone policy debates showed continuity with earlier national debates, or whether the sectoral state traditions changed.

Once the institutions of the post-war regime were in place (1946 in France, 1953 in Germany) no major legislative change took place in the telephone sectors of France and Germany, and the national parliaments therefore had few if any occasions to debate telephone policy. Policy debates in this period mainly took place between experts within the public bureaucracy, and, particularly in Germany, academics.

The lack of parliamentary telephone policy debate in France implied an increased relative importance of 'technocrats'¹, whose debate primarily focused on technical issues such as financial status, efficiency, and cost accounting rather than on the broader issues related to *service public*. The relative absence of references to *service public* illustrated the concept's central role as a political 'myth' and legitimating factor in public policy, whose level of precision and technical detail was too low to be of use in sectoral experts' discourse. The fact that the technocrats' discourse differed significantly from that of Parliament underlines the communicative character of public political discourse in France.

In Germany, recent experiences from the Nazi regime led to a strong emphasis on 'democratic' structures in the post-war regime. Subsequent political and academic debate showed an increasing unease with this temporary decreased attention to traditional ideas about efficient management of infrastructure provision. As this chapter illustrates, by 1970, prominent ideas in public debate comprised calls for separation of regulation and operation of telecommunication services, and favoured referring more 'political' issues (such as the telecommunications services' characteristic as public good, and their importance for democratic development) back to the political institutions. Thus, by 1970 the debate showed a clear continuation of pre-1933 principles, whilst incorporating ideas on the optimal organisation of telecommunications policy's enlarged social role.

The case of France

Centralism, planning and *dirigisme* were central characteristics to state activities in France in the post-war period. All three could be assumed to lead to a higher degree of politicisation of policymaking, because central political channels would be used rather than private enterprise. Sectors not included in the Plan, however, gained little attention from Parliament, a development that allowed increased relative power for experts within the public bureaucracy. As this chapter shows, bureaucrats were reluctant to involve Parliament even when the latter was actively seeking information, indicating that Parliament was perceived among the technocrats as a less relevant actor when no legal change

¹ A 'technocracy' is according to the Concise Oxford Dictionary, "organisation and management of a country's industrial resources by technical experts for the good of the whole"

was forthcoming. This cannot, however, be taken as evidence of a change in the sectoral state tradition, which is evaluated by public political discourse. Rather, there is no evidence that the ultimate authority of Parliament was questioned by bureaucrats, only that the latter sought pragmatic solutions to perceived problems within the existing sectoral state tradition.

In the immediate post-war period, the social compromise that effectively excluded public debate about organisation and relationship between service provider and end-user, helped consolidate the public ethos of the concept of *service public* as the ultimate rationale for state action, while failing to specify its content. The concept became increasingly vague in the decades after the war (Demichel 1974: 17-25), and its prominence in public interventions and relative absence in debates among technocrats indicates its high symbolic but relatively low practical value at this time, although its role as embodiment of common values for the telephone provision regime remained.² Vivien Schmidt's assumptions about communicative v. coordinative discourse correspond with the fact that the highly political concept of *service public* figured low in the technocratic debates of the 1950s and early 1960s, but became more prominent as Parliament regained interest in the issue and as public debate increased (as will be shown in chapter 5).

community" (COD 1976).

² *Service public* was not the only concept with which French policymakers had problems. Also the public sector itself escaped definition in the late 1960. The INSEE (Institut National des Statistiques et d'Etudes Economiques, the public statistical agency) reported in 1972 that 'a fundamental difficulty (...) dominates all this work: that is the problem of the definition of the French public sector (...) until now, because of very different juridical and economic situations, it has been impossible to find a definition of the public sector which is unanimously accepted' (INSEE 1972, quoted in Bonnetblanc 1985: 12).

In the 1950s and the 1960s telephone policy debates references to *service public* were undoubtedly less frequent than in parliamentary debates both before and after this period. However, the empirical material from the period showed that policymakers' perception of the problems facing the telephone sector was in line with the existing sectoral state tradition. Bureaucrats were striving to achieve 'continuity and quality, equality, and adaptability' of service, whilst meeting requirements of a balanced budget, targets that translated into a search for efficiency and knowledge of real costs. Continuity and quality of service became worse throughout the two decades, especially as demand for telephone connections increased, and this inability to fulfil an essential element of the sectoral state tradition became a major contributor to the calls for fundamental reform in the 1970s.

Equality of service effectively hampered decentralisation measures in the late 1960s, when increased 'commerciality' of the telephone service was implemented through a reorganisation at regional and local levels that did not remove close political control from the central bureaucracy. The adaptability of the telephone service was sought through new financial structures. The central elements of the *service public* concept were therefore significant in shaping policy debate and perceptions among policymakers in the post-war period. Their proposed solutions, however, centred around 'efficiency' and 'rationalisation', both new to French telephone policy debates. They must therefore be said to have enlarged the sectoral state tradition, but, because they were not contradicting ideas from the 1923 regime, they cannot be used to argue substantial change.

Criteria for legitimate decision-making did not change compared to the 1920s.

Public discourse remained communicative, as the varying use of the concept of *service public* among parliamentarians and bureaucrats indicates.

That calls for reform and the reforms themselves were not forthcoming in the period investigated in this chapter shows the power of existing sectoral traditions. If the technocrats gained power in the post-war era they were safely embedded in a tradition in which commercial management of a *service public* was not perceived as contradictory but rather as a question of correct implementation of policies.

Telephone policy in the post-Second World War years

After the financial reform of 1923 the French sectoral state tradition contained ideas about continuity and quality of service, equality, and adaptability, embedded in the concept of *service public*, which during the first part of the 20th century had become the foremost rationale for state action. Commercial management principles were not perceived to contradict the requirements of a *service public*, and efficient service provision was expected to increase the state's legitimate intervention in the sector through its relentless pursuit of implementing the general will and by its management of scarce resources to the benefit of the nation.

Two major developments provide interesting evidence regarding continuity or change in sectoral state traditions in the two decades after the Second World War: First, in parliamentary debates (seen in this chapter in attempts at having

the telephone sector defined as a 'basic sector' in the late 1940s), elements of the sectoral state tradition were frequently referred to, even if such references were absent in non-parliamentary documents. Second, the absence of the *service public* concept from bureaucrats' debate in the 1950s and the 1960s indicates that the concept was not sufficiently detailed to be useful in practical policymaking, despite its central role in legitimating policies towards the general public.

Public political discourse: the continued importance of service public

What direction should I give to the economic effort so that it will respond to the political orientation in which I want to lead France? (...) [M]y main idea is simply that of common sense. Our country cannot accommodate its needs internally and be of importance outside unless its activities are accorded to its time. In the industrial era, it must be industrial. In the age of competition, it must be competitive. In the era of science and technology, it must cultivate research. But, in order to produce much, and to do it so that exchange is facilitated, to constantly, by invention, renew what is produced in its factories and cultivated in its fields, it has to transform itself, and profoundly so. (...) For me, on my level, this is about the *Plan*.

De Gaulle 1970: 141, 143

The French state took on a new role in economic policy in the immediate post-war years, conducting its economic policies through *Plans*, in which public investments in infrastructure were laid out for between four and seven years at a time. During 1945 and 1946 it became "the country's major investor, it became banker and industrialist, and installed a planning system" (Rosanvallon 1990: 243).³ 'Planning' and 'modernisation' became bywords for public policy development, penetrating telephone policy debate at all levels. Whereas

³ The idea about centralised public plans to manage economic dynamics had emerged in socialist circles in the 1930s (Rosanvallon and Viveret 1977:60), and a centralist policy-making trend emerged under the Vichy government (Kuisel 1981), but the post-war era was the heyday of central economic planning.

economists from the 19th century believed that an economic system was governed by 'natural' laws and therefore sought its natural equilibrium, post-war economists and policymakers believed that key parameters, such as economic growth, employment, and purchasing power, could and should be modified and optimised by the state (Rosanvallon 1990: 251). This broadened the scope of the state's legitimate sphere of action.

The high investment necessary for telecommunications infrastructure⁴ made it essential to have telecommunications defined as a basic sector, i.e. among those sectors targeted in a *Plan*. A commission for the modernisation of telecommunications was therefore established in 1947 to develop a programme for improvement of telecommunications equipment, and to study the modernisation of 'specialised industries'.⁵

The modernisation commission's presentations show that increased investment in telecommunications was justified through references to the 'general interest', the centrepiece of legitimacy for *services publics*:

The obvious obstacle to the expected and wanted telecommunications development is the lack of investment. (...) In our country, governmental will has established different telecommunications networks (telegraph, telephone...) at the nation's service through state administration. All financing is therefore through budgetary measures (...). However, because of quasi-permanent financial problems, the public authorities have been obliged to reduce costs and slow investment in sectors that did not appear immediately profitable. (...) The paradox is therefore that the state which subsidises nationalised (and even private) enterprises because of political,

⁴ By the end of the war, the French telephone network had sustained significant damage. Approximately 30 per cent of switches had been destroyed and telephone connections did not meet the needs of the national administration (Diréction des télécommunications 1945).

⁵ The commission consisted of 23 members, comprising representatives from various governmental and public administration offices, employees of the PTT service, and from the industry at large (Carré 1996: 56-57). The 'specialised industries' were radio and television, and the electronic industry (Commissariat Général du Plan de Modernisation et d'équipement 1949b: 5-7).

economic or social consequences of their actions, is not interested in its own administrations responsible for telecommunications and consequently for industries heavily dependent on this activity, and which presents a general interest.

Commissariat General du Plan de Modernisation et d'équipement 1949b: 77

However, the general interest was not the only legitimate reason for giving telecommunications more attention. In addition, 'economic and social life, both nationally and internationally', were seen to benefit from good telecommunications services. This point indicated an increased emphasis on economic competitiveness. Such references to telecommunications policy's role in providing an essential infrastructure for a well-functioning economy were not new, they were also present in the debates in the 1920s. However, the point was more important in the late 1940s, mainly because of increased penetration rates, and was used to justify financial autonomy of the telecommunications services. The question of financial autonomy would reappear in public debate in the late 1960s, then presented as a way to fulfil the tasks of a *service public* within existing economic constraints.

When one rightly considers transport a basic activity it is normal to include all activities based on electrical transmissions and which one has convened to call telecommunications. One might say that these are the nervous system, just as indispensable for economic and social life, both nationally and internationally, as the blood system constituted by transport.

Commissariat General du Plan de Modernisation et d'équipement 1949a: 19

Experience has shown that the telephone service regime, which every year called into question the programmes that could have been established, and which, given the resources, only insufficiently followed up financial and economic projects, was the main cause of the long-deplored paralysis. (...) The commission was not qualified to define the autonomous regime that should be given to telecommunications: the question surpasses it. But it is necessary that the autonomy is not simply verbal, which has been the case too often. It needs to be real.

Girousse [President, Commission for Modernisation of Telecommunications] 1948

Despite these arguments, telecommunications remained outside the basic sectors, so that their economic situation suffered: open credits were reduced from 24.3bn Francs in 1948 to 10bn Francs in 1952 (Carré 1996: 78). The neglect of national politicians left the policy area in the hands of public officials, whose focus on modernisation and rationalisation fundamentally marked the telephone policy debate in the 1950s and the 1960s.

The 1950s and the 1960s: 'efficiency' and 'autonomy'

Parliament's refusal to include telephone policy in the Plan implied that bureaucrats and sectoral experts in practice became sole policymakers. It also all but removed telephone policy from the public agenda. Sectoral state traditions are identified through public political discourse, and cannot therefore be expected to change in the 1950s and the 1960s. This period, however, provides interesting evidence on how bureaucrats' discourse continued to relate to the separate elements of the public ethos, even though the concept of *service public* itself was absent from debates. Furthermore, general ideas about state intervention were challenged in the 'inner circles' of policymaking, which became important for subsequent political debate (in the 1970s and the 1980s).

The telephone service continued to be classified as a *service public*, whose effectiveness was a prerogative for economic growth and modernisation. All *service publics* partook in a broad social compromise, which excluded explicit discussion of the services' organisation as well as their relationship with end-

users.⁶ In 1946, the nationalisation of basic industries, such as gas and electricity as well as several banks and insurance companies, cemented the idea of direct intervention and public service provision (Stoffaës 1995a: 64-72; Rosanvallon 1990: 244).

The *Diréction générale des télécommunications* (DGT) had been established in 1946,⁷ and was paralleled by the establishment of a *Diréction générale des postes* (DGP), which institutionally separated the two branches joined almost seven decades previously. A new term; 'telecommunications', was used to connote both telephone and telegraph services, entailed two important consequences. First, it provided a unifying term for the 'technological' services, and thus gave increased prestige and power to the telecommunications engineers to the detriment of postal workers.⁸ (By the late 1950s, telecommunications would also be profitable, unlike postal services that from this time were running a deficit.⁹) Second, it coincided with a realisation that 'telecommunications

⁶ The absence of public discussion on *services publics*' organisation did not mean that it remained static. From 1938, insurance companies were considered a *service public* despite their private law status, and the trend strengthened with among other agricultural co-operatives in 1946, social organisations in 1956, anti-cancer centres and defence organisations, both in 1961, technical industrial centres in 1963, sports federations in 1974 being considered the same (Chevallier 1997: 28; Demichel 1974: 12-13). The main characteristic of a *service public* remained its general interest, which for political, economic or technological reasons (such as 'natural monopolies') necessitated some form of state intervention. Intervention could, however, be in the form of regulation, controlling private enterprises, or licensing regimes (Waline 1949; Guibert 1956; Trevoux 1938). The variation in organisational form, basic rationale, and juridical regime, for *services publics* grew, resulting in the concept being increasingly vague. This development would eventually be important for the discussion on telephone monopoly in the 1970s.

⁷ Its predecessor, the *Diréction des télécommunications*, had appeared in 1941 by the merger of radio, telephone and telegraph services into one ministerial office, giving the telecommunications sector a unity and coherence it had not possessed before (Libois 1983: 215; Carré 1994).

⁸ Recruitment of engineers had increased between the wars, and from 1941 onwards engineers were given managerial responsibility in local organisations, through the creation of the *ingénieur en chef régionale* (Vedel 1984: 65-67).

⁹ According to cost-benefit analyses for the 1959 budget, postal services had a surplus of 2bn francs in 1955, deteriorating to a deficit of 3.5bn in 1956 and 1.4bn in 1957, whereas the telecommunications service ran a consistent surplus in the same years of 16bn, 11.5bn and 15.5bn, respectively (Ministère des Finances 1958). These numbers are meant as rough indicators only.

policy' was about more than just providing telephone and telegraph services. It was also about creating and sustaining an industry to ensure national independence, which in turn would function as a 'locomotive' for other domestic enterprises, thus entailing economic growth.

Electric communications with or without cable – telecommunications – have seen a formidable development over the recent years. (...) Thus grown, the telecommunications take on, in the life of the Nation, and in its relations with the world at large, an ever-increasing importance.

De Gaulle 1946, quoted in Libois 1983: 228

Despite Parliament's low interest in telephone policy and the resulting discretion in the hands of the public administration, documents from the 1950s and the 1960s illustrate the bureaucrats' adherence to central principles in the existing sectoral state tradition, within existing economic constraints. The fact that Parliament had to approve the PTT budget was seen (by the bureaucrats) to hamper possibilities for long-term planning and much debate focused on potential ways of giving the PTT authorities increased autonomy to develop and implement long-term plans. The financial regime of 1923, lacking clear rules for issuing of bonds and obligations, and for supervising expenditure, proved ill adapted to long-term planning. In 1939 the separate PTT budget had started receiving funds in the form of loans directly from the general state budget (Ministère des PTT 1954). The basic requirement of budget balancing was theoretically not breached, but the PTT organisation built up serious debts towards the general budget.

The requirements of a balanced budget and the ensuing economic problems led to attempts to cut costs and to determine the real costs of the telephone *service public*, thus reflecting a conception among state officials (in line with the

established sectoral tradition), that a legitimate state monopoly in telephone provision should optimise its benefit to society through efficient management procedures within the legislative framework laid down by Parliament. However, the question of organisational autonomy for telecommunications services was increasingly raised in the 1960s, justified by its proponents as a solution to the lack of funding.

Efficiency

In the 1950s, as in the 1920s, lack of increased revenues was met with cost-cutting measures. 'Rationalisation' and 'modernisation' of the state apparatus were seen to provide important savings and 'independent' observers suggested measures to rationalise and increase efficiency (Bourniquel 1949; Emery 1966).

'Efficiency' of service provision is relative, and as measuring efficiency requires a comparative tool, cross-national, and, subsequently, cross-temporal, productivity studies were initiated (Pellenc 1960, 1962; Robert 1953; Vaquier 1966). The studies had no immediate effects for the telephone provision bureaucracy, and questions from the *Sénat* were all but ignored by the ministry (Pellenc 1960). These studies and their subsequent treatment illustrated the conflict between Parliament and government as well as the powers of the bureaucracy in this period.¹⁰

¹⁰ The fourth Republic (1946-1958) was marked by ministerial instability, seen by contemporaries to "underline that the all-powerful Parliament implies a reduction of governmental authority" (Bastid 1954: 145). In the fourteen years from June 1945 to June 1959 France saw 26 governments, ten different PTT ministers, and ten reorganisations of responsibility for the PTT within the government (Cheveigné and Lajarrige 1994: 91-97). Civil servants provided continuity of service, and constituted the second pole of opposition for the government's search for power after Parliament. Civil servants further increased their relative

During the 1960s political awareness of the inferiority of French telecommunications services grew. The services were perceived as 'inferior to what they should be', demand was not being met, they were expensive, equipment bought and employed by the French PTT ministry was inefficient, and its high price served to sustain private industry to the detriment of the nation's interests (Pellenc 1962: 30; see also DGT 1963). Solutions to the problem were sought in changing financial and organisational structures:

Does the PTT administration pay normal prices for its products? Is the French industry competitive? It has not been possible to give a clear answer to this question. The group (...) has not been able to prove that French prices are abnormally elevated (...) But this industry at present definitely suffers from certain weaknesses: modest size; large degree of dispersion; absence of specialisation. A better structure could certainly give a better rate of return.

PTT Ministry 1967: 1

Determining the cost of service publics

The tension between social obligations and economic viability, i.e. the conflict between telecommunications as *service public* and as an industrial and commercial activity, remained problematic for French policymakers, indicating continuity of the sectoral state tradition.

If "the vocation of a service public is not to create profits, (...) [but rather] to provide the best possible service with the least possible input (...) [then, in order for it] not to be a traitor of its social obligations, (...) [it cannot employ industrial economic models in its financial affairs, since this would] penalise the current generation to pay for services that only future generations would benefit from".

Anonymous 1952¹¹

power in 1946 with the introduction of the *statut* for employees in *services publics* (Rosanvallon 1990: 88-90).

¹¹ The authors' argument was that private enterprises would include the need for future investments in their calculation of benefits also, and therefore in the price of their products, so that the current buyers would not only pay for the cost of the actual products they received, but also for the enterprise's capability to invest in future equipment (Anonymous 1952).

Applying industrial economic models to a service public was not without complications and much effort was made to develop cost-benefit analyses for *services publics*.¹²

The observations regarding the complexity [of assessing the costs of services] retain their value: the indications given must be considered only as by order; they do not permit to answer the original objectives until several years of studies have been undertaken and perfections have taken place.

Ministère des Finances 1958: 5

If however 'the current generation should not be penalised' and only pay according to the service received, it was vital to be able to calculate the real production cost of the service. The technical accounting difficulties were not solved by the rationalisation and modernisation effort of the central bureaucracy, but contributed to increasing discontent and frustration with French telecommunications services. The absence of parliamentary debate, however, meant that technocrats continued their search for organisational and administrative solutions within the existing legal framework of a state monopoly provider whose adaptability (central to any *service public*) was traditionally sought through new financing formulae (Chevallier 1997).

Organisational autonomy

Among the first to claim the potential profitability of increased autonomy for telecommunications was the *Association des ingénieurs des postes et télécommunications* (AIT):

¹² Another conflict superposed the practical difficulties of assessing the real costs of services. The postal trade union was categorically opposed to running the PTT services as an industrial activity, because 'investments [in equipment] increases the wealth of the national patrimony and the general budget should therefore cover the costs' (Rédon 1960).

Whether one is talking about buildings, personnel, social services, transport or accountability, telecommunications are in need of a high degree of autonomy, for reasons of both efficiency and economy. (...) The goal is the harmonious functioning of the postal and financial services and the telecommunications services. This objective necessitates the internal autonomy of telecommunications. (...) The increasingly sound economy, the perspectives on the development of international relations, particularly in the European Community, and the industrial, commercial and social blossoming of our country, imply that it needs to be given modern telecommunications systems. If this decision is taken (...) telecommunications should be given a financial autonomy that allows it to be managed as an industrial and commercial enterprise.

AIT 1963: 15-16, 48

The telecommunications engineers also argued in favour of increased economic autonomy to increase investments levels. One should note that the AIT's demands for autonomy were not in any way justified with reference to the concept of *service public*, which was not once mentioned in their report. Rather, the argument was based on a conception of telecommunications services as an industrial activity. According to the AIT, a common postal and telecommunications services organisation would deter investment because of the postal service's constant deficit, so the AIT's call for autonomy was not only to ensure some degree of financial autonomy from the state, but also from the postal service (AIT 1963). Postal service employees not surprisingly opposed such autonomy (Emery 1966: 22). Relations between the two groups of employees were difficult not only because of the different potential profitability, but also because of the low status of administrators within the central bureaucracy. Telecommunications engineers were members of one of the *grand corps* and enjoyed higher prestige than postal workers who were mainly internally trained and lacked formal education (Rosanvallon 1990; Vedel 1984).

The rigidity of the employment status for *fonctionnaires* was thus perceived as a problem, both by the government and some employees, but drastic change (for example, freeing PTT Ministry employees from standard public administration rules for recruitment and advancement, as suggested by one government commission) was considered premature (Emery 1966: 31-32). Although rules for recruitment and employment had changed in 1946, engineers and administrators continued to be suspicious of each other and to argue in favour of an organisational split up until the late 1960s (Emery 1967).

In 1967, calls were made for increased transparency in policy-making and for a separation between policy and regulatory development, and between the operation of network and services (Thatcher 1999: 108; Stoffaës 1995a: 70). Organisational changes took place in 1968 and again in 1971 (Ministère des postes, des telecommunications et de l'espace 1990: 272). A certain reorganisation took place locally, with some responsibility of policy implementation being transferred from the central administration to local organisations to render the local agents more commercially focused (Bertho and Carré 1984: 34-40). The 'commerciality' was, however, constrained by the fact that the telephone service continued to be defined as a *service public*.¹³

Financial autonomy – the CNT

Demand for telephone connections increased rapidly in the 1950s and the 1960s. The DGT was unable to meet demand, and public dissatisfaction grew.

Consequently, throughout the 1960s, there was increasing pressure for fundamental reform of the telecommunications sector. The low quality of the French telephone service was argued to be against the general interest, thus contradicting the sectoral state tradition, and solutions were sought within the existing regime dating from 1923. The 1960s were characterised by changing financing formulae for telephone services,¹⁴ but did not entail changes in the justification of policies.

The *Commission des Finances* proposed in 1967 to create a public corporation (*établissement public*) with financial autonomy, operating under private law, responsible for the telephone service only (separated from the postal service) (Libois 1983: 241). Parliament rejected the proposal, but both issues – separation of posts from telecommunications and financial autonomy for the latter – had been reintroduced on the public agenda. The limited possibility of raising money through international financial markets was perceived as a major obstacle:

¹³ In 1971, *service public* implied “a service of equal nature and equal quality, where the only acceptable reasons for temporary disparities [were] related to equipment or of purely technical nature” (PTT Ministry 1971).

¹⁴ One should note here that the company *France Câbles et Radio* (FCR) was established in 1959, merging former submarine, telegraph and radio cable activities, mainly in the colonies and overseas. The FCR was 100 per cent state owned but operated under private law, which made it more suitable to engage in foreign activities, since other countries would be hostile to allow a French state administrative office operate on their territory. This reorganisation was also part of the modernisation of the state apparatus and was indeed important for the organisation of French telecommunications services. Moreover, the increased international activity created competition and new possibilities for comparison between different countries’ telecommunications industries. French industry in the late 1960s did not appear favourably in such comparisons, which led the PTT Ministry to suggest restructuring and specialisation within the industry. These points did however not concern domestic telephone provision directly and therefore falls outside the scope of this thesis. For the Ministry’s debate on industry structure, see Ministère des P.T.T. 1967a. For further information on the subsidiaries of the French PTTs, see Vedel 1991.

The absence of a judicial personality of the PTT administration, now that state services are given only a budget annexe, particularly excludes use of borrowing possibilities that certain financial organisations offer in international markets.

Guèna 1967

Following Parliament's rejection, several policy options were discussed:

Three solutions [to finding a judicial support for emission of PTT bonds in international markets] can be envisaged: creation of a "Caisse nationale des Télécommunications"; use of the enterprise France-Cables; use of a private law enterprise created for this purpose. (...) The Caisse nationale des Télécommunications could be used not only for the realisation of the euro-dollar project, but also for long-term borrowings. (...) The creation of a limited company can judicially be easily realised. (...) But it is clear that such an enterprise could not possess sufficient "financial surface" to undertake international loans on the necessary scale, and a state guarantee would not be sufficient to remedy this.

Ministère des PTT 1967b: 1-3

The *Caisse nationale des Télécommunications* (CNT) was subsequently established as a 'public administrative body' (*établissement public national*) operating under private law and with financial autonomy by decree on 3 October 1967 (Décret portant création d'une Caisse nationale des Télécommunications). The PTT minister proposed that in order to accommodate (particularly non-French) financial institutions' need for guarantees that the body effectively would be financially autonomous, the CNT's administrative council (consisting of just six members, three from the Ministry of Finance and three from the PTT ministry) would not be obliged to seek the Finance Ministry's approval for all financial decisions.

I fear effectively that such dispositions would render borrowing more difficult by openly displaying the absence of the borrower's legal personality and real autonomy in the eyes of interested bankers and international lenders. Meanwhile, the absence of these dispositions does not in any way question the extent of your ministry's right of control.

Guèna 1967

The final decree did, however, stipulate, after intervention from the *Conseil d'Etat*, that bonds should be issued with the authorisation of the Minister for Economy and Finance (Art. 4). The Finance Ministry thus retained important powers, but the CNT remained outside the annual budget and did not need parliamentary approval (Thatcher 1999: 107). The CNT would issue bonds “to the benefit of the budget annexe of posts and telecommunications” (Art. 2), which effectively amounted to a ‘debudgetisation’ of PTT investments (Cohen 1992: 47).

The case of Germany

The German sectoral state tradition for telephone policy was challenged in the late 1960s. Whereas Parliament retained and even strengthened its formal powers through the 1953 PverwG, they were in practice diminished compared to those of the 1924 regime. The final authority did however remain with legislation. The set of actors perceived as relevant to policymaking remained constant, albeit with a strengthening of the Ministry of Finance’s position.

The post-war telephone policy regime in Germany also resulted in a conflict of central goals, and, therefore, of the public ethos, for the sector. On the one hand, democratic structures and procedures (e.g., parliamentary control) were the new ubiquitous base for legitimacy of state action; on the other hand, the DBP was required to provide efficient management of federal resources. However, the DBP’s efficient management (compared to a private enterprise’s) was hampered by the fact that it was embedded in the general public administration, and it had

to follow bureaucratic procedures in central matters (personnel and recruitment policy, compulsory transfer of funds to federal coffers, accounting systems).

In addition, the fundamental agreement on the sector's product was challenged in the post-war period. Whereas the previous emphasis had been on telephone services' role as infrastructure for the economy, the policy area was now perceived in a broader context of social and industrial policy. Although debates on 'affordable rates' (which could have indicated a stronger perception of telephony as a social good) were absent, increased political attention implied that telephony was perceived as politically more important than before 1933. The 1965 commission's view of 'political burdens' as the root of much of the DBP's problems resulted in a proposal of separation of operational and regulatory functions.

Two different interpretations can be given of the development of the public ethos of the German telephone regime between 1924 and the late 1960s. Kühn (1971) argued that the development from 1924 to the 1960s demonstrated that the 'true' and 'German' approach to telecommunications was to treat it as primarily a business sector like other business sectors, which would entail a certain set of guidelines for practice and operation. This view emphasises the continuity and similarity in the situation in the two periods.

However, cross-national business activity was increasing from the 1960s, as was international telephony, and to some extent data transfer (Genschel and Werle 1992). At the same time, telephone demands from households were increasing, bringing in a new set of customers. As a consequence, *ideas* about

the telephone service – what it was and what it should be – and its *raison d'être* changed, thus challenging the sectoral state tradition. This line of argument would conclude that rather than Germany temporarily ‘diverting’ from its principles about treating the telephone sector as another industrial sector, the new sectoral characteristics resulted in a changed sectoral tradition.

The investigation of ideas in the post-war period reveals that the prominent problems in the telecommunications sector at this time were perceived as legal/organisational and economic problems, more than political ones, even if the organisational problem indeed encompassed a degree of political intervention in DBP matters (see Garbe 1969). The DBP was legally under an obligation to balance its budgets, something it did not manage in the two decades after the war, and the financial difficulties functioned as a trigger for reform demands. Four years after the introduction of the PverwG, the Sondervermögen was seen to provide the much-needed managerial flexibility for the telecommunications organisation (Steinmetz 1957). As stated by the Secretary of State for PTT in 1961, “judicially [the DBP] is a public administration, but economically a real enterprise, which like any private enterprise must manage with its income” (Steinmetz 1961: 425). Five years later, however, the same author describes a different reality (Steinmetz 1966). The DBP’s economic problems were seen as a result of political constraints, and politically determined obligations and prices were perceived to be incompatible with enterprise management and cost covering. The concepts of ‘Daseins-vorsorg’ and ‘Flächenversorgung’, which might be seen as German parallels to French ‘social justice’, ‘equality’ and ‘territorial coverage’ (central elements in

the *service public*), did not play a significant role in German telephone policy debate.¹⁵

‘Cost-based tariffs’ and ‘budget balancing’ remained strong in the German tradition, but the increasing investment needed to maintain and develop installations required more resources than politically could be assured through tariff revenues. The growing importance of telephone services for the population in general meant that telephone tariffs were politically sensitive, especially because of their influence on public perception of costs, which led to severe conflicts between the PTT Ministry and the Ministry of Finance. Investment needs implied that DBP debts should be serviced through public funds, which increased the political power over the institution.

Criteria for legitimate decision-making remained consensus-seeking among a broad set of interests, and thus did not change in the period investigated in this chapter. However, the nature of public discourse changed in the decades after the passing of the PverwG. Although no legislative changes took place, new ideas were put forward and discussed both in government and among other actors in the policymaking environment. In particular, the idea of separating operation from regulation is interesting for the development of the sectoral state tradition. Although a clear parallel can be drawn to the 1920s’ call for separation of ‘business’ and ‘politics’ in telephony, the difference was more than just linguistic, and echoes the broadening of the fundamental idea about the telephone service. The fact that the telephone sector’s main product was

¹⁵ When they figured in debates linked to the DBP, they related to the postal service rather than to telecommunications activities.

increasingly perceived as more complex than mere infrastructure provision (e.g., its importance as a public good), implied that some form of political intervention was legitimate for reasons of social justice. The debate showed no signs of negating the legitimacy of such control and supervision, only demands that these should be clearly separated from the operational tasks of the DBP. Telephony was thus still viewed as a commercial activity for which the manager, i.e. the public administration, needed sufficient distance from political considerations to safeguard efficient management. Even if the ideas did not result in legislative change, their presence in public debate implied that the rules for 'what just is and isn't done' had visibly changed.

Post-Second World War debate on telecommunications policy

German telephone policy debates in the three decades after the Second World War can be organised around three major nodes, the first being the new legislative framework from 1953, the two latter constituted by two expert commissions from 1965 and 1970. Neither of these commissions resulted in immediate legislative change, but marked clear challenges to the sectoral state tradition.

The Postverwaltungsgesetz from 1953 reintegrated the PTT services into the German political system following their management by the Allied powers during their occupation of the West-German territory. The 1953 regime showed a clear continuity with the regime from 1924. The search for legitimate and transparent structures for state intervention resulted in the Postverwaltungs-gesetz from 1953, based on the 1924 regime, which allowed the country to

distance itself from the Nazi period and to enjoy a high degree of institutional continuity in its telephone sector. However, the need for democratic structures and accountability ensured that the PTT sector was organised as a public administration rather than a public enterprise, although it was endowed with its own special fund, the *Sondervermögen*.

The German sectoral state tradition was challenged in the late 1960s, when the conflict between democratic legitimacy (i.e. parliamentary control, transparency and accountability in policymaking) and efficient management became more pronounced. The German sectoral state tradition had viewed the telephone service as an industry much like any other. This, however, conflicted with the new perception of telecommunications services' broader political and social impact, which implied a rapprochement between telephone policy and social policy, foreign to the German tradition. The result was eventually a proposal for separation of operations and regulatory functions. Political considerations related to the broader political impact of telecommunications services could thus be potentially catered for without interfering with the management of the telephone service provider.

The end of the Reichspost

Under the Nazi regime the Deutsche Reichspost had become a part of the war machine, and democratic control had largely disappeared with the introduction of the Simplification of Administration Act in 1934. This abolished the administrative council and gave the Minister for Posts exclusive authority over conditions and tariffs for use of PTT equipment (Gesetz zur Vereinfachung und

Verbilligung der Verwaltung 1934), although it conserved some of the main principles of the 1924 Reichspostfinanzgesetz, such as budgetary and organisational autonomy (Kämmerer 1958). Hence, economic (cost) arguments remained relevant, but “the economic logic in network expansion was reduced in favour of a political one that accentuated equal access to the *Großraum Mitteleuropa*” (Thomas 1989: 16; see also Flanze 1940: 62–63; Reichspostminister 1941).

The end of the German Reich in May 1945 was also the end of the German Reichspost. All normal service stopped, international telephone calls were prohibited throughout the country, and the Allies took control of the remains of the telephone network, fifty per cent of which had been destroyed during the war.¹⁶ Reconstruction started in the autumn of 1945, organised under the former Reichspostdirektionen, supervised by the Allies (Reuter 1989).

The organisational structure of German telephone services largely survived the war. Relations between administration and industry were not heavily influenced by the events of the preceding decade, so that they returned to former practices when the Allies left (Thomas 1995: 277). The administrative structure remained stable at the local and regional level throughout the period of occupation. In the British zone a central administration was formed based on the model of the pre-1933 Reichspostministerium, whereas the authorities in the American zone delegated power to the *Länderrat* to establish an *Oberpostdirektionen* in

¹⁶ The totalitarian military regime had preferred manual switching to automatic solutions, since this was operated on a first-come first-serve basis. It changed the network design and promoted underground cables (see Reichspostminister 1941, Anlage 3), both expensive measures that did not contribute to a modernisation in switching technology, from which Germany suffered for a long time after the war.

Munich (Reuter 1989: 13; Schilly 1987). The administrations in the British and American occupational zone merged in March 1947.

Legal provisions in the new Bundesrepublik

The new Constitution

Telephone policy was integrated into the German political institutions from the establishment of the new federal state in 1949. In October, the Bundestag established a PTT Committee and few months later the Bundesrat followed suit. The German authorities regained control over their telephone system when the PTT administration was transferred back to the government administration. On April 1st, 1950 the powers of the *Hauptverwaltung für das Post- und Fernmeldewesen des Vereinigten Wirtschaftsgebietes* and the *Oberpostdirektionen* in Baden, Rheinland-Pfalz and Württemberg-Hohenzollern were transferred to a new body, the *Deutsche Bundespost* (DBP) (Amtsblatt des Bundesministeriums für das Post- und Fernmeldewesen 1950: 92). The DBP was organised as a Ministry; the *Bundesministerium für das Post- und Fernmeldewesen* (BMPF).¹⁷ The post-war era in German telecommunications can therefore be said to begin in 1950. The fact that it had remained a separate organisation from before the Nazi period gave it much-needed democratic administrative traditions to return to. The new constitution established that the DBP was identical to the DRP from the Weimar republic (Schilly 1987: 510). The main laws from the pre-war

¹⁷ The two abbreviations, DBP and BMPF, were used interchangeably, emphasising that the DBP was an integral part of the State administration.

era were still in place and provided organisational reference for the sector, ensuring institutional continuity.

With this public Act the federal administration for post and telecommunications is established. It is given the name 'Deutsche Bundespost' and will be headed by the Federal Minister for Posts and Telecommunications. (...) For the first time since the breakdown in 1945 we have a form of administration that springs from German law.

Amtsblatt des Bundesministeriums für das
Post- und Fernmeldewesen 1950: 91

In the German constitution of 1949, Article 87 regulated the telecommunications sector and established a constitutional state monopoly in telecommunications services. This confirmed the Ministry of Posts as the executive arm of government in public services, and the DBP was thereby granted exclusive provision of public services. In addition to Article 87, which defined posts and telecommunications as a direct federal administration, Article 73 laid down that they were subject to exclusive federal legislation. "Since amendments to the Basic Law require a two-thirds majority in both the Bundestag and the Bundesrat, Article 87 for a long time provided a decisive source of stability, ruling out both corporatization and privatization" (Schmidt 1996: 47).

The DBP, however, had a somewhat ambiguous role under the new constitution: According to the law of 1924, which was still in force, it was supposed to run a profitable (cost-covering) service, but under direct political control whereby the Bundesrat had to approve tariffs. Wages were still set annually, under a bargaining scheme common to all civil servants, and the main source of income, the telephone tariffs, was subject to political considerations more than pure market-economic principles (Haid and Müller 1988: 157-158).

This institutional design paved the way for a conflict that would mark German telephone policy for decades – i.e., the conflict between the Ministry of Finance and the PTT Ministry. The PTT Minister needed the Finance Minister's approval in the setting of tariffs, but the roles of the two ministries were not easily reconcilable. The PTT Minister was responsible for balancing a budget whose main source of income was users' fees in post and telephone services, the very same tariffs that the Minister of Finance was eager to keep stable because of their impact on inflation.¹⁸ In a letter to the DBP in 1952, the Ministry of Finance agreed to a tariff increase for the DBP services, as long as postage and telephone call charges were excluded.

I hold the opinion that both these DBP services, namely the sending of a letter between different towns as well as telephone calls within towns and between different towns, is not only an expense for nearly all business enterprises, they also play a decisive role for the general perception of the value of money.

Bundesminister der Finanzen 1952

The PTT Ministry, on the other hand, argued that the Minister of Finance was responsible for the DBP budget only to the extent that he was responsible to Parliament, and that the ministry could oppose the budget only on general financial policy grounds. The PTT Minister did not accept a reduction in the financial autonomy of the DBP, and rejected the notion that the post and telecommunications sector executed 'public investments' (*öffentlichen Investitionen*). Rather, it was felt that tariffs should be cost-based in order to bring demand for services economically in harmony with supply (Bundesminister für das Post- und Fernmeldewesen 1952).

¹⁸ Both telephone and postage changes were included in the product basket on which price

Whereas the Minister of Finance used his position as the guardian of public finances, the PTT Minister fought hard to preserve his autonomy. As a practical answer to the conflict, the two ministers signed an understanding in April 1953 concluding that the Minister of Finance's duties were constrained to

the guarantee of

-) observing the (...) current basic administrative regulations, especially with regard to salaries of civil servants and employment projections, as long as it [the Ministry of Finance] takes the special requirements of the DBP as a "business administration" into account,
-) the transfer from the DBP to the federal budget according to §21 of the PverwG [Postverwaltungsgesetz, the Postal Administration Act],
-) the observance of the basic rules of federal financial politics, to the extent that this can be reconciled with the "business administration" nature of the DBP.

Bundesminister für das Post- und Fernmeldewesen 1953

The 'basic rules of federal financial politics' was left open for interpretation but did not exclude the need for the Ministry of Finance's consent in tariff policy, which would prove a major problem for the financial health of the DBP in subsequent decades.

The Postverwaltungsgesetz (PverwG) of 1953

The constitution required subsequent legislation to develop a comprehensive regulatory regime for the PTT sector. The most important piece of legislation to this end was the Postverwaltungsgesetz (Postal Administration Act, PverwG) of 1953 that re-instated the administrative council (the *Verwaltungsrat*).

There was a relatively closed debate from November 1950 onwards concerning the government's draft bill on the PverwG. The draft was initially confidential, stability was calculated.

but was finally made public as a result of parliamentary pressures (Werle 1990: 75-76). With the overall aim of reinstating “normality” after the totalitarian regime, the law had three main objectives:

0. The PTT services were to be administered according to democratic principles, so a democratically elected organ (Parliament) was given final decision-making power;
0. The main principles from the 1924 Act were to be reinstated, in particular the *Sondervermögen*;
0. The PverwG should specify and complement the ‘organisational framework’ laid down in the Basic Law’s Article 87.

Principle of democratic administration

According to legislation prior to the PverwG, i.e., the Simplification Act of 1934, the Minister for Posts was in principle politically responsible to the government and Parliament, but exclusive decision-making power regarding conditions for use of equipment and tariffs ensured considerable autonomy for the Minister. Prior to 1953 there were also no legal guidelines for political intervention in matters concerning technical development and reconstruction. The Simplification Act of 1934 had thus rendered the management of the PTT services undemocratic as well as ill adapted to handle the problems at hand, and remedying this became the government’s highest priority. Keeping structures and decision-making democratic and accountable must therefore be seen as the expressed public ethos of the German state administration just after the war, an ethos that would increasingly conflict with the existing one of providing economically efficient services.

This overarching need for democracy and accountability was rooted in the PTT services' importance for society in general.

Because of the particular need for communications services in the state the PTT services shall not be organised as a separate entity with its own top management, but rather as a proper federal administration under the management of the Bundesminister.

Bundesregierung 1950: 10

Re-instating the administrative council, the *Verwaltungsrat*, became the first and foremost remedy to ensure democratic decision-making in the sector.

This draft reinstates the Administrative Council, in order to offer adequate PTT services to as wide a circle of the public as possible. The administrative council should have representatives not only from the legislative organs, but also from other parts of the public economy, so that a living relation between the DBP and its users is created. (...) The current legislative situation, whereby only two ministers (Minister of Posts and Telecommunications and Minister of Finance) decide the DBP budget, is not any longer acceptable: The Bundespost must come out of the dark!

Bundesregierung 1950: 9

The administrative council¹⁹ should approve of strategic investment decisions and tariff policy, prepare the DBP's budget for approval by the Ministry of Finance, and provide assistance to the Minister of Post and Telecommunications when needed, especially on financial issues (PverwG §12). Although the administrative council still had to be heard, in most cases its powers were drastically reduced from the 1924 Act.²⁰

The Council's tasks under the new PverwG have been likened to those of the board of directors in a private enterprise. However, this 'board' had its hands

¹⁹ The council's members comprised representatives from the Bundestag (5), the Bundesrat (5), the trade union DPG (7), the 'economy at large' (5), and two experts, one financial, and one technical, from the private sector.

²⁰ The 1924 Finanzgesetz had given the Administrative Council decision-making powers over the budget, tariffs and wages, under certain conditions from the Reichspostminister.

ties with regard to income, as long as prices were determined politically.

Representatives from the industry were seen to strengthen the ties between the DBP and its users (Kühn 1971: 15).

It seems practical to ensure that the DBP remains in frequent contact with its users if it shall be able to fulfil the changing demands from transport and enterprises and the needs of the general public. (...) [The Administrative Council] will provide this link between DBP and the mentioned interested parties.

Bundesregierung 1950: 11

The representatives from the Bundesrat also ensured that the 'federal idea' – another heritage from the Reichspostfinanzgesetz – was kept in mind. Each *Land* was given the right to sit in on Council meetings, albeit without voting powers. The principle of democratic administration, therefore, challenged the pre-Second World War sectoral state tradition with regard to the relative power of the relevant actors, as well as to the public ethos, giving more weight to transparency (process) than to efficiency (outcome).

Principle of Sondervermögen

The 'democratic practices' the German telecommunications regime had to return to were those from the 1924 regime and its *Sondervermögen*.

The aim of the present law is to ensure that legal practice changes from that under the 1934 Simplification Act, through replacing it with legislation built on democratic principles and the guidelines laid down in the Basic Law. These regulations therefore build on the experience from the decade between 1924 and 1934 and the applied regulations from the Reichspostfinanzgesetz from 28 March 1924.

Bundesregierung 1950: 9

The post-war regime, however, was not identical to that of 1924. In particular, the PTT service provider was not given the same legal status it had enjoyed in

the Weimar republic. The emphasis on democracy and accountability in post-war Germany ensured that the PTT services were organised as a Federal Ministry (a public administration), which was given less flexibility than its 1924 counterpart (a public enterprise), particularly in setting tariffs.

However, the need for managerial and financial flexibility led to the continuation of a *Sondervermögen* as the budgetary basis for the DBP. According to the PverwG, the DBP was responsible for balancing its budget, and external financial resources (loans) were to be sought only for equipment investment that would increase the value of DBP's assets (PverwG §22; Bundestag 1949). In particular, earnings from post and telephone tariffs should cover running costs. However, setting tariffs was not up to the DBP alone; it was considered a political decision and needed government approval, in particular from the Ministry of Finance (PverwG §17). The draft bill included provisions whereby the power of setting tariffs was delegated to the Administrative Council, in co-operation and understanding with the Minister of Industry, but tariff increases were a sensitive issue in the late 1950s and early 1960s and gave rise to significant conflicts.

Despite arguments about 'democratic procedures' and 'bringing the Bundespost out of the dark', parliamentary control of the sector remained restricted. First, the PverwG left the Minister of Posts and Telecommunications with a high degree of autonomy (in that he was directly responsible to the Chancellor and could thus 'bypass' Parliament). Second, the Administrative Council could plead confidentiality in sensitive cases, again leaving Parliament uninformed (Steinmetz 1957). Such arrangements were reminiscent of those in place in the

very early years of telephone provision, but one should also remember that although confidentiality could be pleaded by members of the administrative council, they were representing the Bundesrat and the Bundestag and were responsible for ensuring that PTT policy was conducted in harmony with other policy areas such as industrial, financial, transport, and social policies. Policy-making practice responded to the dilemma of reconciling parliamentary openness and public administrative procedures with the call for managerial flexibility and commercial secrecy.

Despite the clear similarities and institutional heritage from the 1920s, there were two, partly conflicting, differences between the situations in 1924 and in 1953. First, in the 1920s debates had encompassed the possible division of political and managerial/business issues. This issue was not raised in the 1950s. The Bundesminister was placed at the apex of the hierarchy, safeguarding the link between politics and management. Second, telecommunications were defined within a broader socio-political frame than in 1924. According to art. 2 of the PverwG, German political priorities in the areas of transport, industrial, financial and social policy were to be considered by the PTT Minister in his work. Just as the PTT Minister considered broader social and political goals, so the PTT organisation was more closely intertwined with the rest of the public administration in 1953 than in 1924 (Garbe 1969), with the consequences for the public ethos as discussed above.

Subsequent telecommunications debates in Germany tried to come to grips with the nature of the DBP, and methods for handling the persistent conflict between its public administration and commercial characteristics. Despite the legal

clarity about it being an integral part of the government administration, its *Sondervermögen* and financial arrangements rendered the DBP unquestionably commercial, a trait it had in common with other public services (e.g., gas, electricity and railways). Nevertheless, the classification of the organisation as a commercial enterprise was not straightforward;

In this way [with its separate budget that was required to balance] the service provider [the PTT Ministry] was made autonomous, but only organisationally. The PTT administration remained what it had always been: a state administration.

Eckener 1952: 99

The main point of contention was the extent of 'political' (i.e. not purely commercial) influence on DBP business, particularly on tariff levels, with the conflict between the PTT Ministry and the Ministry of Finance at its core.

Despite the clarifying agreement from April 1953, the relationship between the Ministry of Finance and the DBP remained troublesome. Tariff increases continued to meet political opposition, but were nevertheless necessary to finance network investments.²¹ "The financing of large and extensive investments especially in telephony is conducted as in private enterprises through the different paths the capital markets offer" (Steinmetz 1961: 425).

Most of these investments were financed through short-term loans rather than revenue from increased tariffs, and so the DBP quickly accumulated significant debt, serviced through public funds. Cross-subsidisation and transfers from a profitable telephone service to a loss-making postal service meant that postage

²¹ Local telephone tariffs remained unchanged from 1949 until 1954, and thereafter again for another nine years until 1963. Telegram and telex tariffs remained stable throughout the period 1949-1962, but long-distance call tariffs changed more frequently, in all 10 times from 1949 until 1963. They did however not always increase, but sometimes decreased and their (nominal)

income was not covering the costs of the service, whereas revenues from telephone operation could not be used to invest in new technology and networks (Steinmetz 1961; Schubel 1957; Stücklen 1960; Stücklen 1961). The Ministry of Finance also questioned the viability of the DBP's borrowing policy:

This unusual increase in investment needs in my opinion to be considered carefully, as the rate of return strongly decreases and the rationalisation effect sinks. (...) The lack of balance between revenue and expenses is unsustainable in the long run. Every effort for a real improvement of the financial situation of the DBP is doomed to fail as long as this situation remains.

Bundesminister der Finanzen 1963a

Investment needs were high, not only as a result of the devastation during the war, but also because of large-scale growth in traffic.²² Together with the weight of existing debts the financial situation of the DBP became so bad in the first half of the 1960s that politicians and the Ministry of Finance alike agreed to increase tariffs (Hildebrand 1984: 129).

Even if one were to increase capital in a way that would significantly decrease the interest payments, a continuation of the current tariff policy could not ensure lasting profitability. Showing to the situation regarding annual interest payments, salaries, compulsory contributions to the federal budget, liquidity, need for assets, and cost-based tariffs, (...) all conditions for a tariff increase are in place.

Bundesminister der Finanzen 1963b

Tariffs were increased in spring 1963, but did not give the expected extra revenues. The difficulty of the DBP was partly that in practice, its tariffs were not cost-based. There is evidence that the Ministry itself argued for cost-based tariffs in the late 1950s, whereas the Ministry of Finance was reluctant to

price in 1963 was only 87 per cent of the 1949 level. Tariffs for postal services showed a similar development (Steinmetz 1966: 109, 114).

²² The number of calls had increased with 78 per cent between 1953 and 1958, with a further 46 per cent from 1958 until 1963, and continued to show strong growth into the 1960s (Stücklen 1960: 9; Steinmetz 1961: 427; Verwaltungsrat 1964).

renounce the principles of overall price stability (see Stücklen 1960; 1961). In part, the problem was that the telephone service's surplus (running to DM800 million in 1964) went to cover the huge deficit of the postal services (Aschoff 1966: 387). When the financial situation in the DBP worsened, however, the Ministry of Finance also spoke in favour of increasing tariffs, as well as linking them more closely to costs.

The Sachverständigkommission 1965

The organisation of the Deutsche Bundespost in the 1960s was formed around classic principles of public administration. The Minister was responsible on behalf of the government to Parliament, and directly to the Chancellor, and also controlled the DBP's actions. Scholars at the time were voicing worries about public administrations being 'captured' by industry, and the classic organisational structures met with distrust from many sources and spurred countless demands for 'rationalisation' measures both inside and outside government (see Schubel 1957; Stücklen 1960; 1961). This was reflected in public debate about the best possible organisation of the telecommunications sector.

The continuous worsening of the financial situation led the Bundestag in 1964 to establish a commission to 'investigate whether the Deutsche Bundespost in the long term is able to fulfil its tasks in an optimal way and without deficit' (Böhm 1966: 343). The 'Sachverständigkommission' had seven members: one technical and one financial expert, one trade union representative, two members from the 'economy at large', and two from academia. They were commissioned

to analyse 'all factors relevant to the financial situation of Deutsche Bundespost' (Böhm 1966: 344).

Although poor financial performance was the triggering factor for the commission, it was the intertwined roles of commercial and state administrative institution that formed the core of the commission's discussion. Various factors were seen as decisive for the problem and its solution. In the main these were: the level of cross-subsidies between telephone and postal services, or more generally tariff policy; *politische Lasten* ('political burdens', i.e., obligations of a non-commercial nature: economic obligations towards former *Länder* banks, deficits from the postal cheque and banking services, pension obligations to old-age pensioners and war victims, special services to the military and for defence purposes, and special rates for distribution of newspapers (Böhm 1966: 355)); fund transfer from the DBP revenues to the federal coffers; organisational structure; personnel and recruitment policy; accounting systems; and research organisation and funding (Böhm 1966: 346). Apart from the three latter points, which were relatively technical (accounting systems and research) or uniquely linked to the postal services, the factors identified as contributing to the problem were all connected to the level of political interference and influence over DBP matters.

In its report the commission gave recommendations on all the main problem areas and concluded that a "far-reaching reform of the Postal Administration Act was necessary to improve and safeguard the economic health of the Bundespost" (Duch 1991: 152). Their most radical suggestions were:

- fundamental reform of the PverwG, including a splitting of the DBP's supervisory and operational roles;
- restructuring of the financial and capital structure of the DBP;
- introduction of a cost-covering tariff policy (Bundesregierung 1965: 25).

Had the commission's suggestions been followed, the DBP would have changed status from a public administration to a federal '*Anstalt*', a more autonomous organisation, with its proper organs and budget. The commission proposed a top management (*Vorstand*) consisting of five members appointed by the Administrative Council and responsible for the daily management of the enterprise, but subject to decisions from the Administrative Council. This latter organ would, in turn, be slightly smaller than the existing council, with one third of its members being independent individuals from industry and science. There would be no need for a fully-fledged PTT Ministry, and the role of the 'responsible Bundesminister' (*zuständigen Bundesminister*, which implicitly was not a separate PTT Minister) would hence be narrowed down to overseeing that federal principles were followed, and to ensuring that government was consulted when needed (Böhm 1966: 359-360). The 'responsible minister' would thus take on the role as guardian of political principles and leave service provision to a semi-autonomous organisation (Arndt 1970).

This would have been judicially feasible in Germany because according to existing legislation "[t]he PTT administration is not an administration with exclusive obligations (*obrigkeitliche Verwaltung*) but rather a public service provider which fundamentally can decide its own methods of action. The PTT

services therefore maintain an important freedom of organisation" (Arndt 1970: 10).

The Sachverständigkommission's report was an attempt to establish a clearer commercial character in the DBP and made several references to political influence being damaging and "a stranger to business" (Böhm 1966: 345, 346, 353). It suggested separating postal services from the telephone service financially in order to address the problem of non-transparent cross-subsidisation of the postal services that aggravated the DBP's financial problems (Böhm 1966: 345). The report also stated that the long-term goal of tariff setting was to approximate prices to those in other European countries, and emphasised the need for better operation of local networks and improved medium to long term capacity planning (Böhm 1966: 353).

The government was sceptical of many of the commission's proposals, particularly regarding the new organisational and financial structures of the DBP. Some of the recommendations, such as improved use of local networks, were met with the claim that the DBP had already done as the commission had proposed (Bundesregierung 1965: 12-13). Others resulted in a demand for further investigations, such as the suggestion to finance the *politische Lasten* through another budget. The whole process indicated that the PTT Ministry and the DBP felt the commission to be an attack on its own performance rather than 'constructive criticism', – something that would increase resistance to change within the DBP itself.

Interestingly, the main trade union, the DPG, was positive about the initial committee proposals on most points, including the need for financial restructuring and abolition of the *politische Lasten* of the DBP. These tasks were broadly referred to as political goals of the federal state that interfered with a strict business-approach to the running of the DBP. (This trade union's approach was in stark contrast to the situation in France.) However, the DPG emphasised that financial restructuring could be done *only* if the government financed the 'political obligations' and reorganised the transfer from the DBP to the federal budget (DPG 1966: 8).

By postponing making a decision for three years through the establishment of another expert committee, the government finally concluded that

the PTT Minister has come to the conclusion that the goals outlined by the commission [in 1965] could be reached within existing organisational forms, and that the Bundesregierung is of the opinion that the complex of the problem should be treated as part of an exhaustive administrative reform.

Kühn 1971: 21-22

As in the discussion in France, elements in the German political debate saw modern management principles and flexibility as the means to ensure a strong economic development and technological innovation in the sector. Although the major contribution of the expert commission of 1965 was identification and highlighting of problems more than the provision of solutions, its efforts resulted in certain political concessions. In 1969, the government declared that the DBP would be more capable of fulfilling its obligations if political control and intervention was reduced to a minimum.

The Kommission Deutsche Bundespost 1970

The Sachverständigkommission of the mid-1960s did not have any immediate organisational effects, but it was nevertheless a sign of a profound development and change of ideas about telecommunications in Germany. Increasing fragmentation of demand and economic difficulties were obvious driving-forces for this change, but they did not result in a simple change of organisational structure. Telecommunications were increasingly seen to suffer from 'political intervention', a point admitted even by the government. In order to find organisational solutions, the government established a new commission, the 'Kommission Deutsche Bundespost', set up in 1969 (Bundesregierung 1969).

The 'Kommission Deutsche Bundespost' was larger and represented a wider variety of interests than its predecessor. It was meant to continue the debates initiated by the Sachverständigkommission and two of the new commission's members had also been members of this earlier commission. The will to reduce the level of political intervention was clear in the definition of the commission's task: "The post and telephone administration would better fulfil its obligations towards the community if ministerial supervision were constrained to the absolute minimum" (Laue 1971: 104).

The main task of the commission was to discuss and recommend a new organisational form for the DBP. In light of this, four theoretical possibilities were outlined:

- i) Maintaining the status quo;

- ii) Establishing a public enterprise under a separate federal administration.

Here, the enterprise would be responsible for service provision, whereas the government would maintain its supervisory (regulatory) function;

- iii) Making the DBP into a judicially responsible autonomous enterprise under public law;

- iv) Privatisation of the DBP (Laue 1971: 105).

Options i) and iv) were excluded because they were politically unfeasible, and option iii) would require a change in the Basic Law, which was equally improbable. It was hence alternative ii) that formed the basis for the commission's subsequent discussions.

There were clear links to the 1924 Reichsfinanzgesetz – increased autonomy for the public service provider was argued on the basis of economic and political principles, with poor financial performance being the triggering factor. Even though the 1924 text had been used as basis for the post-war regime from the early 1950s, over the following two decades it had become clear to policy-makers that keeping the service provider part and parcel of the government's administration was unsustainable.

When presenting its report in May 1970, the commission emphasised that the proposal was not a polished reformulation of administrative guidelines, but rather a “model aiming to clarify and illustrate the fundamental problems at stake” (Laue 1971: 111). However, its ideas about organisational structure were similar to those of the Sachverständigkommission of 1965: it proposed to split supervisory (regulatory) and operational responsibilities, and to make the DBP a

public enterprise with its own management institutions run according to 'private sector principles'.

[T]he future goal of the DBP cannot be reduced to simple economic profit or profit maximising, because the need for profit is judicially due to the state's role as provider of public goods (*Daseinsvorsorge*), and economically due to the state's service provision capabilities. Ensuring that industry and households are provided with the best possible PTT infrastructure is the responsibility of the state; service provision itself is not a political task.

Laue 1971: 107

Despite evidence that several actors demanded change, Parliament did not act on the commission's proposals to change the PverwG. In particular it rejected making the DBP a public enterprise, referring to 'constitutional problems' related to "erasing the distinction between direct and indirect public administration" (Bundesrat 1970). Hence, the first decades after the Second World War left Germany without fundamental legislative reforms of the telephone service, even though several of the basic principles and ideas had been challenged during the period.

Conclusion: Sectoral state traditions in the post-war period

This chapter has treated telecommunications policy debates in the post-Second World War period until c. 1970/ The analysis has shown that the sectoral state traditions in both countries were seriously challenged (although more profoundly in Germany than in France), but that by 1970 it was possible to identify clear similarities with the sectoral state traditions of the 1920s. The findings are summarised in table 3.

	France	Germany
Ultimate authority (UA), Relevant actors (RA) and their relative power	UA: Parliament. RA: Parliament, PTT administration, Ministry of Finance (despite that Parliament was neglected).	UA: Legislation. RA: PTT administration, Bundestag, Länder, industry, Ministry of Finance, Verwaltungsrat
Public ethos	<i>Service public</i> : continuity, equality, adaptability. Rationalisation and efficiency translation of these principles into practical policymaking.	Democracy and transparency at start of period. Changing to cost-efficiency and separation of political and managerial issues. Separation of operation and regulation.
Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Consensus-seeking among a broad set of actors. Coordinative discourse.

Table 3: Summarised findings from the post-Second World War period

In France, the ultimate authority of Parliament was not challenged, despite the institution's low level of attention to the policy area. The set of actors perceived as relevant to policymaking remained constant. The fact that telephone policy was all but absent from public debate in the 1950s and the 1960s, and the practical consequence of the increased *de facto* relevance of public officials and sectoral experts, do not alter the conclusion of stability in the sectoral state tradition. Sectoral state traditions are identified through public political discourse and no evidence has been found to suggest that such discourse at any point challenged Parliament's ultimate authority.

In Germany, the ultimate authority remained with legislation. Due to demands for democratic structures and transparency Parliament was given much formal authority over policymaking by the 1953 PverwG, but the public discourse by 1970 again called for increased autonomy of the public service provider. The set of actors seen as relevant to policymaking remained constant, and continued

participation by these actors was important for the legitimacy of policymaking, in line with the sectoral state tradition of the 1920s.

The public ethos in France remained *service public*. The introduction of concepts such as 'autonomy' and 'efficiency' is argued to be an extension of the existing sectoral state tradition and a translation of the principles contained in a *service public* into practical policymaking. The initial French conception of the problems in the telephone sector was that lack of efficiency, which was the root of the poor state of affairs, could be solved through centralisation of planning and decentralisation of implementation – both of which had been present in the debate before the war. Contemporary technocratic debate focused on accounting methods and organisational development, reflecting the view from the 1920s that public intervention and monopolisation could only be legitimately defended if service provision was of high quality, equally provided throughout the territory, and cost efficient to ensure optimal use of public resources, and that the state was the only organisation that could be guaranteed to act in the general interest. In the late 1960s defence of efficient public management was less frequently heard in public debate, but opposition to the contemporary model was not yet loudly voiced in public. In fact, the proposition in the 1967 budget negotiations to place the telephone service operator under private law provided a rare example of parliamentary debate about the status of the DGT. The next time a parliamentary report suggested a change in the service provider's status was in 1974 – and then the suggestions caused great social unrest because of its potential impact on the PTT employees' status. The issue was subsequently laid to rest as politically hazardous, and remained so for a decade.

Also the German public ethos of efficient management of infrastructure provision was challenged in the period studied in this chapter. The problem of the telephone service was initially seen as a legal/organisational and economic problem. In the 1960s there was a clear new emphasis on the perceived negative impact of political considerations. Factors that had been tolerated immediately after the war, such as the Ministry of Finance's power and its ensuing conflict with the PTT ministry (particularly regarding tariffs, compulsory transfers to federal coffers, and subsidising of postal services), became more difficult to bear and were seen to cause much of the telecommunications services' problems throughout the 1960s. Ideas launched in the public debate were to separate tasks perceived as 'political' and those seen as 'non-political' or 'managerial', in particular to separate the operation of the services from their regulation. The political climate was not mature enough for these ideas to produce legislative change, but they were debated openly.

The fundamental change in Germany was thus one where certain tasks of the public telephone service operator were seen as incompatible with its requirements to act as a commercial enterprise, and that these incompatibilities could not be handled within the existing organisation. A political separation of tasks was required to ensure that the federal state provided the infrastructure as efficiently as possible, thus confirming the public ethos from the 1920s.

Criteria for legitimate decision-making and discourse did not change in either case. Thus, while France's telecommunications policymakers continued to debate telecommunications as a *service public*, telecommunications in Germany remained a vital part of the federal infrastructure and thus fundamentally linked

to economic policy, indicating stability and continuity in the sectoral state traditions for telephone policy in both France and Germany.

Chapter 5

Changing the status of the public operators

The focus of this chapter is the telecommunications debates of the 1970s and the 1980s leading to the reforms of 1989 in Germany, and of 1990 in France. In both countries, some competition was introduced (e.g., for mobile services, satellites, terminal equipment, and value-added services), and the former telephone service administrations were transformed into publicly owned corporations, thus changing a 100 years old *status quo*.

The sectoral state traditions were challenged both in France and Germany. This chapter shows, however, that although many of the elements in the new telecommunications regimes in effect contradicted traditional practice, public discourse continued to refer to the traditional elements in the sectoral state tradition, implying continuity in the ideas legitimating state action. The public ethos of *service public* in France remained central to legitimating state action, despite its content being dramatically changed. In Germany, discourse emphasised the state's responsibility as economically efficient manager of society's infrastructure, in line with existing traditions. The development in the 1980s therefore paralleled what had happened in the 1920s in that central concepts constituting the sectoral state tradition were adapted to new technological and economic realities.

Both France and Germany were faced with similar external pressures for change in the 1970s and the 1980s. The period was characterised by increasing demand

for telecommunications services and the development of new services. In 1987, the European Union issued its Green Paper on Telecommunications. This was, in effect, the first major public document on the possible future telecommunications policy within the EU, although European industrial firms had been engaged in debate since 1984 (see Eliassen, Mason and Sjøvaag 1999). EU legislation from 1988 and 1990 opened the terminal equipment and advanced services markets to competition, and established the principle of open network competition. Some of the directives were issued directly by the European Commission rather than the Council of Ministers, which made France take the European Commission to court, only to be overruled. Member states were, therefore, obliged to implement the EU legislation, thereby introducing measures that gave new impetus to national debate, particularly in France. Despite these similar external pressures, national policy debates showed clear continuity with their respective sectoral state tradition.

The case of France

Political consensus about the unsustainability of the telecommunications framework in France developed during the late 1980s. This chapter's investigation of political discourse shows that the sectoral state tradition framed the debate, and that the concept of *service public* retained its central place in legitimating state action, whereas new actors were seen as relevant to policymaking, and criteria for legitimate decision-making were changed by the novel 'open consultation'.

Parliament's *de facto* authority over policymaking was challenged by supranational legislation from the EU in the 1980s. Although national government officials participated in the preparation of directives issued by the Council of Ministers, several of the central EU directives were issued by the European Commission under the auspices of the then Article 90¹ of the Treaty of Rome.

The French state challenged the European Commission's powers to issue the terminal directive in the European Court of Justice, illustrating the continued perception of Parliament as ultimate authority in telecommunications policy.

France's challenge was overturned by the Court (Scherer 1995: 5-6), after which the European institutions were presented as the 'scapegoats' for new policies, seen as 'inevitable'. This continued reference to the 'inevitability' of the liberalisation process, not only as a consequence of technological advances, but also as result of EU legislation (even more pronounced in the 1990s, as will be seen in chapter 6), can thus be interpreted as evidence of the profound difficulty in French policymaking circles to accept another institution than the French Parliament as final authority and source of legislation, which effectively contradicted the existing sectoral state tradition. National policymakers were, however, justifying the new policies by emphasising their role in ensuring provisions in European legislation that allowed the central elements of the French *service public* to be safeguarded at home, as well as being extended to other parts of the European Single Market.

¹ The article (renamed Art 86 after the Treaty of Amsterdam) reinforces the EU's rules on competition and permits the Commission to address directives or decisions to member states in order to ensure compliance (Kamall 1996: 89).

The set of actors seen as relevant to policymaking changed in France in the 1980s. Employees, telecommunications users, and industry, gained a new position through the consultation procedure used by the Prévot commission.

The *service public* concept retained its place as public ethos in French public political discourse, despite that the content of the concept changed. In the 1980s, as this chapter shows, it went from being a ubiquitous but badly defined defence of the *status quo* to being discussed in greater detail, emphasis being placed on continuity, equality, and adaptability, as well as its role for France's international competitiveness. Even in the late 1980s and early 1990s, however, as the Prévot report showed, public perception was still that only a publicly owned operator could legitimately be trusted with service public obligations, and parliamentary control remained a legitimate argument for ensuring citizens' rights in face of private enterprises' profit-seeking and cream-skimming activities.

Criteria for legitimate decision-making changed in the late 1980s. Extensive consultation before official government policy was declared, which happened in the preparation of the legislative change of 1990, was definitely a novelty in French policymaking. Direct open involvement of a plurality of recognised interests negated a century-long tradition of closed decision-making circles where the government communicated policy decisions to the public as well as to industry at the end of an elitist, closed process. It is not suggested here that 'inner circles' of power ceased to exist, simply that the consultation procedure

was fundamentally new in the French sectoral state tradition and, as such, deserves attention.

The consultation procedure thus marked a change in what was considered legitimate decision-making procedures. Furthermore, it changed the nature of public discourse from purely communicative to more coordinative, involving a broader set of knowledgeable actors whose participation was central to the legitimacy of the new regime.

The situation prior to reform: telecommunications policy in the 1970s

The concept of *service public*, which had been defined “the activity of a public entity aimed at satisfying a need in the general interest” (Laubadère 1970: 40), became increasingly vague. Private enterprises started undertaking *service public* tasks, new organisational forms appeared within the public administration, and conflicts arose between administrative law and general competition law for organisations enjoying monopoly powers in certain areas while being exposed to competition in other areas. The myth of *service public* and its value as political symbol however remained strong (Chevallier 1997).

Public debate in the 1970s increasingly recognised the need for fundamental reform. Basic ideas about ownership and organisation were questioned, and the appropriateness of the state administration as sole and all-powerful provider of telephony as well as regulator for the industry was discussed (Bonnetblanc 1985: 25-29). Parliament was not prominent among the discussants, which

mainly comprised the DGT, the government, large business users, and trade unions (Thatcher 1999: 125). Parliament, although adopting the PTT budget annually, did not show any significant interest in the policy area, and was not presented with any legislative proposal for change until the mid-1980s, when the laws on the rights and obligations of the public administration (1984) and audiovisual communication (1986) were passed.

Changing environment of telecommunications services

The international environment for telecommunications services provision changed gradually throughout the 1970s, resulting in a perception among politicians across the political spectrum that the contemporary state of affairs, whereby the PTT organisation remained a public administration holding a *de facto* monopoly, was untenable. Four main incentives for change operated:

- The DGT as well as the PTT Ministry was in reality no longer a traditional public administration providing a *service public* because
 - The DGT was, contrary to 'classical' public sector institutions, operating with an inherent view to profit. Cost-covering requirements and budget balancing meant that prices, at least in theory, were related to costs rather than solely to politically determined prices.
 - The budget annexe and cost-basing requirements made it possible to measure success in economic terms, rather than only

output-related, as would be the case for 'standard' *services publics* (such as health services and education).

- Some of the DGT's services, particularly the new ones, followed market principles where consumers' demands and their willingness to pay largely determined the DGT's provision.
- Since 1979, the organisation increasingly recruited from external sources, thus breaking with public administrative traditions (Bonnetblanc 1985: 4-13).
- Digitalisation implied that the formerly different sectors of telecommunications, information technology, and broadcasting would converge. The information technology sector was already exposed to competition and thus provided a legitimate entry point for private firms to break the telecommunications monopoly. Satellite and cable technology undermined the actual possibility of maintaining control over all signals received within national territory.
- International telecommunications regimes became more competitive, both judicially with the deregulation of the telecommunications markets in the USA, the UK and Japan, and in practice because of the new technological possibilities.
- The users of telecommunications services became increasingly sophisticated and demand fragmented. Business users in particular demanded tailor-made systems and seamless communications, which were difficult, if not impossible, to provide as long as service provision was undertaken by a public administration.

Increasing political awareness

The telecommunications sector had, because of its delayed inclusion in government *Plans*, received little attention from Parliament in the 1960s and the 1970s. This had increased the bureaucrats' *de facto* power, although Parliament's ultimate authority was not formally questioned. In 1970 the establishment of the *Caisse nationale des Télécommunications* had given the service provider greater financial flexibility (see chapter 4). The DGT's internal organisation had changed in 1968 and 1971 (Bertho and Carré 1984: 34-40; Ministère des postes, des telecommunications et de l'espace 1990: 270-273), with the particular aim of commercialising the local levels of the organisation, but the effects were hampered by what was perceived as the conflict between commerciality and the principles of *service public*.

Political awareness of telephone policy increased from 1967, when Giscard d'Estaing through the Commission des Finances had proposed to establish a '*Compagnie Nationale du téléphone*' as an industrial, commercial public corporation with financial autonomy operating under private law (Giscard d'Estaing, quoted in Libois 1983: 241). Parliament rejected the proposal, but the issue of institutional reform of the telecommunications sector was on the public agenda. "It is difficult to envisage that one can continue to administer a large organisation whose functions are partly those of a bank, of a transport and distribution company, and an industrial producer, with the traditional public administration rules and norms" (PTT Minster Galley 1969 quoted in Libois 1983: 241).

In 1974 the *Commission de contrôle de la gestion du service public du téléphone* [Control commission for the management of the telephone service public], discussing the organisation of the PTT services, concluded that privatisation of the telephone services organisation (i.e., making it a profit-seeking enterprise; Corrèze 1974: 55) was not a feasible option, and that the best solution in the given circumstances was to create an *établissement public*, as proposed by the Commission des Finances seven years previously (Corrèze 1974: 154-155). Such a move would, however, have threatened the employees' status as *fonctionnaires* (civil servants), and the proposal was met with large-scale strikes in October and November 1974.

The government argued that contemporary institutional arrangements were appropriate because the important '*esprit de service public*' could only be assured in an organisation similar to the existing one (see Chapuis 1987: 72-73). Furthermore, the 1923 regime was seen to provide sufficient flexibility "within existing political constraints" (Lelong 1974: 6779), i.e., the strong opposition among employees to a change in their legal status away from that of *fonctionnaires* (civil servants), and the perceived need for parliamentary control over telecommunications services provision. The question of employees' status remained problematic for French policymakers throughout the liberalisation process, and effectively hindered fundamental reform of the PTT organisation for more than a decade (Thatcher 1994: 457-458). As long as public debate and official statements neglected the opportunity to frame potentially radical new policies according to accepted and legitimate reasons for state action, stalemate remained.

The impact of convergence between telecommunications and information technology was not lost on French policymakers. The government commissioned a report on the future possibilities of the growing information technology sector, which was presented in January 1978. The report promoted state pragmatism and regulation:

If France does not find the correct response to its new and serious challenges, its internal tensions will remove its possibilities to master its destiny. The growing information society is at the heart of the crisis: (...) in relations between the state and civil society.

Nora and Minc 1978: 9

The new technology was thus perceived a threat to the social consensus, as well as to national economic independence. Whereas the new technology would increase productivity, it would also threaten the sovereignty of the state through the impossibility of controlling communications (particularly through American firms' market power concerning transmission of data; Nora and Minc 1978: 13). The solution, according to the report, was to be pragmatic and use (legislative) direct intervention to protect French industry in international competition, and to regulate to protect smaller firms threatened by larger enterprises (Nora and Minc 1978: 12-14).

Protecting French industry and the French economy were also central to the Socialists' programme when they came to power in 1981, albeit with initially different methods (Hall 1994: 175-178). The socialist government renationalised large firms, among them several in the telecommunications and electronics sectors, but recognised that fierce international competition necessitated a pragmatic approach to management methods and control structures in these

companies. The government's principles were to allow for managerial autonomy whilst maintaining political control through 'long-term contracts' (*contrats de plan*). Such contracts were perceived as allowing necessary political influence to ensure the enterprises' constructive participation in industrial policy, thus preserving the final authority of Parliament, without hampering their commercial activity (Ministère de l'industrie et de la recherche 1983: 46-53).² The *contrats de plan* constituted a political instrument that had been politically legitimised with reference to Parliament's final authority, in line with the sectoral state tradition, and that provided the possibility to enhance commercial flexibility of the state-owned France Telecom after its corporatisation in 1990.

Legislative action

Parliament had one of its relatively rare occasions since 1950 to debate telecommunications policy when in 1984 it adopted the 'Law on the telecommunications *service public*' [Loi relatif au service public des telecommunications], introduced to redress the balance of rights and obligations between the public administration and users. The old conflict between Parliament and public administration again became apparent when Parliament, although it acknowledged the improved situation of French telecommunications over the previous decade (Haye 1984: 4-5), portrayed itself as prime defender of

² The nationalised industries were re-privatised under the Right's government privatisation programme between 1986 and 1988. However, this privatisation programme excluded public service utilities and monopolies as well as firms with poor financial performance. Only firms involved in the competitive sector were involved (Bauer 1989: 51; Feigenbaum 1990: 273).

individual citizens' rights in face of an old-fashioned and arrogant (albeit competent) administration.

In addition to the persistence of a non-satisfied demand, limited surely, but all the more sensitive because of today's indispensability of the telephone as working instrument and a commonly used good, thus of utmost importance, legislative affirmation of the right to access to telephone is strategically important for the rebalancing of rights and the relations between the public administration and users. This principle must accentuate the administration's consciousness of its prime vocation as *service public* – it has not always erased the memories or the habits of the regal prerogatives from the 19th century; and can assure the user elementary rights, which too often become opaque because of the complexity of the service and because of a sentiment of total dependency vis-à-vis the administration, whose quality is not being questioned.

Haye 1984: 10

Parliament's need to assert its influence and criticise the PTT administration did not, however, disguise the fact that the real power over the policy-area lay within the DGT and the government, and that the legislator played a very limited role (Thatcher 1999: 188). Despite Parliament's limited effective power, the debate provided information about the contemporary conception of telephone policy issues, showing the continued adherence to the concept of *service public*, as well as a growing understanding of the impact of the incentives for change.

The first principle [of the current legislative proposal] is the will to open for new users' rights. (...) It was indicated [in a letter from president Mitterrand to the telecommunications services users' group in April 1981] that the notion of *service public* needed to be introduced in legislation. (...) The second principle (...) is the will to make the *service public* capable of fulfilling all its missions.

Mexandeau 1984: 2918

[This legislative project] was absolutely necessary. Necessary because the legal framework (...) must adapt to the new technologies that have appeared during the last decade. Necessary because it was time to improve the rights

and obligations of the users, which until now had been in a disadvantageous situation vis-à-vis the administration.

Bonnet 1984: 2920

The law of 1984 was the first to state explicitly certain principles for the telecommunications *service public*; previously, principles such as continuity and equality of service, had been derived from general *service public* jurisprudence, and the PTT Code made no reference to the *service public* aspect. The 1984 law, therefore, “contribute[d], along with other dispositions to improve the protection of *service public*, to ameliorate the situation of the user” (Chevallier 1989: 604). Ironically, it was as a result of the telecommunications *service public* obligations being specified in this first law that the state monopoly was first seriously questioned. The public monopoly was no longer used to support the *service public* status of telecommunications services (the argument once being ‘all state actions are *service publics*. Telecommunications services is a state monopoly and hence a *service public*’; see chapter 3), but rather, the *service public* status was used to legitimate the monopoly (the argument becoming ‘the services provided by the DGT are so important to the population that the state is the only legitimate guarantor of equality, adaptability, and quality of service’). This rationale proved illegitimate once market and demand fragmented and diversified.

European legislation and domestic competition

During the latter half of the 1980s it became clear that the EU’s interest in the telecommunications sector would have legislative repercussions at the national

level (Sandholtz 1992). The EU issued directives in 1988 and again in 1990 aimed at introducing competition in certain market segments, notably the terminal equipment and the advanced services segments, and later also in the mobile and satellite services segments (Eliassen, Mason and Sjøvaag 1999). The European debate had been closely followed in France and in 1988 another proposal to transform the DGT into a *société nationale* was put forward (Laffitte 1988)³, although fundamental reform did not take place until 1990. Limited competition had been introduced in the telecommunications sector in the 1980s, but the process had not touched upon voice telephony, which was securely in the hands of the monopolist. However, a cluster of forces came together in the 1980s that were able to wedge open parts of the DGT stronghold. For example, technological advances meant increased diversification of both equipment and services segments, which weakened the case for a single supplier (Fillioud 1982: 2). Further, large firms, particularly financial institutions, intensified their demand for advanced value-added services that were not necessarily provided by the DGT.

The DGT had several arguments to prevent extensive competition in the 1980s. First, the DGT had a reasonably good track record and its customer base was reported to be largely satisfied with the services provided (Haye 1984: 4-5; Thatcher 1994: 457). Second, large investments had made the French network highly sophisticated (in 1990, the rate of digitalisation of the French telecommunications network reached 75 per cent; Libois 1996: 173). Third, penetration rates were among the highest in the industrialised world in 1985, and both

³ Similar proposals had been launched in the 1920s and in the 1960s, see chapters 3 and 4.

access charge and user tariffs were among the lowest in Europe (Dang-Nguyen 1988: 148; OECD 1987: 231). Furthermore, French policy-makers wanted to maintain telecommunications as a *service public*, which constrained the introduction of competition because of the need for cross-subsidisation between different telecommunications services. It was believed that competition could lead to 'cream-skimming', i.e., private operators could operate in profitable segments and reduce prices (and hence profits for the DGT), whilst not operating less profitable or loss-making services, leaving the less profitable services for an economically weakened DGT.

In order to retain its positive image achieved by extensive network expansion and quality improvement, the DGT would have to adapt to the changing market demands. This 'commerciality' found its expression in several contexts. A report from an international comparative study initiated by the DGT in 1979 noted the increased emphasis on 'marketing' in the promotion of telecommunications services abroad, whereby the foreign telecommunications organisations were seen to "employ forceful and specific techno-commercial sales techniques and use publicity as well as discretionary tariffs" (En Direct 1979). PTT Minister Mexandeau claimed early in his term in office that he would "rebuild the role of the *service public*. The users should stop being considered as 'automatically equally uninteresting clients'. Everything will be put in place to meet the diversity of demands of all customers, without discrimination" (Mexandeau 1981).

The concept of *service public* was thus hailed as the prime yardstick with which performance should be measured, implying, as before, high quality of service to all customers, even when their demands diversified. ‘Commercialisation’ did not, however, at this point entail the introduction of competition. Rather than debating the issues of privatisation and competition in the sector *per se*, the terms ‘modernisation’ and ‘efficiency’ were used (terms frequently used by policymakers in the 1950s and the 1960s), and referred to an organisation which was firmly anchored within the state administration, thus trying to appease criticisms which in 1974 had led to large-scale strikes (Thatcher 1999).

Direct incentives for more fundamental change of *services publics* came from the European Union. The establishment of the Prévot commission was the first major initiative to launch public debate about telecommunications issues in France after it had become clear that EU legislation would challenge national legislation in the telecommunications sector.

Industrial action in 1974 had illustrated how attached PTT employees were to their status as *fonctionnaires*. Much emphasis was therefore put on consultation with interested parties (employees, users and ‘partners’ of the *service public*, parliamentarians, and local politicians) prior to the publication of the document, in itself a novelty in the French policy-making process, since “in France, ministry officials [had] virtually monopolized the policy-making process. Manufacturers, consumers, end users, and labor unions [had] relatively little input into the policy process” (Duch 1991: 186).

The Prévot commission

In 1988, the PTT Minister, Paul Quilès, called on M. Hubert Prévot to investigate and clarify the challenges and possible options for the future of the *service public* of the post and telecommunication services. The commission identified four areas to be addressed:

- A definition of the missions of the *service public*, its role and place in the state and in the nation considering the impact of '1992' (the establishment of the Single European Market);
- The necessary regulation (*reglementation*) of a rapidly changing sector;
- Proper ways of motivating employees to give new career opportunities and re-evaluation of competence;
- Whether real autonomy of a *service public* was possible while guaranteeing the employees' status as *fonctionnaires* (Prevot 1989:7).

The establishment of the Single European Market was identified as one of the major reasons for change:

It is clear that the realisation of the Single European Market profoundly modifies the conditions for La Poste and for France Telecom [formerly DGP and DGT, renamed in 1988]. This market opens positive perspectives for the member states that know how to extract the best social consequences from an economic dynamic stimulated by the extension of markets and a coordinated co-operation in large scientific, cultural and social projects.

Prévot 1989: 7

The report offered a synthesis of the interested parties' views, as well as recommendations in the fields of regulation, the social role for the PTT, and its obligations towards its employees. The debate showed that the French

population was relatively satisfied with its telecommunications service. The *service public* status of the telephone clearly shaped the general public's evaluation, and private alternatives were perceived as less good:

Users have great confidence in the employees of the *service public*. Neutrality, objectivity, respect for confidentiality, concern over moral values, equal treatment of 'small and large'; the employees' values greatly contributes to the attachment of the *service public*. The public expresses the opinion that for basic services, private enterprise would be more expensive and sometimes less good.

Prévet 1989: 20

However, diversification of demand resulted in a contradiction between personalised services and equality of provision. A *service public* was to follow three main principles: continuity of service, equality, and adaptability. "The *service public* must be delivered continuously both in time and space. (...) [But] the services must adapt to the new needs as well as to the new technologies"

(Prévet 1989: 21, 22). Thus,

the public wishes to benefit from the values of the *service public* as well as the spirit of private commercial enterprise. The objective is thus to solve this kind of contradiction between an accepted commercial language and a resurgence of the normative administrative rigidity which must be applied to problems that arise.

Prévet 1989: 28

Private enterprises were more critical than the general public. They demanded higher quality and cheaper services, flexibility, the option of negotiating on price, competition (except in network provision), and separation of operational and regulatory functions (Prévet 1989: 30-44). Their most prominent preoccupations were their own international competitiveness and the need for effective and efficient telecommunications infrastructure. Industrialists seemed to agree that network operation, because of its infrastructure character, was best left to a

state monopolist. Other segments, however, particularly terminal equipment and value-added services, should be as free as possible.

If this quoted opinion illustrates a highly liberal conception, one should admit that the exact limit between exclusive (monopoly) or reserved (regulated competition) services and free competition varies among the different interlocutors.

Prévot 1989: 38

Against this background, the Prévot commission made certain recommendations for the future organisation of the French telecommunications sector (pp. 143-151):

- Separation of regulatory and operational functions, and the establishment of an independent regulator;
- Abolishment of the *budget annexe*;
- Creation of two autonomous organisations with their own legal personality
 - France Telecom and La Poste, the latter including the financial services, and both to have a proper top management possessing 'real' powers (in e.g., budgetary matters, recruitment, and negotiations with the employees);
- Creation of a 'National PTT Council' to confirm the unity of the sector (ties between telecommunications and postal services), to supervise and control 'common services' such as research and education, and to facilitate negotiations between the two branches, for example, in budgetary matters;
- Integration of the '*filiales*', i.e. the DGT's numerous subsidiaries that were mostly state owned but operating under private law.

The report also treated the more general question of the legitimacy of the telecommunications monopoly. Theoretically the state monopoly had been for regulation only (the state could, e.g., grant operation licences to private operators) and this was its real basis of legitimacy, emanating from the sovereign state.⁴ The Prévot commission used this traditionally legitimate basis to argue for a rapid creation of a regulatory framework to create a stable business environment. Some monopoly areas (infrastructure and termination of communications) were envisaged within this framework but the specific definition of monopoly areas would necessarily be revised relatively often, in accordance with emerging technologies (Prévot 1989: 79-82). 'Monopoly' was not understood as inevitable, but rather as a means to certain ends, particularly to ensure sufficient investments in infrastructure – a 'common good' to which licensed service providers would have access in a non-discriminatory fashion. Non-discriminatory access by service providers necessitated clear rules and tariffs for interconnection, something the Prévot report called for.

The Prévot commission remained relatively pragmatic about *service public*. Although the concept was extensively used to characterise the service, and the 'morals and values' of *services publics* were praised (particularly in the first part of the report), the recommendations stressed the goals (excellency and universal provision) rather than the organisational form:

The monopoly draws its legitimacy from its associated *service public* obligations. This implies equality, continuity and also openness of networks and services. The monopoly demands that the operator (...) offers a service

⁴ The fact that the French telecommunications monopoly was non-exclusive implied that the state had great flexibility in its choice of how to organise and market different services. This fact had always been used in relation to the state subsidiaries, a tradition that was furthered by the establishment of Transpac and Telecom 1, DGT subsidiaries operating under private law (OECD 1987: 226; see also Vedel 1991).

of excellent quality. (...) One must, in consequence, foresee that the ministry charged with the regulation can introduce competition as long as society can prevent its excess.

Prévot 1989: 81

One should note the resemblance with parliamentary debates from the beginning of the century, when speakers from across the political spectrum alluded to central constitutive elements of *services publics* with which they agreed, and avoided references to budgetary unity, which was the contentious point of the day. This corroborates the value of *service public* as political myth, a principle with which no politicians was prepared to disagree publicly, although severe divergence of views might exist with reference to details.

Written in a deliberately vague language, the Prévot commission's report gave room for various interpretations. Supporters of France Telecom's monopoly could find arguments in the report's emphasis on need for a clear interconnection regime, rebalancing of tariffs, and the need for universal service. Defenders of liberalisation, however, could find support for their view in the sense of 'inevitability' of the development towards more competitive structures due to technological development and international regimes:

This conception [that France Telecom's monopoly could include and continue to include transfer of both voice, text, data and images] is difficult to apply because of the technological developments mentioned, and it also meets resistance with adherents of liberalisation, which are active and powerful at the centre of the EEC.

Prévot 1989: 81

The Prévot commission became a reference document for policymakers in the telecommunications sector in France. Not all its recommendations were

adopted, but the document nevertheless provided a synthesis of a multitude of views on the current development, ranging from social to technical to economic issues. It provided important background material for the two new pieces of legislation in 1990, the law on the organisation of posts and telecommunications, and the law on regulation of telecommunications.

The 1990 Law on the organisation of posts and telecommunications⁵

The law of July 1990 was the biggest legislative telecommunications sector reform in France since 1923, and was completed in December of the same year with specific legislation on sector regulation and on France Telecom's new license conditions (Gensollen 1991). It transformed France Telecom into a public corporation (*exploitant public*) that was headed by a Board of 21 members and was separate from the postal services, with financial and operational autonomy. Privatisation was not envisaged, but the corporation would from 1994 be taxed as if it were a firm, rather than being subject to random demands for transfers to the state coffers. As in Germany, the suggestion was to divide telecommunications services into three parts; the monopoly segment, provided by France Telecom (network provision other than switching, voice telephony and public phone boxes); mandatory or regulated services (mobile and cable); and services open to competition (particularly value-added services). The government, it was said, should regulate rather than engage in direct provision. The law established some general principles for the regulatory framework (territorial coverage, equality of users, neutrality of services) as well

⁵ Loi relatif à l'organisation du service public de la poste et des telecommunications du 2 Juillet 1990

as a directorate responsible for supervising France Telecom's and La Poste's *service public* obligations: the *Direction du Service Public* (DSP). Parliamentary debates placed much emphasis on the continuity and strengthening of the *service public* of telecommunications, but the concept remained vague.

The government's presentation (Rocard and Quilès 1990a), which underlined three challenges identified by the Prévot report: diversification of demand; worsening of the financial situation; and increasing international competition (Rocard and Quilès 1990a: 2-3), presented four main goals:

- To strengthen the *service public* by confirming its fundamental mission towards the nation and allowing it to develop in a competitive environment;
- To give the PTT organisation managerial autonomy;
- To affirm unity of the postal and telecommunications services;
- To value human resources and improve social management (Rocard and Quilès 1990a: 4).

The 'valuing of human resources' pointed to the issue of the employees' status. A large majority, particularly among La Poste employees, vigorously opposed any change in status and the government proposal – and the new law – retained their status as *fonctionnaires*. The issue remained tense and represented an important obstacle to more far-reaching reforms, particularly through rendering any form of debate on privatisation politically impossible. The trade unions and the communists in Parliament opposed privatisation, and their arguments referred to the state as the only legitimate guarantor of a strong *service public*.

Maintaining the status of PTT employees as *fonctionnaires* was a concession in a pragmatic introduction of new regulatory structures in the sector.

The modernisation and adaptation of the administration will lead to a strengthening of the *service public*. It is not a question, as some have claimed, to glide towards a privatisation. On the contrary, and this is a point to emphasise, the central characteristics of the PTT have been respected. Thus, the law transforms La Poste and France Telecom into two public corporations. (...) The strengthening of the *service public* will also take place through the confirmation of the two operators' obligations.

Bockel 1990: 1126

‘Affirmation of the unity of the PTT’ was also a political solution to an ‘emotional’ problem. The *Commission de la production et des échanges* maintained

that unity [of the PTT organisation] remains, thanks to the human bonds that unite [La Poste and France Telecom]. (...) It does not take long to recognise the exceptional richness of the social movement. A multitude of associations devoted to sports, culture, hobbies and solidarity create relations between all PTT employees that function as social cement in an immense society of men and women.

Fourré 1990a: 17

‘Managerial autonomy’ was perhaps the most important single outcome of this legislative reform. *De facto* cessation of political intervention in day-to-day running of the enterprise, and a drastically lowered influence of the Parliament, was perceived as a *sine qua non* for the continued viability of France Telecom as a French *service public*.

This ‘tailor-made’ judicial construction will allow [France Telecom] to meet the aforementioned challenges while recognising the PTT activities’ special characteristics. It gives the *service public* true autonomy, by giving it more flexibility in management, in its relations with users, and in the implementation of its development. It renders possible a real contractualisation between the *service public* and the state. It also meets the European Communities’ recommendations regarding separation of regulation and operation.

Rocard and Quiles 1990a: 4⁶

⁶ However, although full managerial autonomy was intended, it took some time for the political authorities to grant this autonomy in practice. Examples of continued parliamentary and

The legal specification of the *service public* tasks that were introduced by the July law and furthered in the Law on regulation of telecommunications and the licence conditions in December was seen to strengthen the *service public*. The government stated that it intended to continue to use the public corporations to further political goals of equality and justice, thus safeguarding implementation of the *service public*. The *service public* tasks included universal service provision, provided equally throughout the territory and across user groups, contribution to national education in telecommunications, as well as research, security and defence. The list was extended in the licence conditions (Décret relatif au cahier des charges de France Télécom et au code des postes et télécommunications).

Generally, the legislative project gives La Poste and France Telecom wide scope for intervention and confirms the government's will to reinforce the *service public*.

Rocard and Quiles 1990a: 5

The reinforcement of service public takes place through the affirmation of the missions that the two corporations will be obliged to undertake. Their activities can largely be undertaken under a competitive regime. The reinforcement is furthermore confirmed through a continued strong '*tutelle*' with the Ministry and through the introduction of a new type of parliamentary control over the two corporations.

Bockel 1990: 1126

Budgetary autonomy meant that France Telecom was no longer required to submit its budgets for government approval. The *Direction de Service Public* (DSP – a directorate responsible for supervising France Telecom and La Poste's *service public* obligations) would participate in the definition of the main strategic choices of the public corporation, and would define the main economic

governmental intervention came through enforced investment policies and continued financial transfers to other state enterprises. See e.g., Le Figaro 1993a, 1993b; Le Monde 1993a.

and financial objectives the operators must reach (Huret 1994). The directorate was composed of twelve members, of which the two chambers of Parliament appointed eight. The *Direction de la Réglementation Générale* (DRG) was given responsibility for defining the regulatory framework for the activities of France Telecom and other telecommunications service operators. Thus, by the beginning of the 1990s France's telecommunications regulator was not yet politically independent, in that it formed part of the PTT Ministry.

The presentation of the new law, however, together with the preparation process by the Prévot commission, showed politicians' valuation of framing the proposals with reference to the existing sectoral state tradition. Radical new measures: splitting of posts and telecommunications (inhibiting cross-subsidisation between the two); corporatisation and new taxation rules (removing substantial income to the state); and introduction of competition into certain segments – all were justified in public political discourse with reference to a strengthening of the *service public*.

The 1990 Law on the regulation of the telecommunications sector⁷

The introduction of competition in certain market segments required an institutional framework for regulating competition. EU legislation, to be implemented in national law, required such regulation to be transparent, something that was also perceived (by both bureaucrats and industry) as indispensable for a stable and healthy business environment. To further these

⁷ Loi sur la réglementation des télécommunications December 1990

aims, the law on the regulation of the telecommunications sector (LRT) was passed on 29 December 1990.

The LRT outlined the regulatory competencies of the Minister responsible for the telecommunications sector, and attempted to strike a balance between the 'general interest' through rights and obligations of the *service public* provider, and 'fair competition' in the marketplace.

By proposing a law on the regulation (réglementation) of the telecommunications sector, the Government wishes to give the nation the necessary instruments to master the development of a complex strategic sector, through searching equilibrium between the economic and the social preoccupations of the present actors. In addition, this text effectively provides the basis for a real regulation (régulation)⁸ of the activity of the telecommunications sector.

Rocard and Quilès 1990b: 2

The law, which made France the first country to bring its national regulatory structure in line with the 1987 EC Green Paper on the development of the common market for telecommunications services (Huret 1994: 296), divided the provision of services into three areas; monopoly services; services subject to structured and controlled competition; and services fully open to competition. It also outlined the powers of the Minister, particularly in regulatory matters. A *Commission supérieure du service public des postes et télécommunications* was established to 'oversee the balanced evolution of the development of the

⁸ The apparition of the term 'régulation' in French scientific and legal literature runs parallel with the criticism of the *service publics*. Traditionally, what Anglo-Saxons referred to as 'regulation' was termed 'réglementation' in France, i.e. a set of rules constraining the behaviour of actors in a specific area. One of the early appearances of the term 'régulation' was in a decision by the *Conseil constitutionnel* in 1989, when it characterised the *Conseil Supérieur de l'Audiovisuel* (CSA) as an '*instance de régulation de l'audiovisuel*'. Interestingly, the term was characterised as equalling the Anglo-Saxon 'deregulation', thus responding to the shift in thinking about proper and effective state intervention in the economy (Gaudin 1995). One might therefore analyse the government's wording in the above quote as a concession to the European principles of de-regulation, popular in the early 1990s.

telecommunications sector' (Art. L.32-2), through which Parliament re-gained some of the power it had lost when France Telecom's budget had been exempted from governmental approval in the law of July 1990. The *Conseil Supérieur de l'Audiovisuel* saw its powers in telecommunications matters abolished and transferred to the Minister and the DRG (Dandelot 1993: 24).

The existence of two regulatory bodies within the PTT Ministry, one regulating the market and the other the incumbent, was specific to France (Gensollen 1991: 32). The lack of a regulator independent of government, which rendered long-term regulatory strategies more difficult, was the prime reason for the introduction of the long-term contracts between the incumbent service provider and government, the *contrat de plan*. This contract fixed tariffs as well as future activities, and constituted an important element of the French regulatory landscape in the early 1990s (Gensollen 1991: 32).

Although Parliament adopted the government's proposal, it was conscious of the fundamental political disagreement amid which the legislation was adopted, and which effectively rendered the law a compromise between the two strands of Parliament; the 'free-marketeers' and the 'interventionists'.

I believe, Mr. Rapporteur, that we are defending two not compatible logics: on the one hand, yours and the one of M. Longuet [the PTT Minister], whom you seem to join in a speedy race – long-distance or sprint, I do not know – towards a total liberalism; on the other hand, ours, partisan of a strong *service public* to ensure equality of access, regional development, better investment, but also a *service public* open to competition and competitive.

Bellanger [MP] 1990: 3361

During the process leading up to corporatisation of France Telecom in 1990, defenders of *service public*, when specifying what they perceived as essential components of the concept, not only repeated the list that had been in use from the turn of the century, they also included competitiveness of the public service provider (Rocard and Quilès 1990a; Fourré 1990a; Bockel 1990). Although the benefits of competition in general were not adhered to, as the continued monopoly in voice telephony and telex services demonstrated, the inevitability of competition in areas of an international nature was accepted (Fourré 1990b: 1127). The creation of the Single Market in the European Communities was perceived as the prime driving force for competition in segments such as terminal equipment and value-added services. Legislation for competition in certain parts of the French telecommunications market was therefore seen as unavoidable and this perception would play a decisive role for the process leading to the introduction of full competition in the 1990s.

The right wing and centre parties clearly perceived a future need for a common regulator and saw the introduction of competition across all segments as inevitable. The communists, however, criticised what they saw as the beginning of the privatisation process of France Telecom and a threat to the *service public* (Leyzour 1990; Carpentier 1990). The critics particularly argued on the basis of the following:

- Technological developments, particularly satellite services from abroad and digitalisation, would undermine the practical implementation of the law (Gouteyron 1990: 3357);

- The framework was in reality a protection of France Telecom's monopoly and thus protecting the *status quo*. 85 per cent of France Telecom's revenues came from the monopoly segments, and approval of technical equipment, whose exposure to competition was the least controversial, was given by ministry officials with strong ties to France Telecom (Larcher 1990: 3356);
- The division of powers between the Minister as regulator and France Telecom as competing enterprise were insufficient. No institution was given final responsibility for dispute settlements, which was assumed giving greater than necessary weight to the European Court of Justice as last resort (Quilès 1990: 3354);
- The Minister was given too much power to ensure equilibrium between the general interest and fair competition.

The Law on the regulation of telecommunications was inspired by the compromise at the European level whereby member states were able to maintain exclusive rights for infrastructures and voice telephony one the one hand, whilst allowing controlled competition respecting the *service public* for other services on the other hand. The law deliberately gave room for interpretation, which rendered it relatively flexible and hence adaptable to the developing international environment (Danelot 1993: 25).

The case of Germany

This chapter shows that ideas about the optimal organisational mode for telecommunications services changed in Germany during the 1970s and 1980s.

These ideas on organisation were, however, based on the same principles of ultimate authority, public ethos, and criteria for legitimate decision-making and discourse as in the post-war years, which indicates continuity in the sectoral state tradition.

No evidence has been found to indicate a change in the final authority of legislation. Convergence between telecommunications, information technology, and media technologies broadened the field of relevant actors in the policy-making process. The *Länder* took a particular interest in the DBP's operations where they saw local industries or their own competencies in media policy threatened. Through the Bundesrat and the Infrastructure Council they ensured a certain degree of continued control over the corporate DBP Telekom, but the corporatisation of the DBP implied a further reduction of Parliament's direct control. Regulation replaced direct state provision with neutral state intervention, ensuring fair competition between the DBP and other enterprises in competitive sectors whilst safeguarding provision of basic services to the public.

After 1970, both academic and policymaking circles increasingly advocated competition as beneficial for the telecommunications sector (in line with the existing public ethos of economic efficiency in infrastructure provision). The challenges to the sectoral state tradition identified in the late 1960s (conflicts

between democratic structures and economic efficiency, the need to relate to broader political issues whilst separating them from the daily management of the DBP) had been accentuated over time and the ideas about competition and separation of regulation and operation gained acceptance among a broader set of policymakers.

The fundamental rationale for state action was increasingly perceived as providing conditions for fair competition rather than ensuring correct and democratic decision-making methods, i.e., values that had been prominent in the immediate post-war era. Telecommunications services were seen as elements vital to the economic health of the Federal Republic. Not only did they provide infrastructure to other sectors and a general 'social good': in the 1980s, the telecommunications industry was increasingly seen as the locomotive for the German industry as a whole, whose research and development efforts the economy could not forego if it wanted to stay competitive in a global environment.

What had started in the 1970s was continued in the 1980s, namely a change in the organisational implications of the public ethos of efficient infrastructure provision. Rather than providing telecommunications services directly, the best way to fulfil the public ethos was seen to be through ensuring conditions for just and fair competition. In the process of corporatisation of Deutsche Telekom, budget balancing and cost-based tariffs were no longer the main issues, signifying the state's withdrawal from the daily management of the corporation.⁹

The commercial characteristics of the DBP were commonly acknowledged and

⁹ Cost-based tariffs would reappear in regulation of interconnection charges, but then as a means to prevent abuse of market power by the DBP.

the remaining political problems were how to safeguard basic services of high quality throughout the territory. Regulation as a function separate from service provision was introduced to solve this problem.

No change was found in criteria for legitimate decision-making. Discourse remained of the coordinative type.

The Postreform I can thus be seen as the institutional and legislative 'solution' to the challenge to the sectoral state tradition in the 1970s. Despite radically new structures (corporatisation of DBP Telekom, separation of regulation and operational tasks, introduction of competition), the public political discourse continued to refer to the established sectoral state tradition.

Telephone policy in the 1970s: changing ideas about organisational framework

By the end of the 1970s the DBP had grown to become the largest single enterprise in Europe, whether measured in terms of financial turnover, employees, or investment (Klett 1979: 41). The first profound legal, organisational and administrative reform of the German telecommunications system after the PverwG of 1953 took place in 1989, in what was popularly named 'Postreform I'. The Ministry for Post and Telecommunications was then divided into three separate entities: Telekom; Bundespost; and Postbank. Limited competition was introduced in the terminal equipment market, whilst Deutsche Telekom retained monopoly rights in infrastructure (networks) and voice telephony. The PTT Ministry became a separate regulatory body. The public operator, whether a

public enterprise (pre-1933) or a ministry (post-1953), had never had its monopoly powers seriously criticised since 1900, but this changed with Postreform I.

Political intervention was seen to be at the root of the DBP's economic problems from the late 1960s and monopoly powers were perceived as unsustainable from the latter part of the 1970s (Kimmich 1976; Heyden 1979). Early in the 1970s both the Christian-Democrats (the CDU) and the Social-Democrats (the SPD) advocated change in the DBP's organisation, but reform attempts failed. This "lack of success (...) clearly reflected the highly complicated nature of the reform process" (Schmidt 1999: 211) with a large number of groups involved in consensus-seeking. The reform proposals had concentrated on the organisational structure of the DBP, searching for organisational forms that would give the public organisation sufficient managerial flexibility to manoeuvre in an increasingly complex environment without questioning the justification of the monopoly powers (see e.g. Gscheidle 1980).

The perception that political intervention was the cause of the DBP's problems signified a profound shift in ideas about the optimal organisational form for state intervention. In the three decades after the Second World War, it was increasingly recognised that the optimal organisational form for telephone service provision and other telecommunications services was not a traditional office within the public bureaucracy.

If one should create a commercially independent Bundespost, a solution which I hold for better than the current situation, one would achieve several benefits (...): on the one hand rationalisation measures and lowering cost,

on the other hand a cost-focused and flexible management able to adapt to changing market conditions.

Ehmke [PTT Minister] 1974: 190

The previous decades' focus on tariffs as the ultimate expression of the economic and organisational health of the public service provider changed to a general discussion on the adequacy and appropriateness of the DBP monopoly (see Bott 1984; Maschke 1984). Academic debate on telecommunications in Germany in the 1970s and early 1980s focused on economic theory. As the perception of the DBP's problems changed from the degree of political intervention in a state-owned enterprise to the sustainability and suitability of its monopoly powers, so academic debate investigated whether the monopoly structure was beneficial for the pronounced goals of telecommunications policy in particular and industrial policy in general (Adelmann 1975). 'Deregulation' processes in the USA and the UK, increased international competition in the technological arena and the emergence of new services generated criticism of the DBP's policies. During the 1970s, however, the political climate opposed liberalisation policies, and it was only with the coming to power of the Right in 1982 that the possibilities for reform increased (Esser 1989: 61).

The theoretical thinking said to have the greatest influence on German policy-makers and civil servants in post-war Germany belonged to the 'Gemeinwirtschaftslehre Schule', or the 'Social Economy School' (Pfeiffer and Wieland 1990: 43), according to which the state should play a substantial part in industries where market results are not satisfactory. "The Gemeinwirtschaftslehre views public enterprises and regulation as powerful and benevolent tools

of the government to implement various aspects of economic policy” (Vogelsang 1988). Public enterprises should be substituted for private ones when political consensus exists that an industry is experiencing market failure.

The social economy school was increasingly attacked in the 1970s and 1980s. Several international and cross-national comparative studies on telecommunications policies and deregulation were undertaken at the Wissenschaftliches Institut für Kommunikationsdienste (WIK), and the importance of telecommunications services for industry was investigated by the German Institute for Economic Research in Berlin. The Institute for World Economics in Kiel was “one of the most outspoken advocates for a total deregulation of German telecommunications” (Pfeiffer and Wieland 1990: 38). The University of Freiburg’s academics advocated competition in a free market, arguing that an appropriate institutional framework was the most decisive parameter for the success of an economy (Pfeiffer and Wieland 1990: 35-39), and normatively favoured “steps towards privatisation and deregulation” (Vogelsang 1988: 202). As the amount of normative academic literature advocating profound changes in the DBP’s structure and privileges grew, their ideas became increasingly incorporated in political parties’ opinions on the status of the public telephone service provider. Nevertheless, although central ideas about the organisational framework changed, the coordinative nature of public discourse in Germany where interaction between several knowledgeable actors was necessary for legitimacy, remained constant.

Growing support for competition

In 1975 the '*Kommission für den Ausbau des technischen Kommunikationswesens*' (KtK) had been asked to work out proposals that would lead to an economically rational and socially desirable technical communications system of the future (Snow 1982: 12), and in particular, to investigate

what services at what time, by whom and under what technical conditions our country shall and should build and offer. The real challenge of this commission will be to incorporate all aspects of the necessary extension in long-distance data transfer and broadband communication.

KtK commission mandate, quoted in Werle 1990: 167

The commission's report, published in 1976 (KtK 1976), concentrated on the consequences of telecommunications services for production, storage and logistics, and administrative organisation (Witte 1979: 361), and very little emphasis was placed on ownership, control, and financing of the services in question. However, it did provide an elaborate recipe for the technical development of the German telecommunications network, and stated that the DBP should be put in a position where it "technically and financially [could be] in the position to plan, direct and – as much as possible – implement the extension of the telecommunications services" (Werle 1990: 169). Economic difficulties, linked to the 1973 oil crisis, resulted in these technical recommendations not being implemented, and thus "unintentionally preserving the status quo in telecommunications" (Werle 1990: 169).

The central issues in German debate changed at the end of the 1970s. Instead of debating how to fulfil the DBP's tasks through a state monopoly with certain

financial and institutional constraints, more attention was given to the question of the 'real objectives' of the DBP.

The Bundespost is no enterprise. (...) The DBP must be operating under different rules to private enterprise in the market place. (...) Whoever puts foot in the new areas of industrial policy [in particular microelectronics for the telecommunications sector] realises fairly quickly that the meeting point between public administration and private enterprise creates severe tensions. And the question then becomes: Is this the task of the Bundespost?

Klett 1979: 41-42

The increasing diversity of telecommunications services rendered the DBP's complete monopoly more controversial than had been the case only a decade earlier.

The central feature of the Telecommunications Installations Act [of 1928] – and within it the concept of telecommunications installations itself – as well as the management principles from the Postverwaltungsgesetz have shown themselves so vague and badly defined that the organisational and regulatory form of the DBP is increasingly being questioned, which leads to ever more frequent conflicts between the Bundespost and industry.

DIH 1980: 4

Outdated telecommunications legislation and increasing friction between public service provider and private industry prompted several public reports on the telephone issue. Existing suppliers' arrangements were seen to threaten technological innovation, which led to the terminal equipment market being first in line for introduction of competitive structures (Witte 1977). The innovation issue would be central to the government's worries about the future of the telecommunications industry.

In 1981 the *Wirtschaftsministerkonferenz der Länder* (WMK – Conference of the Ministers of Economic Affairs of the Länder) and the Monopoly

Commission turned their attention to the question of competition in the telecommunications sector. The WMK's interest was spurred by emerging technology and its impact on DBP's role in service provision (Graffe and Bilgmann 1980: 203-205). "The WMK report can be seen as a statement of concern by the Laender that economically detrimental effects might result from unreasoned DBP participation in or monopolization of markets created by new telecommunications technologies and services, particularly in the terminal equipment area" (Snow 1982: 13).

Hence, although the telephone monopoly had been introduced because of the telephone service's role as infrastructure for the economy and, consequently, to encourage economic growth, the telephone organisation's monopoly was now seen as a potential threat to national economic health if left uncurbed. This was, however, not contradicting sectoral state traditions, because the state had traditionally taken action only when private enterprise had in some way showed market failure, and development and provision of new services were undertaken by private firms. The debate was rather over the limits of the federal monopoly, as it had been on previous occasions, and shows that the German federal state's ethos was still to provide economically efficient solutions rather than upholding the DBP's monopoly.

Convergence between telecommunications and the media sector entailed another potential conflict between the federal and *Länder* authorities because the latter was responsible for media policy. According to the Deutsche Industrie- und Handelstag (DIH), the German association of Chambers of

Commerce, the public discussion on the telephone monopoly was “pushed from two sides: on the one side through the problems in industrial policy related to new telecommunications services, on the other side through the media policy” (Deutsche Industrie- und Handelstag 1980: 3). The media policy question was linked to the role of the Länder, whereas industrial policy issues were a continuation of the old dilemma between the public administration’s bureaucracy and the commercial nature of the telephone service. However, whereas the problem in the 1950s and the 1960s had focused on adequate financial arrangements for the DBP to provide a full range of services within the sector, the debates of the 1970s and 1980s questioned the sustainability of the monopoly powers in non-telephony segments. The ultimate goal for state action was therefore how to best correct economic dysfunctions to ensure optimal infrastructure for the German economy.

Voice telephony was the area least attacked by advocates of competition. The state was still perceived as the guarantor for universal basic services, and its ‘*Daseinsvorsorge*’ characteristics increased the legitimacy of its monopoly provision.

The most important reasons for state operation of industrial tasks is the special obligation it has towards the population. In the state administrative jargon this obligation is often called “*Daseinsvorsorge*”. It embraces goods and services that are so important or so basic for the individual’s existence that their distribution (...) cannot be trusted to the unregulated market.

Gscheidle 1980: 31

Central arguments for making the DBP part of the state are (...) [that] the post and telecommunications are not only products, but indeed conditions for a functioning market and they belong thus to the infrastructure in the hands of the public sector. This definition is correct for part of the DBP tasks, which is to ensure secure and territorially equal services for the whole

population. Concerning this part of the task, the DBP belongs to the ever-increasing branch of state activity called public *Daseinsvorsorge*.

Herrmann 1986: 103

Nevertheless, re-formulation of basic questions introduced new actors into the policymaking arena, among which the Monopoly Commission was the most influential. The DBP, by virtue of its telecommunications sovereignty and monopoly, was theoretically exempted from German anti-trust legislation as a supplier. However, the Monopoly Commission argued that procurement policies were fully subject to scrutiny and, “since the procurement policy of the DBP represented a reflection of its supply policy, its activities as a monopolist with telecommunications sovereignty could also properly be examined” (Snow 1982: 15-16).

The Monopoly Commission commissioned several background studies on the various aspects of the role of the Deutsche Bundespost and issued ‘The Role of the Deutsche Bundespost in Telecommunications’ (Monopolkommission 1981). One sub-study, prepared by economists Knieps, Müller and von Weizsäcker, was particularly influential in future debate and the Monopoly Commission’s own report to a large degree repeated its conclusions.

The report by Knieps, Müller and von Weizsäcker “argued persuasively in favor of distinguishing among the DBP’s various activities. (...) The report also argued that greater use of competition in providing telecommunications services could reduce costs, hasten innovation, and improve and increase the range of user services” (Snow 1982: 14). The report distinguished between four types of

activities within the DBP: networks, services, terminal equipment, and certification activities (Pfeiffer and Wieland 1990: 32). The report was a cautious 'yes' to competition in certain of the activity areas. It was argued that the DBP should be allowed to continue its monopoly over the network (both services and operation) because of 'economies of scope', but it should engage in competition with private suppliers in all terminal equipment markets.

The most radical of the policy suggestions, which was also followed up by the Monopoly Commission, was that the terminal equipment segment was ready for competition.¹⁰ Whereas the report by Knieps, Müller and von Weizäcker had recommended DBP participation, the Monopoly Commission suggested it be excluded from taking part in this segment altogether (Snow 1982: 16).

Further debate on competition

The public administration had accepted the introduction of competition into the terminal equipment sector (Snow 1982: 16), and the subsequent debate focused on the exact provisions of a competition regime. The debate therefore indicates the continued relevance of the large set of actors, as well as the continuation of a coordinative type of discourse.

The government preferred to allow the DBP to compete in all areas, but without making its participation compulsory. They also drew attention to the financial

¹⁰ The terminal market was not monopolistic in the sense that there was more than one supplier, but the central role of the Bundespost as sole purchaser of network equipment, its monopoly over the first handsets installed with the telephone line, its uniqueness in servicing and maintenance of terminal equipment, and, not least, its role as setter, controller and certifier of technical standards, gave it the power to effectively determine entry barriers to new suppliers.

responsibilities of the telecommunications organisation vis-à-vis the postal service (Nitsch 1981: 10). The Deutscher Industrie- und Handelstag (DIH) also wanted the DBP to participate in the terminal equipment market, but expressed doubts as to whether the Monopoly Commission's recommendations would be politically feasible (Snow 1982: 16-18), due to political constraints from the corporatist environment.¹¹

In the early 1980s, the DBP's administrative council was perceived as yet another forum for coalition building and partisan politics rather than the bureaucratic equivalent of a Board of Managers. "The choice of experts [to the administrative council] is, because of the relatively low prestige of PTT matters within government, often not subject to professional criteria, but to the arithmetic of coalitions and partisanship" (Herrmann 1985: 288). Furthermore, DBP employees and the telecommunications industrial giants were important power centres, who, together with the BMPF, had effectively controlled telecommunications policy after the Second World War (Duch 1991: 138-140).

The employees opposed change through fear of losing their status as civil servants, and the government used transfers from the DBP revenues both to subsidise the postal service and to improve the national economy. The PTT Ministry, the postal union and a handful of equipment producers "in effect 'joined forces' to oppose a fast transition from the old order of a public telecommunications monopoly to a competitive mode of service provision

¹¹ The pattern of tight relations between politicians, trade unions and the industry has been said to be responsible for the political stability in West Germany in the post-war period, because opinions from all major interested parties were channelled into the decision-making process. The stability, however, has also been criticised for hampering necessary change, or at least significantly reducing its speed (Schmidt 1991; Junne 1989; Katzenstein 1987; Dyson 1996).

through private firms" (Werle 1999: 110). Although these structures hampered earlier moves to reform, it is true to say that they slowed down the process rather than prevented it (Schmidt 1991; Werle 1999: 112). However, the Ministry of Economic Affairs, for a long period governed by a Minister from the liberal party (the FDP) had traditionally been in favour of liberalisation measures and pushed for reform.

New services, digitalisation, and fragmentation of customer demand, were seen to drive the fundamental discussion of the DBP's monopoly (Elias [PTT Minister] 1983: 97-98; see also Herrmann 1985; Maschke 1984; Berger 1986; Rottmann 1986). Scherer (1985) summed up the situation thus:

Telematics – the merging of telecommunication with data processing – requires a new set of concepts for both telecommunication law and politics. (...) In Germany, the future organizational structure of the telecommunications field is being discussed with emphasis on its economic efficiency. (...) German telecommunication law has not yet provided the organizational, procedural, and substantive rules necessary to meet the social, economic, and political challenges of telematics. This legal deficit has permitted the telecommunications technology and industry to develop their own dynamics and to build up economic constraints that apparently reduce the choices for telecommunications law and politics.

Scherer 1985: 749-750

Thus, in the first half of the 1980s, strong forces advocated the introduction of competition into parts of the telecommunications sector (e.g., terminal equipment). The employees' civil servant status, the need for cross-subsidisation, and fears of privatisation, were central to those opposing competition. Although the issue of privatisation was less prominent in German debate than in French in the initial phase of the restructuring program, efforts were nevertheless made to

emphasise that continued public ownership was a prerequisite for a high-quality universal service.

The public discussion about the role of the DBP in our organisation of the market is currently strong. Contradictory statements and assumptions are brought forward – such as: the Post [DBP] will be sold; the Post will be split up; the Post will be privatised. (...) It is therefore necessary here to state the fundamental pillars of our policy: (...) Postal and telecommunications services are vital to our infrastructure and thus remain a central task of the state.

Florian 1986: 4

In October 1986, the PTT Minister, Schwarz-Schilling, denied any possibility of privatisation of the DBP (Süddeutsche Zeitung 2.10.1986). This was representative of government policy throughout the 1980s, which was conducted on the basis that the DBP would continue as a publicly owned company (Witte 1992: 98-99). Changing the ownership status of the DBP would, apart from inciting strong negative reactions from its employees, require a change in the Basic Law. This could only be achieved with a parliamentary majority of two thirds in favour, which did not exist: “privatization of the *Bundespost* is simply out of question” (Vogelsang 1988: 196).

Report from the Government Commission for Telecommunications (The Witte Commission) and the Government's Concept

The report from the Government Commission for Telecommunications (the Witte Commission) constituted the major policy document prior to Postreform I. The commission was established in 1985 to consult relevant social actors and to formulate proposals that would be backed by a strong consensus: “It is expected that the Commission will endeavour to establish the opinions of all

social groups concerned with this question and include them in its considerations" (Witte 1988a: 9). The Commission's 12 members comprised: representatives of the political parties (4), of trade and industry, the industrial associations and trade unions (5), and of the sciences (3). The Commission's task was to approach the following questions within the existing legal conditions imposed on the sector by Articles 73 and 87 of the Basic Law:

1. What are the future tasks in telecommunications?
2. What are the scope, limits and structure of the Government's tasks in the sector?
3. What are the organisational, economic and legal prerequisites for an efficient fulfilment of government tasks by the DBP in line with requirements?
4. What framework should the government define for the fulfilment of private enterprise tasks? (Witte 1988a: 9)

The main motivation behind restructuring the sector was the perceived need for technical innovation in microelectronics, and in the information and communications technologies. The need for innovation was explained first in a government document on Microelectronics and competitiveness from 1984, thus preceding EU policy initiatives and policy developments. Such innovation was seen to be necessary to keep German telecommunications industry competitive at an international level. The Commission's mandate stated that "[t]he objectives to be achieved are the most effective promotion of technical innovation, the development and observance of international communication

standards as well as the safeguarding of competition on the telecommunications market" (Witte 1988a: 9), thereby mixing the goals (technical innovation) and the means (market competition). Such laxness in defining competition either as a means to an end or an end in itself would leave it open for interpretation by regulatory authorities at a later date.

The Commission judged the DBP's record as relatively satisfactory given existing political and legal constraints. However, it also felt that technological developments, fragmentation of demand, and increased customer sophistication, implied that "the dictates of the hour [were] not a mere change in the fulfilment of tasks but a corrective adjustment or rather a greater differentiation of the objectives" (Witte 1988a: 27). The 'dictates of the hour' were consumer-oriented policies and flexibility in management and customer services, a view echoed by the Government when it presented its 'Concept for restructuring of the telecommunications market':

Rapid innovation in telecommunications technology and applications has fundamentally changed the telecommunications market (...) On the demand side users are constantly multiplying and specifying their requirements for quality, price and efficiency of the telecommunications offerings.

Federal PTT Minister 1988: V

In their report, finalised in late 1987, the Witte commission had not managed to come to complete agreement. Representatives from the social-democratic party (the SPD) and the trade unions felt the proposals went too far in their liberalisation measures, whereas representatives from the DIH, the liberal party (the FDP), and the Commerzbank wanted yet more radical proposals.

The Commission put forward its findings and recommendations on the following issues:

1. Networks – Retaining network monopoly for networks and basic services

(Witte 1988a: R1).

Ten of the Commission's twelve members favoured a proposal that DBP's network monopoly should be upheld as long as it provided fixed leased lines on fair and competitive conditions, meeting governmental requirements on quality and quantity, and subject to reviews every three years (Witte 1988a: 3).

The Commission left some loopholes such as slow data transmission via satellite, one-way data distribution or fewer restrictions on the construction of internal networks, but basically the monopoly was left untouched

(Pfeiffer and Wieland 1990: 48-49). It was recommended that competition be introduced, implying that the “existing powers for licensing private telecommunication installations [should] be exercised to the largest possible extent” (Witte 1988b). The Commission noted that the Basic Law did not exclude the possibility of competition.

2. Customer Premises Equipment – Further liberalisation (Witte 1988a: R20-R29).

The Commission recommended that the CPE market be completely opened. Previously terminal equipment had been sold through the DBP, and produced mainly by one of four ‘royal suppliers’. The Commission recommended that “each subscriber shall be entitled to have a network termination installed which will allow him to connect any equipment he wishes” (Witte

1988a: 6). The DBP should be allowed to compete in this market, but without engaging in production of equipment, and equipment approval should be placed in a separate, independent authority reporting directly to the PTT minister. Prices of terminal equipment should not be subject to approval.

3. Services – Separation between competitive and monopoly services (Witte 1988a: R10-R19).

The Commission made a distinction between monopoly services, regulated (mandatory) services and unregulated services. DBP Telekom was to retain monopoly over voice telephony, but the enterprise should not be excluded from operating in any service segment. Telekom would be obliged by law or ordinance to provide 'mandatory services', but it would do so in competition with private service providers. Unregulated services would be open to all. Private service suppliers were to be permitted to interconnect with the public network, and Telekom's means for cross-subsidisation would be limited by cost-based tariffs for monopoly and regulated services (Witte 1988a: 4-5)

4. Structural Consequences for the Deutsche Bundespost (Witte 1988a: R30-R47).

a) Separation of regulatory and operational responsibilities.

The Commission proposed to separate regulation from operation: "the sovereign task shall be separated from the entrepreneurial tasks as far as organisation is concerned" (Witte 1988a: 107). Regulatory functions should

be put under the competence of the Federal Ministry of Posts and Telecommunications, as an 'independent ministry', thus reducing the role of the ministry to regulation of the German telecommunications sector (Pfeiffer and Wieland 1990: 51.

b) Separation of telecommunications from postal and banking services in the DBP.

The commission's recommendation to split the traditional PTT structure to control the flow of financial resources generated much controversy (Pfeiffer and Wieland 1990: 52). The Commission proposed that subsidies of postal activities by the telecommunications activities were to be phased out over five years in a stepwise procedure.

c) Increased flexibility in personnel management.

The Commission suggested that DBP Telekom could set up subsidiaries under private law for the provision of unregulated services, which would be exempted from the special funds arrangements governing the monopoly part of the activities. Such subsidiaries would not be under the same strict rules for personnel management as a public company. The Commission also indicated that the Board of Telekom, and the second management level in the DBP, should not be civil servants, because the "Commission attaches great importance to a strong Board of Managers vested with the capacity to act" (Witte 1988a: 114), in other words, there was to be less direct political control in the day-to-day running of the enterprise.

A new law on telecommunications in Germany

The government issued its 'Concept' for restructuring the telecommunications market shortly after the publication of the Witte report (Federal Minister for Posts and Telecommunications 1988). In general, the government's subsequent legislative proposal supported the Witte Commission's conclusions, in that it included liberalisation of the terminal equipment segment and telecommunications services, the retention of the DBP monopoly in voice telephony and networks, a willingness to offset the supposed cross-subsidies between long-distance and local charges, and support for the principle of separate accounting for DBP operations in monopoly and liberalised markets. Separation of regulatory and operational responsibility was incorporated into a whole new organisational framework for Deutsche Bundespost. DBP employees, however, would retain their status as civil servants.

The government's main motivation for retaining the monopoly for voice telephony was financial; if DBP Telekom was to be able to fulfil its public tasks as defined in the mandatory services and to maintain a sophisticated network to serve the whole telecommunications sector, it would have to benefit from its monopoly revenues from the voice telephony.

Competition can (...) only bring about the desired effects for the national economy if an efficient infrastructure as well as a reliable and reasonably priced provision of basic postal and telecommunications services and facilities will continue to be guaranteed for all users. (...) [T]he Federal Government does not strive to introduce competition everywhere blindly. (...) Over 90 % of telecommunication's revenues are earned by [voice telephony]. The surpluses of this service are used to finance today's innovations and the infrastructure obligations of other telecommunications services. (...) The Federal Government assumes that the aforementioned tasks [covering the postal deficit, contributions to the federal budget, and

paying infrastructure obligations] can only be financed in the future if the telephone service can maintain its profitability. During the coming years, innovations for telecommunications must be financed and pre-financed by the surpluses of the telephone service. The envisaged regional policy aimed at the rapid and nationwide offering of mandatory services will result in burdens that cannot be financed to the same degree without the telephone service monopoly.

Federal Minister of Posts and Telecommunications 1988: 2, 64

Thus, proposals to guarantee basic services at the same price across the country were put forward by a government who saw itself as ideally a (commercially) efficient manager of public resources. The cornerstones of the government's reform work were separation of political and managerial tasks, corporatisation of the DBP, maintenance of cross-subsidies within the three DBP units, increased flexibility in personnel policy, new regulations for DBP's financial matters, and the establishment of an 'infrastructural council' (Schwarz-Schilling 1988: 7). The Postreform aimed at

stimulating the market in posts and telecommunications and ensuring that the Deutsche Bundespost through an improved competitiveness can become closer to its customers and more efficient. It also ensures that the infrastructures are keeping up with the times and that the general economy's needs are seen to and financed. (...) Furthermore, the Deutsche Bundespost will better be able to meet the needs of smaller and rural users.

Schwarz-Schilling 1988: 15

The government's main opponents in the decision-making process included the Länder, who would lose power if the Administrative Council were abolished, the Finance Minister, who would lose a substantial amount of money if the DBP Telekom would come under normal tax laws from 1992 instead of transferring 10 per cent of its revenues to the federal budget, and the Bundestag which pressed for a common office responsible for social aspects of the DBP as a whole (BMPT 1989: 21-26; Le Monde 1988; La Tribune de l'Expansion 1988;

Goodhart 1989). In the end, the Administrative Council was abolished, but a 'Council for Infrastructural Matters' with representatives from the Länder and from the Bundestag was included, thus letting the Länder and the Bundestag regain some of their powers from the former Administrative Council (BMPT 1989, §§32-35). An 'Office for Welfare' was introduced to ensure equal treatment of the workers in the three different units of the DBP.

The law, which came into force on 1 July 1989 (BMPT 1989), split the DBP into three public enterprises: DBP Banking, DBP Post, and DBP Telekom. Each enterprise had its own supervisory council consisting of 15, 21, and 21 members, respectively, and each having financial responsibility for its own operations (Le Figaro 1989). The three enterprises remained branches of the Bundespost, which was a holding company rather than a service provider. The chair of each enterprise met in a Deutsche Bundespost directorate, responsible for consolidating the individual balance sheets, co-ordinating service between the groups and handling joint labour compensation issues.

Regulatory functions were removed from the operational units and exercised predominantly by the Minister for Posts and Telecommunications. Service provision was opened for competition, whereas transmission of signals via fixed line networks was held under the DBP monopoly, albeit with the Minister's prerogative to licence competitors. This partial introduction of competition, where some areas were open to competition while others were classified as monopoly areas, was controversial from its introduction (Bauer 1993: 84). Opponents of the monopoly argued that cross-subsidisation within Telekom

would hinder competition, as well as affecting other firms' behaviour inasmuch as they were relying on Telekom to provide them with transmission facilities. Those in favour of a monopoly justified this by arguing "a monopoly is the best and only way to ensure the provision of socially desirable services such as rural telecommunications and cheap telephone services to poor people" (Bauer 1993: 84-85).

The first private mobile operator, Mannesmann Mobilfunk, was licensed by the Ministry on 7 December 1989 (La Tribune de l'Expansion 1989). The transformation from a complete monopoly structure to an opening for competition and free market structures took a long time in Germany, longer than in many other Western European countries. However, once the new regulations were in place, they reflected not only a change in government policy, but also a change in the attitudes and interests of key actors in the sector. The 'search for a consensus' had led to a law proposal and a new law that in most ways avoided all difficult issues of liberalisation, but an important process was initiated.

In the process leading to Postreform I, the set of actors with a direct interest in telecommunications policy was extended, and the 'old' actors saw their interests change. It would be wrong not to recognise the role of European Community legislation in the process. However, whereas the European Commission's Green Paper on Telecommunications was published almost simultaneously as the Witte Commission's report, one should not conclude that German policy-makers copied EC officials' ideas. Rather, German policy-makers have been credited with an important exportation of ideas to the European process (Werle

1999). European documents and the supra-national trend towards competition in certain segments persuaded national policy-makers that introduction of competition, particularly in the terminal equipment segment, was inevitable, but the origin of the new ideas was just as much within Germany as outside it.

Conclusion: Stability and change in the sectoral state traditions in the 1980s

The institutional reforms in the telecommunications sectors in France and Germany in 1989/1990 showed significant similarities. Faced with similar technological change, the two countries established similar institutional structures for their telecommunications sectors: Institutional separation of telecommunications, posts, and banking; functional separation between operation and regulation; competition in value-added services, mobile, and terminal equipment. However, despite these similarities, important differences remained in national political discourse. These findings are summarised in table 4.

	France	Germany
Ultimate authority, relevant actors and their relative power	UA: Challenged by the EU, but fundamental idea of Parliament as ultimate authority prevailed. RA: Industry and users considered relevant in addition to the traditional actors.	UA: Legislation. RA: New business interests because of convergence between telecommunications, information technology, and media. Monopolkommission central because of discussion on competition.
Public ethos	<i>Service public</i> but better defined than in previous period.	Economic efficiency in infrastructure provision, 'just and fair competition'.
Criteria for legitimate decision-making and discourse	Consultation procedure new in French policymaking. Increased relevance of a multitude of actors. Coordinative discourse.	Legislative circumscription of federal rights. Participation of a broad set of actors. Coordinative discourse.

Table 4: Summarised findings from the 1980s

The notion of authority was not changed in either case, despite the challenge to the French Parliament posed by EU legislation. French policymakers' actions after the adoption of the Commission directives in the late 1980s supports the view that Parliament's final authority was unquestioned in French public political discourse. The set of actors perceived as relevant to policymaking in France changed in this period, as indicated by the open consultation process of the Prévot commission. In Germany, new segments of the industry took an interest in telecommunications policy because of its convergence with information technology and media, but the most significant of these 'new' actors were the *Länder*, whose competencies comprised media policy, and who were already present among central actors in previous periods. The Monopolkommission, however, emerged as a significant actor in the 1980s when ideas about competition appeared on the agenda.

The French debate continued to be a debate about *service public*, which retained its central place as public ethos. In Germany, the discussion focused on the merits of competition. In both cases, the main point concerning arguments for a continuation of voice telephony monopoly was how the state could guarantee certain basic services and their quality to all citizens throughout the territory. For the French this was the essential element of their *service public*, for the Germans it was a prerequisite for continued economic growth.

Competition as initiator of economic efficiency, international competitiveness, technological development, separation of regulation and operation: these themes were present in both French and German institutional reform debates.

Parliament in both countries had seen its powers eroded since the 1920s, and particularly with the technocratic regimes after the Second World War. However, these power reductions were not perceived in the same way in the two countries. Whereas in France a reduction in Parliament's powers was seen as implying reduced democratic power of the population and, therefore, of each individual citizen, a similar reduction in federal Germany was interpreted as an increased opportunity for the DBP to engage in industrial activity without unnecessary political interference. The debate in the 1970s in Germany illustrated that tolerance of political interference was decreasing, thus re-defining the main problem of the DBP from one where the question was to find an optimal organisational and financial framework within the existing institutional constraints, to one where changing these institutional constraints (through separating 'political' and 'non-political', or 'managerial' issues) was central.

References to the European Union as the new power centre in European telecommunications policy also differed. Domestic ideas had largely preceded European debate in Germany, whereas the opposite was true in France. In France, the EU was used as 'scapegoat' or to emphasise the 'inevitability' of the liberalisation process by effectively removing parliamentary and governmental responsibility for certain liberalisation measures. In Germany, technological development, globalisation of business activity, and increased economic competition were used to the same effect. The difference underlines two diverging views of rationale for state intervention in France and Germany. The French state traditionally, and particularly in the post-war period, acted as if it

could determine its own economic development and conditions. Dirigisme, planning and strong direct relationships between state and industry indicate such belief, and the political debate from the 1980s telecommunications reform did not indicate a profound change. The federal German state, however, was traditionally managing an environment, ideally to the optimal benefit for its economic actors and subsequently to its citizens, but never primarily as direct service provider. The debate prior to Postreform I continued this trend.

Chapter 6

Privatisation and full competition

This chapter analyses the French and German debates on legislation for partial privatisation of the incumbent telephone operators and for full competition in the sector to investigate whether the sectoral state traditions remained constant.

The relevant French legislation dates from July 1996. In Germany two important reforms took place in this period: the 'Postreform II' in 1994 and the 'Postreform III' in 1996.

In both countries, public debates were marked by legislative changes at the European level. Of particular importance were the 1993 decision of the Council of Ministers to open all segments of the telecommunications sector to competition from 1 January 1998, and the requirement to separate regulation and supply of telecommunications services.

Similar institutional structures developed in France and Germany in the 1990s. At the start of 1998 both countries had partly privatised telecommunications operators operating under private law and their former PTT ministries were either abolished or merged with other ministries. In both cases an independent regulator was established with responsibility for daily supervision of the sector.

Despite institutionally similar outcomes from the national reform processes, political arguments continued to display significant differences in line with existing sectoral state traditions. *Service public* continued to be the central

concept in the French debate, and even if its content changed during the 1990s, its omnipresence suggests that it constituted the major source of legitimacy for state intervention in the sector. The German federal state, however, continued to be perceived as an infrastructure provider for the economy, and hence legitimised and justified intervention through optimal management of telecommunications services. In Germany, therefore, debate focused on management problems, i.e. financial aspects and how to ensure fair competition in the market place. Social policy aspects such as universal service obligations evoked less interest in Germany than in France, and when debated the Länder representatives, who were traditionally responsible for social policy, were the most active.

The case of France

Despite the radical institutional reform that took place in the French telecommunications sector in the late 1990s, French public political discourse continued to show remarkable similarities with former discourse, in line with the sectoral state tradition for telephone policy.

The notion of authority remained with Parliament, although more 'subtly' so than before. Parliament remained the legislative assembly, but the new independent regulator was given much discretion over daily decision-making influencing the telecommunications sector, comparable to the PTT Ministry in the very early days of telephony. However, very much contrary to the earlier situation, a larger number of actors were seen as relevant to policymaking (in line with the

sectoral state tradition from the late 1980s), as illustrated in a speech from M. Hubert, President of the ART, in July 1997:

I accept credit for our professional method and open dialogue. During the six months since its creation, the ART has been continuously in discussion with all market players. We have used ad hoc committees, public consultation and formal hearings as daily tools to enhance our capacity to make the right decisions and foster our independence. Just one word by the way: yes, we are independent.

Hubert 1997: 2

The introduction of full competition into a sector that had been monopolised since 1889, and the dramatic change in the state's mode of action from direct service provision to regulation, were justified with reference to the existing public ethos for sectoral policymaking: *service public*. The concept of *service public* itself, however, underwent profound development between 1984 and 1997, changing from a vague but ubiquitous term to one carrying specific meaning laid down in legislation. Its contents were specified and (pragmatically) adapted to contemporary needs (as dictated by socio-economic and international political and legal requirements). The various elements of a *service public* were increasingly delineated and defined throughout this period, but the concept itself retained its crucially central place in French public political discourse on telecommunications policy.

Criteria for legitimate decision-making remained stable compared to the 1980s, involving the broad set of actors (not only Parliament, the PTT administration, and the finance ministry, but also industry, telecommunications services users, and France Telecom employees) in 'continuous discussion'. The discourse type remained similar to that of the late 1980s, with a large set of knowledgeable

actors discussing at a level of high technical detail, and thus coordinative rather than communicative.

Telecommunications and the state in the 1990s

The beginnings of the 1990s were turbulent times for telephone policy across Europe, including France. The sectoral state tradition had been challenged in the previous decade through the growing importance and influence of a broad set of economic actors, including industry (through their role as telecommunications users), as well as the general public. Legislative activity from the European Commission reduced national parliaments' powers and in France was a major justification for the 'inevitability' of regulatory reform and the introduction of competition. French policymakers' emphasis on the potential impact of French ideas about *service public* on European policymaking, however, illustrates the strength of the sectoral state tradition. A political consensus on the unsustainability of the *status quo* in telecommunications had developed during the late 1980s, and continued during the 1990s.

The privatisation of France Telecom in the late 1990s was seen – at least in France – as a clear break with national traditions of public administration. Trade unions and employees feared that offering the enterprise on the stock market would be the end of *service public* guarantees (Le Figaro 1993a; La Tribune Desfossés 1993a; 1993b; Nexon 1993a), whereas the management of France Telecom considered a transformation to a limited company a necessity to survive in an increasingly competitive environment where the old state-centred

model had outlived its role. Observers remained suspicious as to whether the French state would prove capable of giving France Telecom its independence and letting it engage in 'fair competition' with other companies, or whether 'alternatives' would be found to enhance France Telecom's competitive stance both domestically and in the European arena. This investigation shows that despite such public opinions about fundamental change, the justification for policies, the sectoral state tradition, remained constant compared to the end of the corporatisation period.

The aftermath of corporatisation – emerging issue of privatisation

At the beginning of January 1991, France Telecom had been transformed into an '*exploitant public autonome*', [an autonomous public corporation] under the guise of giving it more managerial and financial flexibility in an increasingly competitive international environment, as well as reducing the Ministry's powers of direct intervention. The novel regulatory instruments were a licence (*cahier des charges*) stating France Telecom's rights and obligations, and a *Contrat de Plan* running for four years. Regulatory functions were kept in the PTT Ministry, regulation of licences being the responsibility of the *Direction de la réglementation générale* (DRG), and the *service public* obligations being closely followed by the *Direction du service public*. These two offices were merged into one single unit, the DGPT (*Direction Générale des Postes et Télécommunications*) from 1994.¹

¹ The DGPT was responsible for 'implementing the government policies in the areas of posts and telecommunications. (...) It ensure[d] conditions for loyal and fair competition between the different economic actors'. Décret relatif à l'organisation de l'administration centrale du

The new regime of 1990 had resulted in greater independence for the operator.

“There was a clearer separation between France Telecom and the political executive. The participation of elected politicians (...) continued, but in diminished form, over issues which were politically sensitive or required co-operation between France Telecom and the political executive, such as tariffs and internationalisation” (Thatcher 1999: 215). The legislation did, however, maintain important state influence over telephone policy through licence conditions. The telephone service was to remain in the service of the public and the general interest, and France Telecom was the state’s implementation tool.

The decree’s preamble set out France Telecom’s major objectives:

[France Telecom’s] activities respond to the users’ needs provided in the optimal way for society. They contribute to territorial development, national defence and security issues, as well as the development of European industry.

Ministère des postes, des télécommunications et de l’espace (1990): 16570

The public ethos of *service public* was therefore laid down and specified (although not necessarily exhaustively) in legislation. *Service public ‘à la française’* thus implied more than universal provision of telephony, it comprised a guarantee that services were provided in an ‘optimal way for society’. Within the context of French policymaking this could only mean continued control by Parliament, which remained the institutional expression of the general will and thus guardian of what was socially optimal. It did however not imply *ex ante* supervision as opposed to *ex post* control, but emphasised the outcomes of France Telecom’s actions rather than procedural correctness as the important measure for success.

It proved difficult for the political authorities to stop using France Telecom as a tool for broader industrial policies.² After the introduction of normal taxation rules in 1994 the state was criticised for pocketing too much of France Telecom's profit.³ Trade unions and political opponents condemned the government's behaviour, claiming that they '[distorted] the initiated reforms [which should give autonomy to a state-owned France Telecom] and [opened] the way to privatisation' (Le Figaro 1993a). Whereas politicians' appetite for France Telecom-generated funds was perceived as a threat to the contemporary status of the operator, privatisation remained a sensitive issue. When, in spring 1993, a government representative formally asked France Telecom's board to consider 'separating out the mobile activities'⁴ of France Telecom, heavy protests followed from both top management and trade unions.⁵ The issue's sensitivity, combined with the presidential elections of 1995, resulted in legislative proposals being postponed until 1996.

In 1993, however, the government instituted a 'reflexion' on the future of the telecommunications sector in France and the possibilities of partial privatisation through divestiture of the mobile activities of France Telecom, the so-called Dandelot report (Dandelot 1993).

² Until normal taxation rules were introduced in 1994, the company continued its direct contributions. In addition to direct transfers, politicians were seen to use France Telecom as a 'milk cow' by obliging it to invest in other enterprises, sometimes substantially above the market price. In January 1993, the government obliged France Telecom to spend 1bn francs on shares in two insurance companies as a 'pure financial operation' into a sector where France Telecom had no immediate interest, thus using the telecommunications operator as a 'milk cow' for their industrial policies (Le Figaro 1993b; Fabre 1993; Le Monde 1993).

³ Tax and dividends for 1994 amounted to approximately 16bn Francs, i.e. the same range as earlier direct contributions: 15bn France in 1992 and in 1993 (Le Coeur 1995a).

⁴ The representative, M. Couture, gave two main reasons for the government's demand; first, the increasingly aggressive competition in the mobile sector; and second, that mobile services in France lagged behind those in other industrialised countries (La Tribune Desfossés 1993b).

⁵ Top management was more 'surprised' about the form of the message rather than shocked by its content; trade unions opposed any possible privatisation (La Tribune Desfossés 1993a).

The Danelot report

Although not voluminous, the Danelot report touched upon many of the major themes in contemporary telecommunications debate, with the notable exception of the future status of France Telecom's employees.⁶ The report focused on three aspects:

- Competition – its impact on the economy in general, on employment, on existing actors, and on the role of the European environment as 'stimulator or risk factor';
- The actors – their strategies, both internationally and domestically, relations between service providers and equipment manufacturers, and between service providers in converging sectors;
- The role of the state – the development of different forms of intervention, regulation, means of ensuring equal treatment and respect for the missions of the *service public* (Danelot 1993: 1).

Its main contribution was to recommend the introduction of private capital into France Telecom, subject to the state retaining more than 50 per cent ownership. Public ownership and state control were regarded as the best guarantee that short-term search for profit would not destroy longer-term policy goals. In addition to the political difficulties over selling a larger part of the company, constitutional constraints rendered selling more than 50 per cent impossible (Danelot 1993: 48). The report maintained that

⁶ "It is outside the scope of this report to investigate possible solutions for the problem with employees' status in a reformed enterprise, because such considerations must be the object of internal consultation within the enterprise" (Danelot 1993: 49).

in a competitive world, it is imperative that France Telecom maintains its international competitiveness. (...) This depends on (...) tariffs – France Telecom cannot be exposed to an environment that can engage in cream-skimming; and (...) the enterprise's status.

Dandelot 1993: 46

The report argued that technological development and European legislation rendered competition, and therefore French legislative reform, inevitable. Competition was expected to result in cheaper services for the consumer and stronger growth for the economy in general (Dandelot 1993: 13-21), which was not portrayed as an independent goal for French authorities, but rather as an unavoidable fact of the global market (see Chevallier 1989: 605-610). The report also considered greater financial flexibility and independence necessary for the public company to survive in a global market, and international partnerships were seen as essential as cross-border service-provision increased. In order to engage in alliances and joint ventures, France Telecom needed its own capital. Moreover, foreign operators had expressed doubts as to whether it would be possible to maintain good business practice as long as France Telecom was completely owned by the state and controlled by the public administration.⁷

The Dandelot report also called for clearer separation between regulatory and operational functions, and envisaged a regulatory authority independent from the Ministry:

The relations [of the state towards the enterprise] should be less as those of the "tutor" (...) and more as those of a shareholder. However, it is

⁷ The American company MCI's search for an overseas partner culminated in it joining forces with British Telecom, particularly because of the French state's direct involvement in France Telecom, and because the enterprise was neither flexible enough nor possessed sufficient capital (Monnot 1993a, 1993b; Quotidien de Paris 1993; Nexion 1993b).

preferable to dissociate the role of regulator from that of shareholder. If the administration in charge of the “*tutelle*” also holds the role as the shareholder, should one not consider developing towards an autonomous regulatory organism?

Dandelot 1993: 57

Such views echoed recent legislation at the European level. EU legislation required a regulatory entity independent from the service provider(s), and although not compulsory, all member states, including France, opted for a model with a regulatory agency independent from the Ministry (Eyre and Sitter 1999: 55-56).

The Dandelot report also treated the issue of telecommunications as *service public*, reflecting on the increasing vagueness of the concept (illustrated in this thesis's chapters 4 and 5):

The major difficulty which exists in telecommunications is that the importance of the missions of *service public* remain imprecise; the concept is used everywhere, but its substance is not defined. Competition will oblige us to do this.

Dandelot 1993: 53

Universality of service had always been an important element in any *service public*. For telecommunications this idea was perceived as fulfilled “with current [1996] penetration levels” (Ministère délégué à la poste, aux télécommunications et à l'espace 1996b: 7). Full coverage had, however, been achieved by subsidising access charges and local tariffs through ‘overpricing’ long-distance and international telephone charges (Dandelot 1993: 54). A transitory system for re-balancing tariffs, which implied the relative cost of local calls would increase whereas long-distance and international calls would

be relatively cheaper⁸ was recommended, and was seen as another inevitable consequence of increased competition. Other important elements in a *service public*, such as adaptability, continuity, and high quality services, were expected to occur as a natural consequence of exposure to competition (Dandelot 1993: 22), but it was also recognised that for this to be the case, precise and high-level regulation would be necessary. A greater level of precision regarding the *service public* concept would also facilitate the development of licence conditions, which became the state's main policy instrument *vis-à-vis* the telecommunications operators.

The ensuing debate

The Dandelot report met positive reactions from the incumbent operator. France Telecom's president, Marcel Roulet, officially supported a change in status from public corporation to limited company, albeit with the state as majority shareholder, to ensure sufficient capital and flexibility to partake in international alliances and joint ventures (Monnot 1993d). However, the issue of France Telecom employees' status constituted a major obstacle to reform, and the PTT Ministry asked the top management of France Telecom to instigate a consultation process similar to the one conducted by Prévot in 1989 (Le Gales 1993b). Here, the Minister had taken the initiative to conduct an 'open consultation' process with the employees, at the time a novel method for the French state to handle a reform. Throughout 1994 Marcel Roulet emphasised his wish for "an internal campaign to construct a common project for the group

⁸ France Telecom introduced new and more balanced tariffs in a reform that came into force in early 1994, when the two-zone system (local or national tariffs) was replaced with a three-zone system (local, area and national tariffs), and access charges were harmonised throughout the territory (Monnet 1993c; Le Gales 1993a; Libération 1993).

and to open for a new social contract with the trade unions" (Le Coeur 1994).

The approach, which previously had entailed a peaceful process, failed to prevent the industrial action of October 1993 (Nexon 1993c; Douroux 1993), but was still a clear indication that consultation as procedure had gained ground in the French telephone policymaking environment, not only between central politicians and the general public but also within the state apparatus itself. However, increased participation from a broad set of actors was not a sufficient condition for legitimacy of policies, as the industrial action indicated.

The major issue at stake for the employees was their status as *fonctionnaires*.

The trade unions DGT-PTT and CFTC expressed their qualms and opposition to the proposed joint venture between France Telecom and Deutsche Telekom in terms of fears for job losses and ultimately privatisation, which they saw as an inevitable consequence of the alliance (Le Coeur 1993a). In November 1993, a solution was presented whereby the Conseil d'Etat ruled that

the law creating a private enterprise [*société anonyme*] could maintain state employed *fonctionnaires* in this enterprise and give the enterprise's president power to employ and manage these civil servants without breaking a constitutional rule or principle.

Conseil d'Etat quoted in Devillechabrolle and Monnot 1993

The employees would, however, need to provide a *service public*, implying that a law proposal would have to define the enterprise's missions, that more than 50 per cent of the ownership must remain with the state, and that license conditions would ensure the execution of the *service public* interests (Devillechabrolle and Monnot 1993). This again brought the need to define and clarify the content of the *service public* concept back into focus. The issue remained politically

sensitive and the *Contrat de Plan*, the agreement between France Telecom and the relevant ministries for 1995-1998, made no reference to the future status of the enterprise, but obliged it to “keep the growth of personnel costs lower than its value added” (Le Coeur 1995b; Les Echos 1995a).⁹

The privatisation plans had supporters abroad. Günter Rexrodt, the German Minister of Economics, demanded ‘substantial’ privatisation of France Telecom as precondition for any joint venture with Deutsche Telekom (Petit 1993a; Monnot 1993e). “Out of respect for competition it is not possible to join two state monopolies” (Günter Rexrodt, quoted in Monnot 1993e). The domestic conflict regarding the employees’ status, however, induced the French PTT Minister to temporarily renounce his privatisation plans in the autumn: “France Telecom’s objective is not to be privatised, but to be a public enterprise, independent from the state” (interview with M. Longuet on Europe 1 29.10.93).

When France Telecom was transformed into a corporation in 1990, political debate emphasised the future ‘inevitability’ of competition in the telecommunications sector, not only globally but also in the French market.

Globalisation gave France Telecom new competitors, companies that had

⁹ Despite the temporary closure of the subject, it remained clear that a change in employees’ status was forthcoming, mainly due to the impossibility of a corporation without its proper capital to form alliances with other, notably foreign, companies (lack of proper capital had hampered a possible deal with MCI in 1993). The ruling by the Conseil d’Etat inevitably opened the question of how long employees would remain *fonctionnaires*, since one could envisage *service public* obligations being removed from France Telecom’s remit (Boiteau 1996). The ruling therefore provided a means of delaying the transfer of all employees to the private sector, as well as signalling the state’s willingness to take on responsibilities for pensions and provide early retirement schemes (Boiteau 1996: 383). However, the issue of employees’ status remained largely untouched in French debate until 1995, when a new project for changing the status of the corporation was undertaking (Delion and Durupry 1995: 180). The PTT Minister emphasised the inevitable forthcoming competition and the need for clear rules (M. Fillon, Minister for technologies and information, quoted in Monnot 1995) and “the government considered that a change in status of [France Telecom] is necessary” (Le Gales and Saint-Victor 1995).

“shown a much greater capability to adapt and change rapidly. These competitors are not without weaknesses, but they correct them quickly” (Danelot 1993: 46). Technological developments, particularly satellite technology, threatened national monopolies, and European legislation required national governments to open their domestic telecommunications sectors to competition no later than 1998. The relative importance of the various driving forces for liberalisation was not agreed upon, but the inevitability of the development was found on both sides of the political spectrum.

Contrary to ideas held by some, this reform [ending the state monopoly in telecommunications] is less spurred by European legislation than by the development of technologies. (...) In such a promising field as telecommunications, both economically and industrially, we have no choice but to employ the current mutation to our advantage.

Fillon [PTT Minister] 1996

[The Minister] has presented the law proposal [on regulation of telecommunications] as the inevitable consequence of the holy scriptures of the European Union resolution of 22 July 1993. From there, everything hangs together, as if automatic.

Zuccarelli [MP, PS] 1996¹⁰

The Member States of the European Union have in 1993 unanimously decided to open the whole sector of telecommunications to competition. This is the result of a long process of technical development and not the fruit of an ‘ultra-liberal’ ideology.

Ceussin [MP, UDF] 1996

With competition accepted as inevitable, it became paramount to ensure that France Telecom was given the best possible conditions to compete. Opening voice telephony to competition only from 1998, the latest date set by the

¹⁰ Even if M. Zuccarelli (PS) was critical of the government’s handling of the matter, he did not suggest at any point during his intervention in Parliament that the introduction of competition should or could have been ‘avoided’.

European Commission, gave the incumbent operator maximum time to prepare for the new regime.

The ensuing debate was, however, focused around *service public* (vs. universal service) and the modalities of organisation and regulation of competition (defining the central actors and their relative powers). These foci correspond with two of the main elements of the sectoral state tradition. The authority of Parliament was only indirectly questioned through the emphasis on the 'inevitability' of reform, and the decision-making methods employed, with emphasis on open consultation, were similar to those used in the late

Service public vs. universal service

EU legislation remained crucial in determining the timetable and central structural features of the new regimes. EU legislation did not make specific reference to the French *service public*, but rather to 'universal service', i.e. high quality voice telephony offered at affordable and equal prices throughout the national territory, free access to emergency calls, public phone boxes, and a directory enquiry.

The concept of 'universal service' was not current in European legislation until applied by the European Union.¹¹ French politicians argued that their *service public* was a broader concept than the EU universal service requirement. Thus,

¹¹ The term itself was originally adopted from the US, where it was first used by T. Vail in 1907 in the annual report of the ATT. For historical overviews of the concept both in American and European contexts see Mueller 1993; Dordick 1990. For the EU debate on universal service see e.g., Hart 1998; Skogerbø and Storsul 1998.

in a round table discussion on the new regulatory regimes in 1996, the president of the DGPT stated that:

[The two concepts ‘*service public*’ and ‘universal service’] refer to cultural values, a judicial and social tradition. Universal service can be defined as a “basic service” (the telephone), which at a certain quality must be provided throughout the territory, affordable and equal for all. (...) Universal service as we define it is at the heart of the *service public* and respects its founding principles: equality, universality, continuity and adaptability of service. However, the notion of *service public* is broader than that of universal service because it includes compulsory services that the states can determine in order to ensure a minimum service. For example, leased lines and ISDN are not included in the universal service, neither are other tasks of general interest such as research and education, or even security and defence.

Ministère délégué à la poste, aux télécommunications et à l'espace 1996a: 7

The Ministry of Economics had in 1994 asked the group ‘Réseaux 2010’ (under the Commissariat Général du Plan) to study the conditions for industrial and commercial *service publics* in view of current European liberalisation measures (Stoffaës 1995b). In the group’s mandate, the Economics Minister listed certain characteristics of the French *service public*: equality and neutrality of customer treatment; territorial development; protection of consumers against abuse of a dominant position; sustainable development; and development of communications infrastructure (commission mandate, Stoffaës 1995b: 3-4). The list was not exhaustive, but indicated a much broader set of missions than the traditional ‘equality, adaptability and quality of service’, including broad societal tasks that touched upon the *services publics*’ role in the economy in general. Interestingly, it also suggested a broader approach than that used in subsequent debate on the telecommunications *service public*.

The Réseaux 2010 report identified a triple challenge for the French *services publics*:

- The conceptual definition had become outdated, necessitating a profound rethink about the rationale for *services publics*;
- Organisational and regulatory practices had to develop – the organisation would have to accommodate a certain degree of competition, and regulation would be needed;
- The timetable setting the pace for change was partly outside French control, which necessitated clearer lines of decision-making and control (Stoffaës 1995b: 274).

The report emphasised that the development of new regulatory regimes for the public services in general and telecommunications in particular was a political task. A legitimate regime needed general legislation at its root, emanating from an elected assembly, and thus confirming Parliament's ultimate authority, in line with the existing state tradition. However, the report recommended a pragmatic approach because regulatory regimes' legitimacy would be judged more by its outcome than by its intent.

France remains in many cases loyal to its administrative traditions, when these are legitimised by their technical and economic results. The modernisation must progress in a pragmatic manner, and not under simplifying and possibly ephemeral ideologies.

Stoffaës 1995b: 276

According to the report, new organisational and regulatory practice should distinguish between means (the instruments of regulation) and ends (its rationale). Accounting separation, in order to determine the real costs of a service, and the separation of regulator and service provider to ensure transparency and independence, were the new central instruments (Stoffaës

1995b: 277-278). Defining and clarifying the rationale for *services publics* had to be the result of 'democratic exercise', but should include modernisation of the principle of equality (Stoffaës 1995b: 280-282). The concept of *service public* was in France "associated with the social equilibrium of the Nation" (Stoffaës 1995b: 281).

For telecommunications policy, the central issues were how to ensure high-quality telephone services for all users throughout the territory at an affordable price. As re-balancing of tariffs would increase the rate of local calls, a certain cross-subsidy would be legitimate in the name of solidarity. Its extent and degree, however, would have to move according to changing political preferences in the population. The report did not cover other elements of the telecommunications *service public*, such as defence and security, and research and education. However, it did envisage future political debates at the European level to install a sense of a 'European general interest' based on consumers' interests (Stoffaës 1995b: 352). The report, therefore, advocated a shift in focus from a centralised state determining the general interest and implementing its policy through a monopoly, to *services publics* (determined by convention and tradition more than anything else) answering to the needs of consumers and operating in competition with other service providers in Europe.

The report from Réseaux 2010 did not discuss the content of a *service public* in great detail. Other documents, however, tried to give a more precise definition. In a governmental report on the 'information society', Théry (1994) emphasised the need to allow the concept of *service public* to develop together with

technological possibilities (p. 113). Gérard Larcher [a député] (1996) wrote in a parliamentary report on the future of France Telecom:

It is therefore of utmost importance that the [forthcoming] legislation which will remove the monopoly in telecommunications gives an easily comprehensible definition of the telecommunications *service public*, so that by reading it one cannot be led to believe that the maintenance of this service will be questioned by opening the telephone markets for competition. This definition should clearly show the double character of *service public* “*à la française*”, i.e. one the one side universal service, and on the other side the general interests to be accomplished in telecommunications matters, concerning defence, security, standards, international technical co-operation, research and higher education.

Larcher 1996: 97

These elements and the EU definition of universal service were subsequently largely used as a definition of the *service public* of telecommunications. Larcher and others¹² maintained that the double nature of the *service public* could not simply be equalled with ‘European universal service’, but that new instruments, particularly financial ones, were required to allow it to survive in a competitive environment:

- Tariff discrimination relating to volume of communication rather than geography;
- Compulsory contributions by all market actors towards research and development, education and standardisation;

¹² “The universal service is thus not really an adding on to the ‘*service public à la française*’, but rather the translation of its founding principles onto the Community level” (Fillon 1996: 2875). One could often hear in French policy debates argued that the inclusion of such standards at the EU level were thanks to the French, in particular their insistence under their presidency of the EU at the adoption of the services directive in 1990. E.g., “The Commission had first (...) adopted a text which certain Member States – of which France – judged too liberal. Thanks to the efforts of the French presidency, the PTT ministers could finally reach a compromise on the 7 December 1989” (Montcharmont 1990: 10).

- Channelling value added tax from France Telecom and its competitors directly towards higher education in telecommunications (Larcher 1996: 92-96).

The report thus endorsed increased financial flexibility for France Telecom as well as transparent means for financing the *service public* elements that were assumed to be non-profitable. It also recommended that France Telecom be given “responsibility for the *service public* of telecommunications” (Larcher 1996: 126). However, as the argument proceeded, the wording ‘*service public*’ was subtly substituted with ‘universal service’ (*service universel*). The report, therefore, which gave no further clarification regarding organisation and financing of the *service public* tasks not included in the universal service,¹³ illustrates the shift in debate from *service public* to universal service, a shift that was more profound than only the change of words.

Larcher’s report recommended the establishment of a universal service fund, regulated by an independent authority, to which all operators would contribute (Larcher 1996: 125-140). In relation to the elements of a *service public* that remained outside of universal service, (notably higher education and research), it recommended that the state took direct responsibility without using France Telecom to implement its policies (Ministère délégué à la poste, aux télécommunications et à l’espace 1996a: 7-8). France Telecom might be

¹³ The change in language in public debate was not lost on the trade unions: “the term *service public* has progressively been substituted during the debate with that of universal service. For reasons of national traditions, we prefer the term *service public*.” M. Khalfa, representative of the *Fédération Syndicale Sud des Postes et Télécommunications* (Ministère délégué à la poste, aux télécommunications et à l’espace 1996a: 17)

corporatised, commercialised, and eventually privatised, but the French state should still embrace all its traditional responsibilities for a broad *service public*.

By 1996 the debate had changed from the ardent opposition of trade unions (based on a vague concept of *service public* to which they pledged loyalty) to a more technical discussion on the modalities of the new regulatory regime. The mode of state intervention in the telecommunications sector was perceived to be in need of change, because of the sector's importance to the rest of the national economy, and also (and for some, mostly) because of European legislation, which constrained France's possibility to preserve a non-competitive telecommunications sector. Opposition to change remained notably in the Communist party and among some socialists (see Gayssot 1996; Sarre 1996), but the perceived inevitability of the project rendered this opposition less important. Furthermore, by launching public debates on the finer points in the future regulatory regime, such as interconnection and maintenance of the *service public* requirements, knowledgeable experts, not only within the state hierarchy but also from private enterprises and interest groups, brought the debate to a technological level at which agreement on the project's realisation was assumed. Such change in level of debate meant that those fundamentally against the project of introducing competition were devoid of an arena in which to pronounce their views, thus further decreasing the audibility and power of their arguments in public debate.

Regulation of competition

When the telephone service was provided directly by the government, most relevant regulation was issued in the form of laws or government decrees and *arrêtés*, directly applicable to the public bureaucracy. In the 1990s, however, effective autonomy for France Telecom, competition between several service providers, the demand for flexible regulation (spurred by rapid technological change), and the EU requirement of institutional separation between regulator and supplier, altered the role of the state to that of regulator.¹⁴ The regulator DRG (pre-1994)/DGPT (1994-1996) had sought a reputation for impartiality (Thatcher 1999: 216), making policy-documents publicly available and holding public hearings on central issues. Its approach to policymaking confirms the trend that started with the Prévot commission in 1989 that implied greater influence for a larger number of actors rather than an omnipotent PTT administration.

In the preparation for the post-1998 environment, the DGPT launched a public debate where it identified five major objectives for the new regime – to:

- Guarantee everyone a high quality telecommunications *service public* at an affordable price;
- Respond to the increasing fragmentation of user demand;
- Enhance competition in the telecommunications sector;

¹⁴ In France, this change also found linguistic expression when academic and political debate in the 1980s and the 1990s gradually changed its focus from '*réglementation*' to '*régulation*'. The former term would signify 'traditional', hierarchical reports where the State exercised its powers over society, whereas the latter was related to 'modern', more flexible structures, e.g. of the kind seen in the telecommunications field, where the legitimacy of the action was more judged by its outcome than by its organisation. See Mialle 1995.

- Enhance France Telecom's competitiveness;
- Ensure effective regulation of the markets (DGPT 1995: 4-5).

These priorities form a succinct list of the central issues in telecommunications policy debate in 1996-97 and can be seen to arise from two separate sources. On the one hand, supranational legislation obliged the French state to ensure fair competition and effective regulation of markets. On the other hand, the *service public* tradition obliged the state to ensure high-quality, affordable services. As shown, the debate on the *service public* of telecommunications had by 1996 clarified the difference between *service public* and universal service as being a greater inclusiveness of the *service public* concept, embracing a wider range of potential services eligible for universal provision, as well as certain obligations by the state regarding security and defence, and research and education. France Telecom's licence conditions from 1990 had specified that the services should be provided in an optimal way for society, which five years later translated into meeting increasingly fragmented user demands. Effective competition in the market and the competitiveness of France Telecom, as well as the authorities' capability to meet both the traditional obligations developed over 100 years of telephone service provision and the new requirements from technological change and international legislation, would depend on the character and quality of regulation. Of particular importance was the institutional framework and rules on interconnection tariffs.

The institutional framework

EU legislation required institutional separation of regulatory and supply functions. However, whether the regulator should be independent from the state was up to each EU member state to decide, and France never had a strong tradition for delegating regulatory authority to an independent institution (Quelin 1996: 136).¹⁵ Nevertheless, it was argued that:

The unique character of the European 'de-monopolisation' imposes a regulation based on stable principles, but with adaptable application. (...) The regulatory authority should be independent but leaning on the state.

Larcher 1996: 114-116

According to Larcher, the 'independence' referred to in EU legislation was a concept imported from the Anglo-Saxon tradition where the judiciary played a much larger role in political development than was the case in France. Constitutionally it would not be possible for France to delegate political decision-making powers to an institution not democratically elected, but it would be feasible to establish an administrative entity independent from the state to supervise regulation emanating from government (Larcher 1996: 120-121). Such an authority should, according to Larcher's report, be responsible for the technicalities of interconnection tariffs, and they should have sanctioning powers.

The points raised by Larcher were later supported by most interested parties.

Several actors called for a 'strong and independent' regulator at the round table discussion in January 1996 (Ministère délégué à la poste, aux télécommunica-

¹⁵ It is however true that there existed several 'independent administrative authorities' in France, such as the CSA and the Competition Council, but they were supervisory bodies, leaving policy-formation to the legislative assemblies.

tions et à l'espace 1996a),¹⁶ answering to the perceived problem of conflicting roles between a state being both owner and regulator. This problem had first been highlighted in 1994,¹⁷ but although new potential entrants, as well as consumer interests, were in favour of an independent regulator (Ministère délégué à la poste, aux télécommunications et à l'espace 1996a: 5), the political community was not entirely comfortable with what many saw as a 'new model' regulator (Chevallier 1996: 932).

In its preparation for new legislation, the DGPT argued that the authority would need sanctioning and litigation powers, and that the technical nature and economic importance of telecommunications regulation implied it was given greater independence than existing independent administrative entities.

However,

the minister in charge of telecommunications would, evidently, directly exercise the regal powers (international negotiations, preparation of regulatory and legislative texts) as well as the powers to issue licences, attribute public resources and control the implementation of licences.

DGPT 1995: 21

This argument was echoed by the Minister responsible for telecommunications in his presentation to Parliament:

The law proposal establishes an independent regulatory authority. Why an independent institution? Because the principal operator in the market, the one that ensures the *service public*, remains under the control of the state.

¹⁶ This was the case for the representatives from the Competition Council (Ministère délégué à la poste, aux télécommunications et à l'espace 1996a: 22-23), of new entrants (ibid. pp. 23-25), of competitors to France Telecom (ibid. p. 26), and in the general comments to the DGPT draft (ibid. p. 8).

¹⁷ Bruno Lasserre from the DGPT treated this point in his parliamentary report in 1993, published in 1994 (Chevalier 1996: 931). The point was also treated by M. Rousseau from the CSA: "The existence of a competitive telecommunications market will necessitate a regulatory institution. It is however difficult to imagine how a governmental agency, who would also have the 'tutelle' of the public operator France Telecom, would be able to organise the market" (Peytavin 1994).

This is the deciding factor: the state could not remain majority shareholder of France Telecom and claim to simultaneously ensure that the competition rules are followed with all the required impartiality. (...) Not only is the creation of the Autorité de régulation des télécommunications [ART] not a judicial innovation, also the division of powers between this organ and the government aligns well with our republican tradition, because the government retains the essential prerogatives, in particular those of deciding regulation, issuing licences and controlling the content and the tariffs of the *service public*.

Fillon 1996: 2877-2878

New legislative measures were thus once again justified with reference to the century-old sectoral state tradition: final legislative authority in the hands of a democratically elected institution (government, supervised by Parliament, representing the Nation), safeguarding the principles of *service public*. Despite dramatic institutional and legislative changes, political discourse communicated the advantages of the new regime using the same concepts as policymakers had done since the consolidation of the telephone service state monopoly. The fact that the content of the concept constituting the centrepiece of the public ethos, *service public*, had changed dramatically only emphasises its value for legitimating state action.

Observers diverged on the novelty of an independent regulator. Some referred to the growth of similar bodies since the establishment of the CSA in 1983 to emphasise continuity and tradition, others listed the extensive powers and irrevocability of the ART's mandate to illustrate its unique character. Whether the independent regulator was a new invention or not, the participants in the public telecommunications debate throughout the 1990s came to see the institution as a potential impartial safeguard of the telecommunications *service public*.

Interconnection

The regulatory authority's independence from the incumbent operator was particularly important regarding interconnection tariffs. However, in line with the existing sectoral state traditions, interconnection tariffs were linked to the economic viability of provision of *service public*. An expert group was therefore established to investigate the conditions for interconnection, financing of universal service, and regulation of the local network in a competitive environment (Ministère délégué à la poste, aux telecommunications et à l'espace 1996b). The group's mandate emphasised the importance of effective tools to calculate interconnection tariffs for "the development of fair and effective competition respecting the *service public*" (Ministère délégué à la poste, aux télécommunications et à l'espace 1996b: ii).

The expert group's report provided a balance between sectoral competition and *service public* requirements. The group identified two major elements of the *service public* in addition to universal service: a social element assuring access to telecommunications services for individuals; and a geographical element ensuring equal user conditions and prices throughout the territory. The social element was seen as best catered for through individual social support, whereas geographical price uniformity was suggested as being achieved through a 'universal service fund' that would be transparent and related to the real costs of providing loss-making services (Ministère délégué à la poste, aux télécommunications et à l'espace 1996b: 7-8 and 54-63) – echoing conclusions from the 1994 'Reseaux 2010' report.

The expert group thus distinguished between the ‘technical’ issues of cost accounting and universal service requirements, and the ‘political’ issues connected to the broader *service public* concept. Whereas the former was treated in an objective analytical manner and could be handled objectively by a relatively autonomous administration under parliamentary supervision, the latter was referred back to political institutions and assumed best catered for in the democratic political channels. Although separation of ‘technical’ and ‘political’ issues was not part of the French sectoral state tradition, the expert group’s proposal was in line with the tradition that ensured parliamentary authority and control with a *service public* seen as vital for ‘the life of the nation’ (see quote from De Gaulle 1946, chapter 4). Direct service provision was no longer the preferred means to guarantee continuity, equality and adaptability, but the goal as presented in public discourse remained the same.

The new telecommunications regulation regime

France legislated for a new regime for the telecommunications sector in 1996. The two significant pieces of legislation were Law on the regulation of the sector (96-659), and Law on France Telecom (96-660).

The Law on regulation of the sector (Loi de réglementation des télécommunications) established that:

- Telecommunications activities could be freely exercised, subject to certain objective, transparent, and non-discriminatory, rules;

- Provision of services was subject to a licence issued by the minister responsible.¹⁸ Refusal to issue a licence could only be done with reference to public order, national security and defence, or if the applicant was judged not to possess the necessary technical and financial strength to provide the service;
- Interconnection demands could not in principle be refused, and interconnection tariffs to public networks had to be published (but agreements between service and network providers came under private law);¹⁹
- The *service public* of telecommunications was defined, and comprised three elements:
 - Universal services, i.e. high quality voice telephony provided throughout the territory at an affordable price, free emergency calls, directory services and public phone boxes. France Telecom was given responsibility for providing universal service, and its content was to be reviewed at least every four years;
 - 'Compulsory services', i.e. ISDN, leased lines, packet switched data, advanced voice telephony services, and telex. France Telecom was obliged to provide these services, but in competition with other providers;
 - Security and defence, and issues of general interest, i.e. higher education and 'public research', where the State was given responsibility for financing;

¹⁸ For an overview of the initial licensing regime, see Maxwell 1999

¹⁹ For a discussion of the early interconnection regime see Andresen and Sjøvaag 1997

- Provision deficits resulting from universal service obligations should be covered by a universal service fund to which all operators contributed;
- The *Autorité de régulation des télécommunications* (ART) was given responsibility as regulator of the sector.²⁰

The Law on France Telecom (Loi relative à l'entreprise nationale France Telecom) transformed France Telecom into a limited company from 1 January 1997 subject to certain conditions:

- The State would remain majority shareholder;
- The State took on responsibility for providing and funding higher education in the telecommunications sector;
- France Telecom's employees could remain *fonctionnaires* if they so wished, and new employees could be given the status as *fonctionnaires* until 2002.

Under the law several provisions from the legislation of 1990 remained valid, notably:

- The '*contrat de plan*' remained – but only to set out general objectives for telecommunications policy;
- The state continued to reimburse costs incurred by the *service public* obligations, notably for territorial development;

²⁰ The ART was created on 1 January 1997. It consisted of five members appointed for a period of six years, three of which were appointed by governmental decree, one by the president of the Assemblée Nationale and one by the president of the Sénat.

- The chapters on the enterprise's missions, institutional design, fiscal matters, and relations with clients and suppliers remained intact (Chevallier 1996: 939).

The Law on France Telecom gave the company a multitude of functions (*société anonyme, société d'économie mixte, exploitant public, entreprise nationale, opérateur public*), which were neither necessarily *a priori* compatible nor generated a unique judicial entity (Chevallier 1996). Legally, as long as the state retained more than 50 per cent of the capital, the enterprise would remain 'public' and could be subject to (limited) direct intervention from public organs.

The case of Germany

The German debate on telecommunications policy in the 1990s was in line with the existing sectoral state tradition.

The final authority remained with legislation, and the set of actors perceived as relevant to policymaking did not change in the 1990s.

The federal government's major task was seen to be provision of good management of federal resources, to the benefit of the German economy, thus indicating continuity in the public ethos of the sectoral state tradition. What was seen as the optimal organisational form to achieve this public ethos had changed in the 1980s from efficiency in direct service provision to provision of conditions to enhance just and fair competition. This change of organisational

‘interpretation’, however, did not change the essential public ethos of the sectoral state tradition. Between the late 1980s and the late 1990s, the public ethos remained constant, as well as the view that competition would be the optimal way to ensure implementation of the public ethos.

However, the government was criticised for the introduction of competition, and these criticisms, as well as the solutions they provoked from government, show the stability of the public ethos in Germany. Criticisms were made primarily with reference to universal service obligations, which had been a central element in the legitimacy of the former federal monopoly. Government’s proposal, however, was to solve this by a new financial tool, the universal service fund, which could be established in the case that no service providers would undertake provision. This move was in line with the sectoral state tradition of viewing the business community and private enterprise not as opponents to the state, but as valuable partners in attaining optimal telecommunications services.

Criteria for legitimate decision-making did not change in Germany in the 1990s. Discourse remained coordinative.

Telecommunications policy in Germany 1990-1998

German telecommunications legislation changed twice between 1990 and 1998. These two reforms (in 1994 and 1996) formed the last two parts of a sequence of three major legislative changes to restructure the telecommunications sector

(the first legislation was passed in 1989, see Chapter 5). The second part of the remaking of the legislative framework in Germany (Postreform II) came into effect in 1995, when the three administrative entities of the DBP were transformed into limited companies: Deutsche Telekom AG; Deutsche Post AG; and Deutsche Postbank AG. The third legislative change (Postreform III) was the new law on telecommunications, the *Telekommunikationsgesetz* (TKG), adopted in 1996. The TKG abolished the public monopoly of the telecommunications network and of voice telephony. It also established a telecommunications regulator, the *Regulierungsbehörde für Telekommunikation und Post* (RegTP).

Reunification in 1990 resulted in heavy financial burdens for the former West-German state, including the telecommunications ministry, and this led to a broad consensus among central actors of further rapid reform, particularly the necessity of privatising the DBP. The initial consensus did not include the trade unions and the social-democratic party, the SPD, but the latter reached a compromise with the conservative government in 1993. Debate prior to 1994 was therefore largely a debate not about liberalisation but about the privatisation of the DBP in order to solve immediate financial problems. Later, between 1994 and the adoption of the TKG in 1996, the debate concentrated on the modalities of competition; the debate's links with the existing sectoral state traditions were evident. The concept of 'just and fair competition' remained a cornerstone of governmental policy, as it had been in the 1980s. Furthermore, the consensus view of the public administration and the federal government as ideally an efficient manager of federal resources did not change.

The aftermath of Postreform I – reunification²¹

The 1989 reform had opened mobile, satellite and value-added services to competition, but had retained the DBP's monopoly in transmission facilities (network) and voice telephony. The new organisational structure was operative from 1 January 1990. Only nine months later, the DBP, whose restructuring and increased competitiveness had been an important rationale for the first telecommunications sector reform, was merged with its East German counterpart Deutsche Post. It rapidly became clear that the new organisation's managerial and economic flexibility was insufficient to meet the enormous demands from the former East Germany, where investments necessary in 1991 were estimated to be DM55bn and number of new lines was set first to 300.000, then doubled, and reached 758.000 in 1992.²²

Reunification significantly increased the telecommunications services expansion rate in the former East Germany, but also introduced profound changes into the former East German organisation. What had as late as 1989 been a centralised, heavily bureaucratic organisation, spanning telecommunications network and services, postal services, and central communications products, such as broadcasting and newspapers, rapidly had to become market-oriented, flexible and efficient: all central elements in the West-German sectoral state tradition. East Germany chose to adopt West German structures, policies, organisational framework and legislation (Robischon,

²¹ Re-unification is only briefly covered. The study's interest lies within the effect of the re-unification process on telecommunications debate rather than the details of the unification and merger process itself.

²² These numbers are not mentioned to make precise calculations but rather illustrating the enormity of the task. Source: Neumann and Schnöring 1994: 330; Peel 1993.

Stucke, Wasem and Wolf 1995; Neumann and Schnöring 1994: 328), so that network operation and voice telephony remained monopoly areas, with contractors undertaking part of the physical extension work (Broichhausen 1990). There was some debate on whether to allow competitors to the DBP/Deutsche Post (the Monopolkommission was in favour of competition and increased private investment, see Monopolkommission 1991; Goodhart 1991), but both financial and legal constraints favoured the contemporary West German regime. In particular, the Deutsche Post already held the rights of way for telecommunications infrastructure, which facilitated rapid network extension.

By 1992 the DBP was in severe financial difficulties and the promised results from the first Postreform – sufficient flexibility for the DBP to meet fragmented demand and to drive technological innovation – were hampered by the strain on the corporation's financial and human capacities. Consensus evolved among central policy-makers on the need for further reform, and an introduction of private capital emerged rapidly as the favoured solution.²³

Postreform II – transfer of public companies to private law

The restructuring of Deutsche Bundespost in the Postreform I had resulted in a “more progressive, competitive and customer oriented DBP Telekom” (Bauer 1993: 84), and the mobile and satellite sectors experienced increased

²³ “‘There is no question of privatising Telekom’ [says PTT Minister Christian Schwarz-Schilling]. This is however a question of nuances. Because the minister admits that the possibility of introducing the partners of Telekom as minority shareholders in the public company is effectively being vigorously scrutinized” (La Tribune de l’expansion 1990).

competition. However, both the Ministry for Posts and Telecommunications, members of Telekom's Board, and academia, agreed that "Telekom's status as a government enterprise [was] causing severe problems" (Bauer 1993: 84).

Continued political influence was not the only obstacle. International activities were hindered by constitutional constraints, the employees' status as civil servants hampered flexibility and adjustment of the work force, and Telekom's capital stock and reserves were decreasing.

The ensuing debate focused on three areas:

- Internationalisation of the sector, which led to other countries' operators becoming more competitive, threatening Deutsche Telekom particularly through call-back and satellite services effectively bypassing the German monopoly;
- Financial problems, both in Deutsche Telekom itself and in the German state's finances;
- The status of the employees of Deutsche Telekom.

German policymakers, therefore, in line with their sectoral state tradition, targeted the management issues, perceived from a perspective of economic policy.

Pro-privatisation

Internationalisation and increased competition, the government argued, were the main reasons for telecommunications reform:

In the past 20 years the industrial, organisational and regulatory landscapes in the telecommunications sector have fundamentally changed. Through internationalisation and increasing competitive pressures the trend towards privately organised enterprises, independent from the state, has amplified. (...) Telekom is currently, due to constitutional restrictions, limited in its international scope of activities. This can be negative for the German economy (...) It is crucial for DBP Telekom to be competitive at this date [31 December 1997] to survive in an open environment.

Ministerium für Post und Telekommunikation 1994a: 3-4

The DBP's financial difficulties spurred key actors' demand for further reform.

"Reform was no longer merely seen to promote private-sector opportunities, but became necessary as a defensive measure to protect the long-term viability of Telekom" (Schmidt 1996: 54). The unification of the two telecommunications systems and investment in East Germany were already expensive, and in early 1991 the Minister of Finance announced that he would raise a levy on the DBP by an additional DM5bn every year in the period 1991-1994 as an element in the general restructuring of East Germany. Introducing private capital through stock markets was therefore seen as a possible solution to the financial problem.²⁴

Re-unification has removed [political] taboos [of privatisation] in Germany and dug a budgetary deficit. (...) Everybody is waiting for a privatisation. The only questions are "when" and "how".

Siegele 1992

One of the most ardent defenders of privatisation was Deutsche Telekom's management. Immediately after re-unification their most important argument was purely financial.

Details of the extraordinary telecommunications investment programme were presented by Mr. Ricke [Deutsche Telekom's chief executive]

²⁴ A debt of DM10bn was issued in early 1992 to help finance the East German project (La Tribune de l'expansion 1992).

yesterday, in a defence of the decision not to open the East German market to wider international competition. At the same time he warned that the planned privatisation of Deutsche Telekom was urgently needed "so that we won't have to hold back our investments because of our capital base".

Peel 1993

One should keep in mind that the German telephone provider since 1924 was under the obligation to cover its costs through telephone revenues. However, as illustrated in previous chapters, political realities hampered the possibilities of real cost-based telephone tariffs, which therefore largely continued to be set politically and to be financed through a complicated system of cross-subsidies within the DBP. In the early 1990s it was politically impossible to let the end users pay for the increased investments in form of higher telephone tariffs, which gave Deutsche Telekom no alternative but to build up debts and decrease its own capital base, a situation which could be remedied through privatisation.

Was the justification for privatisation contrary to what the sectoral state tradition would lead observers to expect? Since the invention of the telephone, the federal government had been required to utilise federal resources cost-effectively, their principal task in telephone policy being to provide German industry with crucial infrastructure without undue economic burdens. As the role of telecommunications grew the telephone authorities' primary aim was expanded and comprised a certain element of social justice, which however had been transferred back to other political authorities in the 1980s. A major yardstick for DBP (and hence government) performance in the early 1990s was, therefore, the DBP's financial viability. Political and economic realities excluded options that would put further strains on federal public finances and so

the introduction of private capital presented itself as a logical option. The sectoral state tradition had by the 1980s changed to prefer the use of just and fair competition in the marketplace to ensure optimal use of resources, and the right and obligation to legislate *ex ante* and supervise *ex post* such competition remained with the federal government. Privatisation, therefore, was justified in line with the sectoral state tradition.

Reunification occurred as other telephone operators in Europe prepared for global competition. The rebuilding effort temporarily implied less attention to foreign expansion (La Tribune de l'Expansion 1992). However, if reunification diverted some attention from internationalisation, its effect on available funds was even more serious. The urgent need for capital was therefore used in favour of privatisation of the mobile branch of Deutsche Telekom's activities, which was sold off in mid-1993:

"Deutsche Telekom as a whole needs 30 billion Mark to finance its expansion outside Germany", says the president of the DBP, for whom only a privatisation can bring such a sum. (...) The pressurised budget resulting from re-unification make direct federal government capital injections unthinkable. However, with [weak] proper funds (...) Telekom bets on a 'soft privatisation'.

Le Coeur 1993b

The need for capital was also an important argument in the government's presentation of the new legislation:

The necessary investments (...) have been and will be possible only because Deutsche Bundespost Telekom lowered its accounted capital share to 20 per cent. This share must be increased to approx. 40 per cent for the enterprise to be competitive. The Bund in its current stressed financial situation is not capable of transferring the necessary proper capital. The solution is therefore to introduce private capital via the stock market, a move that necessitates constitutional change.

Ministerium für Post und Telekommunikation 1994a: 2

Arguments against privatisation

Despite the financial difficulties arising from re-unification and the political consensus behind it, trade unions within all units of the DBP opposed privatisation. The employees were civil servants and were afraid of losing this status if Telekom was transferred to private law (Siegele 1992).²⁵ The SPD traditionally sided with trade unions, and the case of Telekom privatisation was initially no exception to this rule (Huhn 1992).

Two of the main political parties, the CDU/CSU and the FDP, had declared themselves in favour of transforming Telekom into a limited company which would eventually be privatised, but the SPD was split on the issue. Some members stayed loyal to the postal union (the DPG), which opposed any form of privatisation,²⁶ whilst others were less hostile to the proposed change. The crucial points of contention were workers' status and whether the main responsibility for communications infrastructure provision should remain within the federal state (Ministerium für Post und Telekommunikation 1994a: 19; Huhn 1992; Bölke 1992).

Article 87 of the Basic Law stated that operation of the telecommunications network and services was an exclusive task (hence monopoly) for a federal administration (hence public). In 1991, the Minister signalled plans to privatise

²⁵ "The German postal trade union (DPG) vigorously opposes privatisation, because it fears large inconveniences for its members" (Huhn 1992).

²⁶ The SPD suggestion early in the process was to transform the three DBP entities into *Anstalt des öffentlichen Rechts*, i.e. publicly owned corporations with the possibility to issue non-tradable certificates to private buyers (Hill, Genillard, Rawsthorn and Simonian 1993).

Telekom before 1994,²⁷ and a multi-party commission was established to discuss and search for a consensus on the issue (Ministerium für Post und Telekommunikation 1994a: 6). Transferring DBP Telekom to private law would, however, imply constitutional change, which required a two-thirds majority in Parliament, and the SPD's votes were crucial for the government to reach this.

The government and the opposition reached a compromise in June 1993 to establish a common holding company for the three DBP entities, through which the federal state would manage its ownership.²⁸ Moreover, even though the Social Democrats from June 1993 agreed to transform Telekom into a separate company with possibilities for privatisation,²⁹ they demanded a prolongation of the monopoly concessions and that full liberalisation be postponed for a maximum of two years as allowed by EU legislation (Frankfurter Allgemeine Zeitung 1994a). ““The Commission has stipulated that monopolies should end in 1998, but it might well change its mind before then, if the operators are not ready. There is therefore no reason for us to open our market faster than the others,” says the SPD’ (Petit 1994).

²⁷ “Mr Schwarz-Schilling said he planned to privatise Deutsche Telekom in the next two years and was discussing the matter with the political parties” (Dixon 1991); “In March 1991 Christian Schwarz-Schilling judged a debate on the privatisation of the public enterprise ‘completely misplaced’. But in October a thick document from his ministry discussed in detail judicial problems linked with a privatisation of Telekom” (Le Monde 1992).

²⁸ “The compromise which seems to emerge with the SPD envisages a possible modification of the modalities. ‘One might imagine creating a holding company comprising Deutsche Bundespost Telekom, but also the Postdienst and the Postbank. The SPD would not be against an opening of this holding company’s capital’” (Petit 1993b).

²⁹ The party’s official policy was in favour of the new legislation, but still a substantial number of MPs voted against the bill or abstained (Tremel 1994).

Thus, the advent of competition was not perceived as 'inevitable' or 'necessary' in the German case (as became the case in France) and the debate during Postreform II was indeed largely not on liberalisation, but rather on means to solve the Bund's financial difficulties. Again, the problems of the DBP Telekom were perceived as a matter of economics and finance rather than as a political issue.

The Länder's influence

Giving the regions influence in the regulatory process was seen to facilitate the Bundesrat's approval of the constitutional change. However, some of the Länder opposed the reform on the grounds that their role in telecommunications policy would be further reduced.³⁰ There was however no question of removing basic powers from the federal level.

The regional minister for industry in Lower Saxony, Peter Fischer, had in negotiations [on the new telecommunications law] (...) demanded that the Länder be given decision-making powers in all important matters, e.g. the licensing of post and telecommunications service providers. This is not acceptable for the [Bundestag] coalition. (...) "That would be a development towards regional postal services (...) but the PTT will stay in the hands of the federal state" [said the federal minister for posts and telecommunications].

Frankfurter Allgemeine Zeitung 1994a

The 'sovereign tasks', which remained in the power of the federal authorities 'for overriding political reasons', included co-ordination of the three limited companies, general guidelines for their actions, and transitory measures for personnel, such as pensions and social benefit schemes (Ministerium für Post

³⁰ The Länder had before the 1989 reform influenced decision-making through their participants in the Administrative Council for the DBP. This council was abolished under Postreform I, although an Infrastructural Council where the Länder were heard had been established.

und Telekommunikation 1994a: 13). However, the Länder were granted certain powers through the establishment of a *Regulierungsrat* (a regulatory council) consisting of one member from each Land and an equal number from the Bundestag. The *Regulierungsrat* retained decision-making powers on compulsory services, data protection, basic license provisions, and changes in the extent of monopoly powers. (Frankfurter Allgemeine Zeitung 1994b). The *Regulierungsrat* replaced the 'infrastructural council' from the Postverfassungsgesetz. It would assist the Bundesminister in his decisions, and if the Minister disagreed with the council he would need the approval of the government to overturn the council's advice (Ministerium für Post und Telekommunikation 1994b: 171, Art. 13).

The constitutional change to clear the way for privatisation of the telecommunications operator achieved parliamentary approval in June (Bundestag) and July (Bundesrat) 1994.

The two parliamentary chambers' decision on the legal framework of the Postreform II marks the start of a change of the current public postal enterprise into a limited company and from there into a future privatisation. The result (...) is certainly not without compromise. But the absolute necessity for reform implied a compromise, a compromise that does not hamper the future reform needs. (...) The coming years will show that although changes both from the EU and from the global situation required decisive steps, the necessary constitutional change was possible only through a co-operation between broad political forces.

Ministerium für Post und Telekommunikation 1994a: 25

This second stage of telecommunications reform in Germany thus culminated in an amendment of the Basic Law, some new laws, and several amendments to existing legislation, which were approved by the Bundesrat in early July 1994. Changes were mainly organisational, and barely affected potential competitors

or customers. The three entities from the former DBP were to be transformed into limited companies at the beginning of 1995, and a holding company was established, the 'Bundesanstalt für Post und Telekommunikation Deutsche Bundespost', to manage the state's ownership responsibilities (Ministerium für Post und Telekommunikation 1994a: 8-13). The state's shares could not be traded on the stock market for the first five years, and even then the government would be legally obliged to keep a majority of the shares. A change to these provisions would need the approval of both parliamentary chambers (Werle 1999: 113).

Liberalisation and regulation back on the agenda

The organisational structure established through the second Postreform was rapidly criticised for allowing too much political influence in the sector. The 'Bundesanstalt', given the responsibility of negotiating employment conditions for a large proportion of Telekom's 230.000 employees, was endowed with a 3.500-strong bureaucracy, headed by a group of politicians. Important decisions needed political approval, and the supervisory board included more politicians than technocrats. Supply and regulation were formally under the same final authority, the Bundesminister, which gave rise to lack of transparency and potential conflict in the future liberalisation process (Parkes 1994; Nash 1995).

The process of privatising Deutsche Bundespost AG started shortly after parliamentary approval in autumn 1994. The first round of capital extension was to take place early in 1996, but lack of a precise regulatory framework

raised heavy criticism from potential investors who demanded more information on the future licensing regime in order to value Deutsche Telekom (Marti 1995). Consequently, the new shares were not traded before autumn 1996.

The issue of further liberalisation of the telecommunications sector was kept separate from privatisation. The second Postreform was mainly a constitutional change to ease financial difficulties after reunification, and the debate on complete liberalisation of the sector reappeared mainly after privatisation was safely underway. New potential service providers started forming alliances and joint ventures to capture market shares in the post-1998 environment. These potential providers included big utility groups from other sectors, as well as large industrial enterprises, all of whom demanded clarification regarding the future licensing regime, thus marking the start of the debate on Postreform III.

Postreform III – introduction of full competition

In March 1995 the government outlined its plans for the future liberalised telecommunications market with competition in both voice telephony and network services. They included an unlimited number of licenses (subject to certain minimum requirements), and service providers would be allowed to operate regionally (De Peretti 1995a, 1995b; Lindemann and Cane 1995; Cane 1995; Picaper 1995; Les Echos 1995b; Le Monde 1995). Only service providers with more than 25 per cent market share would be obliged to provide universal service, thus opening profitable segments and niches for targeting in the hope of attracting infrastructure investment. The plans were, however, criticised for not

treating the question of interconnection tariffs, characterised as the most central issue for would-be competitors to Deutsche Telekom.

The debate

The government's announcements were criticised by the SPD, who wanted high technical standards for new licensed operators, amounting to restricting market access to "a handful of companies" (Lindemann 1995a). They were also opposed to the idea of regional licenses, and demanded all operators be subject to universal service obligations (Lindemann 1995a). Deutsche Telekom criticised the government's plans for preparing too much regulation of their services whereas competitors would be left to exploit profitable parts of the market (Lindemann 1995b), and would-be new entrants feared the proposed new legislation would unnecessarily delay regulation and give Deutsche Telekom an unfair advantage (Milchener 1995). The government responded by promising to create "a special fund to compensate for provision of unprofitable nationwide telecommunications services after the 1998 watershed" (PTT Minister Bötsch, quoted in Lindemann 1995c). The Länder demanded all full-service providers be obliged to provide universal service within the relevant region (Norman 1995).

This response from the government indicates stability in the sectoral state tradition. 'Universal service' had traditionally been important to the legitimacy of the federal monopoly, and so concerns about this issue were seen as serious for the legitimacy of the new regime. Its solution, however, also in line with the

sectoral state tradition, was to be found by financial measures allowing for good management. A universal service fund, in France amounting to FrF5bn in 1997 (ART 1999), did not exist in Germany, although the new regime gave the RegTP the possibility to require service provision of a dominant service provider if real demand was not met for economic reasons.

The German parliamentary debate on the liberalisation of the telecommunications sector opened in February 1996. EU legislation was instrumental in setting the timetable for reform, although the main drivers for reform had originated domestically:

With the decision from the Council of Telecommunication Ministers of 22 July 1993 on the liberalisation of voice telephony from 1.1.1998 and the decision from 22 December 1994 on liberalisation of networks, important basic conditions on the opening of markets in the telecommunications sector were established. [Postreform II] legislation is valid only until 31 December 1997. This limit expressed the legislator's wish to establish a new legislative framework adapted to the market liberalisation before 31 December 1997.

CDU/CSU, SPD und F.D.P. 1996: 1

The main points of the proposal were:

- The goal of regulation should be to ensure fair and effective competition in the telecommunications sector so that basic services were universally provided (§1);
- Regulation of competition and frequency regulation remained sovereign tasks of the federal state (§2);
- A sector-specific regulator would follow the general economic, competitive, judicial and social role of telecommunications as well as manage and develop the licensing regime, the regulation of universal services, of dominant actors, and the open network provisions (§67);

- The number of licences would not be restricted other than for reasons of frequency regulation (although licensees would have to satisfy certain technical criteria) (§§8-10);
- Operators would not be asked to pay for rights-of-way (§6).

Despite earlier disagreement on the government's first draft legislation from March 1995, the SPD had through negotiations reached agreement with the governmental parties. Thus, the government coalition and the SPD defended the law proposal, whereas the Greens and the PDS (the former communists) opposed it. The Social Democrats, whose co-operation was vital to the reform because of their strong position in the Bundesrat, claimed responsibility for central measures such as legal requirements for interconnectivity of all networks, a definition of basic services including ISDN technology, and customer protection (Bury 1996a; Börnsen 1996). The smaller government partner FDP would have wished for stronger market opening, but appreciated that there was no proposal for establishing a universal service-fund (Stadler 1996).

PTT Minister Bötsch presented the government's rationale for their relatively tight schedule for parliamentary treatment of the law proposal. It is clear from his presentation that the German government in its discourse continued to take the role of manager of the national economy and provider of infrastructure rather than provider of social goods to individual citizens, in line with the German public ethos. The Minister's prime concerns were (in order): stability in Deutsche Telekom's environment before floatation so that the share price could

be maximised; innovation in German industry; and better and cheaper telecommunications services.

We have a strong commitment to reach a final decision before the Parliament's summer break. This schedule is connected with the fact that alternative infrastructure will be liberalised from 1 July 1996, and this is part of the new legislative proposal. The European Commission has given its approval to the co-operation between Deutsche Telekom and France Telecom subject to liberalisation of alternative networks. (...) This is not only the interest of the Bund, but really that of 'Standort Deutschland', to be able to compete internationally. (...) Furthermore, the time of Deutsche Telekom's introduction on the stock market, envisaged in November, is getting closer. For an orderly introduction it is important that potential investors know the future regulatory framework for the telecommunications sector. Ladies and Gentlemen, let me once again emphasise that we through the new telecommunications legislation will liberate the innovations potential present in the communications sector. Private and corporate customers will in the future benefit from a larger diversity of telecommunications services, the quality and price of these services will harmonize with international prices and quality, thereby making possible productivity gains for all sectors of the economy.

Bötsch 1996: 149

Unlike in France, the issue of innovation was often used to justify the need for liberalisation of the telecommunications sector in Germany. The reference to innovation as an essential by-product of legislation for a prosperous industry is also further illustration of how the federal German state was regarded as facilitator and infrastructure provider rather than active supplier and provider of goods and services. Although requirements to manage federal resources effectively constrained and guided federal actions, the main aim of the administration was to be judged by the economic success of its major customer, namely, German industry and, subsequently, the German economy.

This step [towards complete liberalisation of the telecommunications market] is necessary (...). Only through competition can the dynamic of the telecommunications sector be liberated, and we benefit from the potential for growth and innovation and new jobs.

Fischer 1996a: 146

I believe that the existing telecommunications legislations proposal, also thanks to improvements along the way, shows the way forward. We give the green light to the locomotive of innovation.

Bury 1996a: 7290

Criticisms

The main opposition in the Bundestag to the government's proposal came from the Greens and the Communists (Jüttemann et al. 1996; Kiper 1996a; Jüttemann 1996). Their foremost criticisms were:

- The draft proposal established competition as the principal goal, rather than as a means to reach societal and political goals;
- Competition would lead to job losses;³¹
- Liberalisation would lead to a division of society between those with access and literacy in computer technology, and those without;
- Basic universal service was not sufficiently guaranteed;
- Regulation should be governed by the primary goal of providing basic universal service.

Their opposition sought to pronounce the final goal of the federation's telecommunications policy to be "a real growth of life quality for society as a whole as well as its individuals" (Jüttemann et al. 1996: 6). Accordingly, their recommendations for change focused on universal service obligations. They demanded that all operators be subject to such obligations, that all licences be

³¹ "The biggest competitor of Deutsche Telekom plans today for 10 per cent market share a work potential of from 2.000 to 10.000 jobs. That implies that 100 per cent of the market will at best offer 100.000 jobs. At present Telekom employs some 210.000 persons. These numbers show that until year 2000 the announced job increase has not taken into account 60.000 job losses from Telekom" (Jüttemann et al. 1996: 2).

national to avoid cream skimming, and that the content of ‘basic services’ be open to change in line with technological development. Furthermore, the regulatory authority should be independent from both business and politics (Jüttemann et al. 1996: 3-4).

Universal service obligations

The Bundesrat gave much attention to universal service obligations. The Länder were responsible for social policy, and would therefore be expected to be vigilant concerning social goods for their citizens. The Bundesrat criticised the government’s proposal for not sufficiently ensuring territorial equality, and recommended “licences be awarded subject to its universal service commitment” (Eichel 1996a: 144).³² They also held that universal service obligations should remain with the state, and not be given to private enterprise.

Communication is a basic human right. Participation in societal development and the political process belongs to its rights to personal expression. This right is not only depending on its capabilities to communicate, but also on the communications possibilities. As such, the content and extent of universal service is therefore constitutionally relevant.

Eichel 1996b: 267

As universal service could be seen as part of social policy, the Länder should be involved in its policymaking. Regulation of universal service was delegated to the new regulatory authority, so the question was whether this authority would be subject to specific control and supervision from Länder representatives. However, the parliamentary majority was in favour of defining maintenance of

³² The two expressions were used first in the Bundesrat debate, and then reappeared in the Bundesrat’s final criticisms of the law proposal in June. Bundesrat 1996: 5

fair competition as the main regulatory goal, which implied the regulator should be independent both from business and politics. The Länder would thus have to influence the development of universal service through other channels. The parliamentary expert group recommended that operators with more than four per cent of the relevant market be obliged to contribute to universal service (Müller et al. 1996: 74). A separate fund could be established if cases arose where no operator was willing to undertake provision. This move was in line with the sectoral tradition of viewing the business community and private enterprise not as opponents to the state, but as valuable partners in attaining optimal telecommunications services.

The Regulierungsbehörde für Telekommunikation und Post (RegTP)

The institutional design of a regulatory authority was seen as crucial for the development of competition in the telecommunications sector (Müller et al. 1996: 74; Jüttemann et al. 1996: 3-4). However, there are relatively few references to the design of the new regulator in parliamentary debates from the Post-reform III. There seemed to be a near-to-unanimous agreement that the regulator needed independence both from business and from politics.³³ One opposing voice to the plans, however, came from the Greens, who proposed the RegTP be organised as a 'Bundesanstalt' rather than a 'Bundesoberbehörde' (higher federal authority), in order to ensure sufficient independence from political influence, but even the party itself did not expect parliamentary approval for the plans (Kiper 1996b: 9793). The willingness to grant independence from

³³ References to such independence are found in almost all interventions, e.g., Fischer 1996b: 269; Bury 1996b: 9790; Jüttemann et al. 1996: 4.

political institutions was in line with existing traditions where separation of commercial/industrial activities and wider political goals ('*politische Lasten*') were considered important.

The Telecommunications Act of 25 July 1996 established a regulatory authority, the RegTP, which answered to the Ministry of Economics.³⁴ The Act did not determine the size of the RegTP, but established that the federal government would appoint a president and two vice-presidents. The authority comprised an advisory council, where both chambers of Parliament were represented.³⁵ Through the Advisory Council Parliament could influence:

- Appointment of RegTP members;
- Regulation of frequencies in granting of licences;
- Ensuring universal service (§69).

The RegTP was given responsibility in the areas of:

- Technical regulation (e.g. standards, allocation of frequencies and numbers);
- Universal service provision;
- Pro-competitive market regulation (§§71-72).

Decisions on network access and interconnection were taken by independent chambers set up by the Minister of Economic Affairs. These chambers' members were higher civil servants (Werle 1999: 114-116), and complaints

³⁴ Telecommunications Act of 25 July 1996, translated version, §§66-84

³⁵ §67: The Advisory Council consisted of nine members of the German Bundestag and nine members of the German Bundesrat. All members should be appointed by the government, reappointment was possible for all members.

against any decision would have to be filed at Administrative Courts, thus strengthening the independence in the system. The RegTP was however criticised for not providing a clear break with previous regulation, as most of its 2700 strong bureaucracy was simply transferred from the former federal PTT ministry, which had been abolished on 1 January 1998.

Conclusion: French and German sectoral state traditions in the 1990s

This chapter shows that the French and German sectoral state traditions in the 1990s remained similar to what they had been in the 1980s, and thus continued to display significant differences with each other, despite the establishment of similar institutional frameworks. The findings are summarised in table 5.

	France	Germany
Ultimate authority, Relevant actors and their relative power	UA: Parliament RA: DGT/DGPT, Parliament, users, industry	UA: Legislation RA: Bundestag, Bundesrat, DBP, users, industry (also from 'convergence' industries), interest groups
Public ethos	<i>Service public</i> but even more specified than in previous period.	Economic efficiency in infrastructure provision, 'just and fair competition'
Criteria for legitimate decision-making and discourse	Consultation with interested parties. Coordinative discourse.	Participation of a broad set of actors. Coordinative discourse.

Table 5: Summarised findings from the 1990s

In France, the European impetus, international legal obligations, economic globalisation, and technological imperatives were used to justify a liberalisation of

the sector, which from the early 1990s, and particularly after the 1993 Council of Minister's decision to open up the telecommunications sector in Europe, was perceived as 'inevitable'. The feeling of obligation and inevitability was expressed across the political spectrum, illustrating a fundamental discomfort with acknowledging ultimate authority from another institution than the national Parliament in public discourse.

In Germany EU legislation, although referred to by the government as specifying the timetable for reform, was not perceived nor presented as the ultimate reason for reform. Rather, the domestic political environment had gradually moved towards such reform since the 1970s. Liberalisation was not described as inevitable, but was presented as responsible policy to the benefit of the German economy.

Service public continued to be the central concept and the public ethos in the French debate, and even if its content changed during the decade, its omnipresence suggests that it constituted the major source of legitimacy for state intervention in the sector. The concept was traditionally seen as guaranteeing equal treatment of all citizens, protecting them from unjust behaviour from profit-maximising private firms. Even throughout the 1990s, when the content of the telecommunications *service public* was specified and substantially changed, the concept continued to mark all public interventions on telecommunications policy. The European 'universal service obligations' concept was incorporated in the French debate under the *service public* heading.

‘Just and fair competition’ were central to the German liberalisation debate. Having emerged in the 1980s, the concept remained the organisational implication of the public ethos of efficient management of infrastructure provision, emphasising that the main way to legitimate state intervention in Germany was substantially different from the French. Although there were opponents to the idea that competition should be an end-goal in itself (particularly the Greens and the PDS) there was no suggestion that the German state should ensure territorial coverage and ‘affordable high-quality telecommunications services’ through direct provision rather than regulation.

In France, ‘privatisation’ was not debated until very late in the legislative process, and never really adhered to. Even after France Telecom was floated on the stock exchange, politicians continued to emphasise its public character through legal requirements of state majority ownership. State involvement in *service publics* had traditionally been the guarantee of territorial and individual equality, continuity of service and affordability. To legitimise new organisational structures in the telecommunications sector politicians emphasised the continued state involvement, despite the fact that they were walking a tightrope between these demands and the demands of potential investors and other global players who wanted France Telecom to cease being a vehicle for the French state’s various policies.

In Germany, privatisation was debated prior to liberalisation. The Postreform II had opened the way for privatisation of the DBP and the federal government’s main argument for the development of the regulatory regime was not continued

economic prosperity for the future private company, but rather to ensure the highest possible sales revenue for the German state. Although contemporary financial problems after reunification undoubtedly contributed to both the speed and the width of the political consensus on privatisation, the German sectoral state tradition (where both private enterprises and competition – or, alternatively, threat thereof – were important elements), helps to explain the relative ease with which privatisation was introduced. During the reform process none of the aforementioned elements of the sectoral state traditions underwent major change.

Chapter 7

Conclusion

This thesis has presented empirical evidence to answer two questions:

- Did the sectoral state traditions of French and German telephone policy change over time?
- Is there evidence that these two sectoral state traditions converged in the period 1900-1997?¹

Sectoral state traditions have been defined as a set of ideas about political authority and legitimate state action in the relevant sector. The theoretical literature addressed was therefore on the role of ideas in policymaking, and, more specifically, on ideas about the state and state action, as found in writings on state traditions.

The general literature on the role of ideas is often criticised for failing to distinguish between ideas and interests (Orren 1988; Kvistad 1999; Baumgartner and Jones 1994; Schmidt 2002; 2001; 2000; Kohler-Koch 2002; Goldstein and Keohane 1993; Jacobsen 1997). This thesis has addressed this problem by using public political discourse, rather than policy output, as indicator of policymakers' ideas. It is assumed that one of the major functions of public political discourse is to legitimate political decisions and political views for the general public. This thesis has therefore investigated public political discourse with the aim of identifying concepts, ideas, or values, that function as legitimizers in the policy process.

¹ Change and convergence prior to 1900 is not discussed because it is considered the sectoral state tradition was consolidated only in 1900.

The development of the object under investigation, the sectoral state traditions, was inspired by writings on state traditions (Dyson 1980; Laborde 2000; Grimm 1991; Rohe 1993). However, because of the high level of generality in such literature, this thesis's definition of sectoral state traditions has incorporated sector-specific elements to increase applicability of the concept of state traditions to empirical studies. Thus, although investigations of other sectors might necessitate adjustments of the essential elements in a sectoral state tradition, the analytical framework should provide sufficient generality to be of use also in analyses of other sectors, as well as in cross-sectoral studies.

A substantial part of recent writings on the role of ideas in policymaking has assumed that ideas change with policy, either as a prerequisite for, or as a consequence of, change (Hall 1993; Bennett 1991; Peters 1997; Ikenberry 1990, 1997; Kohler-Koch 2002; see Chapter 1). Furthermore, as shown in Chapter 1, there exists an (often implicit) assumption that ideas in different countries converge over time (Dolowitz and March 2000; Eatwell 1997; Levy 1997; True and Mintrom 2001; Cerny 2000; Wolman 1992). This thesis has exposed this assumption to a long-term historical investigation, and found very little evidence to suggest a convergence of sectoral state traditions.

In order to draw general conclusions on the continuity and change of sectoral state traditions, the chapter first presents the findings from the separate empirical chapters (summarised in table 1) before answering the thesis's two main questions.

Table 6: Essential elements in the sectoral state tradition

		France	Germany
Consolidation period	Ultimate authority (UA), relevant actors (RA) and their relative power	UA: Parliament as the embodiment of the general will. RA: Parliament, PTT administration (much discretionary powers). Ministry of Finance through budgetary unity.	UA: Legislation – Parliamentary output as opposed to the temporary assembly of representatives of a ‘nation’. RA: PTT administration, Reichstag, Länder, industry.
	Public ethos	Continuity and territorial equality of service, budgetary unity	Correction of economic dysfunctions. Economic efficiency in infrastructure provision (cost-based tariffs).
	Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Bureaucratic correctness. Coordinative discourse.
1920s	Ultimate authority, relevant actors and their relative power	UA: Parliament. RA: Ministry of Finance seen as increasingly relevant because of industrial nature of telephone service.	UA: Legislation. RA: Ministry of Finance increased its powers in the Weimar republic. Establishment of a Verwaltungsrat.
	Public ethos	<i>Service public</i> , comprising continuity, territorial equality of service, adaptability, was no longer inherently contradictory to ‘efficient management’ and financial and managerial flexibility.	Principles of economic efficiency continue. ‘Autonomy’ and ‘consultative councils’ (proxy for enterprise management methods) specify organisational implications of public ethos. ‘Enterprise’ used for the first time.
	Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Bureaucratic correctness. Coordinative discourse.

		France	Germany
Post-war	Ultimate authority, relevant actors and their relative power	UA: Parliament. RA: Parliament, PTT administration, Ministry of Finance (despite that Parliament was neglected).	UA: Legislation. RA: PTT administration, Bundestag, Länder, industry, Ministry of Finance, Verwaltungsrat.
	Public ethos	Service public: continuity, equality, adaptability. Rationalisation and efficiency translation of these principles into practical policymaking.	Democracy and transparency at start of period. Changing to cost-efficiency and separation of political and managerial issues. Separation of operation and regulation.
	Criteria for legitimate decision-making and discourse	Procedural correctness. Private enterprise and general public no place in policymaking process. Communicative discourse.	Legislative circumscription of federal rights. Consensus-seeking among a broad set of actors. Coordinative discourse.
Corporatism	Ultimate authority, relevant actors and their relative power	UA: Challenged by the EU, but fundamental idea of Parliament as ultimate authority prevailed. RA: Industry and users considered relevant in addition to the traditional actors.	UA: Legislation. RA: New business interests because of convergence between telecommunications, information technology, and media. Monopolkommission central because of discussion on competition.
	Public ethos	<i>Service public</i> but better defined than in previous period.	Economic efficiency in infrastructure provision, 'just and fair competition'.
	Criteria for legitimate decision-making and discourse	Consultation procedure new in French policymaking. Increased relevance of a multitude of actors. Coordinative discourse.	Legislative circumscription of federal rights. Participation of a broad set of actors. Coordinative discourse.
Full competition and privatisation	Ultimate authority, relevant actors and their relative power	UA: Parliament RA: DGT/DGPT, Parliament, users, industry	UA: Legislation RA: Bundestag, Bundesrat, DBP, users, industry (also from 'convergence' industries), interest groups
	Public ethos	<i>Service public</i> but even more specified than in previous period.	Economic efficiency in infrastructure provision, 'just and fair competition'
	Criteria for legitimate decision-making and discourse	Consultation with interested parties. Coordinative discourse.	Participation of a broad set of actors. Coordinative discourse.

Empirical findings

Five historical periods were used as empirical material. Each empirical chapter treated public debate at times of major sectoral institutional change, with the exception of that covering the post-war period, when no institutional change took place, but when the role of the state was challenged (through factors such as increasing international cooperation and communication, and economic interdependence). The empirical evidence was thus drawn from periods when the sectoral state tradition in telephone policy was potentially challenged.

All chapters identified the central elements of the sectoral state tradition in the period under investigation: a notion of authority and of who should be the relevant actors and their relative power; a public ethos for sectoral policy; criteria for legitimate decision-making and discourse.

Chapter 2: Consolidation of sectoral state traditions

The first empirical chapter treated the ‘consolidation period’ for telephone policy, which lasted from the introduction of the telephone in 1876 until c. 1900. During this period legal frameworks were established to ensure state monopoly of service provision, the central actors were identified and a common understanding of the central issues of the policy area had emerged, as well as which issues were not being questioned (e.g., the state monopoly, ownership and competition between 1900 and the 1960s/1970s).

Ultimate authority, relevant actors, and their relative power

In both countries, the notion of authority was closely linked to Parliament.

Parliament's source of authority, however, was very different in the two countries. In France, Parliament was the expression and the embodiment of the general will of the nation and constructed its legitimacy thereupon. The state was presented as the only institution that could pursue the nation's general interest, which strengthened the choice of a ministerial administrative bureaucracy under parliamentary control as the appropriate organisation of telephony rather than leaving it to private enterprise, as had been the case before 1889.

Private service providers, because of their inherent nature as profit-maximisers, were viewed as detrimental to the general interest.

In Germany the federal Parliament built its legitimacy on its capability of providing effective and efficient management of federal resources, rather than representing the general will of a nation (a concept that did not appear in sectoral debates in Germany). This emphasis on parliamentary output implied that legislation, rather than the (temporary) actual assembly of political representatives, retained ultimate authority.

Parliament, the PTT administrations, and the finance ministries, were relevant actors in both countries. In Germany, the *Länder* were among the central actors, as well as industry.

In France, Parliament's ultimate authority implied that it should possess full control over policymaking. The possibility for the PTT Ministry to legislate

through decrees, which Parliament could repudiate *ex post*, (in a time when the young Republic had many problems that were perceived as more pressing than telephone policy) left the PTT administration with much discretionary powers. This large *de facto* power did however not alter the perception that Parliament should have final authority.

In Germany, the ideal relative power of Parliament was less important than in France. The wide array of interests seen as relevant to policymaking meant that Parliament was not the only institution providing checks and balances for the PTT administration's powers. Policymaking was therefore not, as in France, perceived as emanating from Parliament, and implemented ('machinelike') by the PTT administration. Rather, a multitude of actors contributed, and they would ideally all have an important role in the policymaking process.

Public ethos

The public ethos of French telephone policy in the consolidation period consisted of continuity and territorial equality of service, two of the elements that would be characteristic of a *service public* after the turn of the century. Moreover, the doctrine of budgetary unity was applied to the telephone sector. The introduction of budgetary unity in 1892 corresponded with the early developments of an organisational theory of *service public* in which the concept was equated with a single organisational model for state action (Stoffaës 1995a).

In Germany, one major task of the federal state was to correct economic dysfunctions. Moreover, the telephone service was supposed to be economically self-sufficient and not to burden the federal finances. Cost-based tariffs became central to German policymaking. Although not a public ethos, cost-based tariffs indicate a more fundamental quality that remained less explicitly expressed but nevertheless exerted an important influence on policymaking: economic efficiency of infrastructure provision.

Criteria for legitimate decision-making methods and discourse

The criteria for legitimate decision-making in France were based on parliamentary procedures. Parliament was the ultimate expression of the nation's general will, and political decisions taken through the proper channels as decided by Parliament would in principle be legitimate. Discourse was, as far as existing evidence indicates, typically 'communicative' as predicted in an elitist, highly centralised policymaking context (Schmidt 2002; 2001; 2000). As seen in Chapter 1, 'communicative' discourse is directed mainly towards the general public, and is prevalent in states where policymaking is predominantly centralised, determined among an inner group, and communicated to the public only when the decisions have been made. Public records show almost no debate on technical issues such as technology, operational guidelines for the public administration, or tariff modes. Industry and the general public had no place in the policymaking process (except through Parliamentary elections).

German criteria for legitimate decision-making procedures comprised legal circumscription of federal rights, bureaucratic correctness, and participation of

interested parties. The relatively large number of knowledgeable and powerful relevant actors in the policymaking system resulted in a coordinative type of discourse. Coordinative discourse is more common in countries where policymaking is more dispersed, and where larger parts of the population are involved in negotiating reform. Coordinative discourse is mainly aimed at knowledgeable co-deciders, and tends to be more technical than communicative discourse (Schmidt 2002, 2001, 2000).

By 1900 sectoral state traditions for telephone policy were consolidated both in France and Germany and showed significant differences in the notion of authority, public ethos, and criteria for legitimate decision-making and discourse. The set of relevant actors was larger in Germany than in France, and powers were ideally more equally distributed among these actors in Germany. Although territorial equality and continuity of service were important in both countries, the German emphasis on cost-efficiency indicated that economic efficiency in infrastructure provision was the basic idea in its public ethos. Practical differences in financing methods and legal potential for competition led to diverging emphasis on territorial coverage, consistent with diverging views about the state's need to justify its monopoly through outcome. Public discourse was more technical in Germany than in France, corresponding with Vivien Schmidt's (2002, 2001, 2000) models on communicative vs. coordinative discourse.

Chapter 3: Challenges to the sectoral state traditions in the 1920s

Chapter 3 covered the debates around the financial reforms of the 1920s, as well as the FAG of 1927 in Germany. In this period ideas about 'managerialism' and 'modern and flexible management' became fashionable both in France and Germany.

Ultimate authority, relevant actors, and their relative power

The ultimate authority of Parliament in France and legislation in Germany was not challenged. The set of actors seen as relevant to policymaking remained stable, although both the French and the German finance ministries increased their powers. In Germany this was a general trait of the Weimar republic, whereas the French finance ministry gained relevance as a result of the increased perception of the industrial quality of telephone policy.

The industrial nature of the telephone service was increasingly emphasised in French debate. Stability and long-term planning were hailed as indispensable preconditions for industrial success (Fayol 1921; Ministre des travaux publics 1922) and were thus presented as a possible predicament for the PTT Ministry's contemporary difficulties. The ideas of modern management methods and financial flexibility were contradicting the sectoral state tradition, something the public political discourse showed. Institutional structures that would negate parliamentary supervision and control over the policy area (as would the proposed financial autonomy and independence of the administrative council)

would negatively influence the possibility to ensure execution of the 'general will', which was unacceptable to French policymakers.

Public ethos

In France, the nascent concept of *service public* became the centrepiece of the public ethos for telephone policy, incorporating continuity and territorial equality of service. However, the concept was dissociated from budgetary unity in the early 1920s, and policymakers argued it was no longer incompatible with industrial management methods, a development that rendered the concept of *service public* ubiquitous in French telephone debate for the next century.

Coupling arguments about territorial equality and justice with calls for sound economic management proved a *mélange* to which French policymakers were highly positive. The theoretical development and increased precision of the concept of *service public*, mainly by legal scholars such as Rolland and Duguit, ensured that the principles of continuity of service, equality and adaptability remained central to telephone policy debates. The principle of cost-based tariffs was present in public political discourse, but the principle remained less relevant than in Germany.

Ideas about economic flexibility and managerial autonomy were also present in the German context, which was initially more receptive than the French environment. Industrial methods and efficient management were viewed positively in Germany. This resulted in two new concepts appearing: 'autonomy' for the service provider, and 'consultative councils' as proxy for enterprise

management methods. The need for real independence of the telephone service provider conflicted less with the consolidated state tradition in Germany than in France, illustrated by the use of 'enterprise' to define the DRP. The German public ethos of efficient management of infrastructure provision, therefore, did not change in this period.

Criteria for legitimate decision-making methods and discourse

Criteria for legitimate decision-making methods and discourse did not change in either country in the 1920s.

Thus, the study of the reforms of the 1920s showed that although formal institutional outcomes in the two cases contained important similarities, national political debates indicated that policymakers in the two countries framed the issues differently, and that national debates displayed strong continuity with earlier telephone policy debates in each country.

Chapter 4: The post-war period

The period under investigation in chapter 4 saw no major legislative reform in either of the two countries. The role of the state in general was, however, increasingly questioned, particularly in the 1960s, and the telephone sector was not immune to these developments.

Ultimate authority, relevant actors, and their relative power

In France, Parliament's ultimate authority was not openly questioned in the two decades after the Second World War, even though its *de facto* influence decreased. Telecommunications were not included in the list of 'basic sectors' for planning and received little attention from Parliament, and the bureaucracy dominated policymaking. The set of actors perceived as relevant to policymaking remained stable, despite the lack of parliamentary attention.

In Germany, ultimate authority remained with legislation, but the legislative reform from 1953 put stronger emphasis on democratic structures and transparency than its predecessor. No evidence was found to indicate a change in the set of relevant actors.

Public ethos

Despite technocrats' dominance of the policy area in the 1950s and the 1960s, and their focus on 'technical' issues (e.g., cost-accounting, rationalisation of the state apparatus to reduce costs), it is not possible to argue that the public ethos in France changed in this period. Public political discourse from the 1940s (when attempts were made to include telephone policy among the 'basic sectors') showed references both to *service public* and to the general interest. Subsequent debates showed the bureaucrats' adherence to the constituting elements of *services publics*: continuity, territorial equality, and adaptability. Contemporary political and economic constraints did however complicate the

implementation of these principles, and the presence of concepts such as 'rationalisation' and 'efficiency' in technocrats' debate can therefore be argued to be the translation of the sectoral state tradition principles into practical policymaking terms.

In Germany, recent experience with the Nazi regime led to a perceived need to emphasise democratic structures in all parts of public administration and the DBP was organised as a public administration rather than a public enterprise (albeit with its own special fund, the *Sondervermögen*). However, these conditions proved unsustainable and two public commissions in 1965 and 1970 called for a return to former practices where telecommunications were seen predominantly as an industrial sector in need of appropriate financial and managerial tools. The commissions' reports signalled that ideas about the need for 'democratic structures' from the immediate post-war period were challenged and that new ideas, in line with the pre-1933 public ethos, had taken hold in the policy community.

The traditional German view of the telephone service, and later telecommunications services, as an integral part of the federation's infrastructure provision for German industry was, however, challenged as the social importance of telecommunications grew and telephone policy makers were forced to consider social issues. Telecommunications' potential impact on society was, in the latter part of the 1960s, seen as so important that a certain level of political interference in the name of social justice was not only legitimate but also required. This was *a priori* contradicting the German sectoral state tradition, which until then had

required effective and efficient management of federal resources in economic terms, the social impact of its actions not being prominent in policy debates.

The overall German response to this development was not, however, to debate social policy issues under the heading of telephone policy, as was the case in France, but rather to envisage separation of operation and regulation of telephone services, thereby bringing social issues into the political agenda under other, more specific (and perceived more appropriate) headings. Whereas the new enlarged role of telecommunications in society necessitated political interference to ensure optimal social benefits in a way that private enterprise could not be trusted to deliver, the operational side of service provision was still viewed from the same angle, i.e. ideally cost-based, efficiently managed through methods similar to those applied by cost-efficient (profit-seeking) private enterprises. Supply of telecommunications services could then be debated according to the established sectoral state tradition, namely as an industrial commercial activity much like any other industrial enterprise.

Criteria for legitimate decision-making methods and discourse

The investigation of French telephone policy debates in the post-Second World War period did not result in evidence to suggest a change in criteria for legitimate decision-making methods. However, it did offer interesting evidence on the use of different types of discourse depending on the issue's place on the political agenda.

Presentations to Parliament in 1948/9 included references both to *service public* and to the general interest, central elements in the French public ethos. Subsequent debates, however, which were not aimed at public political channels but rather at experts within the public bureaucracy, made no reference to the *service public* concept. This shows that the *service public* concept had a high symbolic but relatively low practical value, and that Parliament's public political discourse in France was more about legitimating decisions towards the general public rather than about achieving consensus on practical issues.

In Germany, criteria for legitimate decision-making methods and discourse did not change in this period.

It is therefore argued that by 1970 the national sectoral state traditions had again shown their strength both in France and Germany. Politically symbolic values of territorial equality and social justice in the guise of *service public* were expressed by the French Parliament, which remained focused on procedural correctness rather than detailed intervention in technical issues. In Germany, however, its tradition of viewing telecommunications as 'any other industry' forced itself back into political debate, despite a post-war emphasis on democracy, and resulted in calls for clearer separation between operational tasks and political considerations.

Chapter 5: The 1970s and the 1980s: Corporatisation

Chapter 5 treated political debates in the 1970s and the 1980s, preceding legislative reforms of 1989 (Germany) and 1990 (France). The 1980s were characterised by a strong increase in demands for a wider array of telecommunications services (especially data transfers, satellite services, and value-added services). The European Union turned its attention to telecommunications policy in the mid-1980s, which provided a common external impetus for national reforms.

Ultimate authority, relevant actors, and their relative power

The European Commission's use of its legislative powers, which constrained decisions within member states, conflicted with the established ultimate authority of the French Parliament. Parliament's discourse to justify the corporatisation of France Telecom in 1990, where European legislation was used as a 'scape-goat' to communicate the inevitability of domestic reform, illustrated the difficulty French policymakers had in justifying the authority of an institution other than the French Parliament, and showed that the notion of ultimate authority remained with Parliament.

The set of actors perceived as relevant for policymaking in France changed in the 1980s. The Prévot commission's use of open consultations indicated that both industry and users were considered legitimate actors. The relative powers of the former central actors (Parliament, the DGT, and the finance ministry) decreased to the benefit of the 'new' groups. The overall *de facto* powers of the

French policymaking environment decreased because of EU legislation, but the latter was perceived as an external influence restricting the possible scope of action, rather than a relevant actor in the domestic policymaking process.

The ultimate authority of legislation in Germany was not seen to change in this period. Despite EU legislation effectively constraining also German authorities' possibilities for action, this was presented as constraining the timetable for reform of national legislation rather than questioning its legitimacy. Supranational legislation was not in any way perceived as suppressing the need for national legislative reform, resulting from a national political process. The set of relevant actors in Germany was extended to include new business interests that had gained relevance because of the convergence of telecommunications, information technology, and media. The convergence also implied a renewed interest from the *Länder*, which were traditionally central to media policy.

Public ethos

In France, the explicit public ethos for the telecommunications sector remained *service public*, adhered to by policymakers as well as the general public (as shown by the Prévot commission's findings). However, the concept itself was redefined, starting with the first specific law on the telecommunications *service public* from 1984 (which, paradoxically, later opened the way for the fundamental questioning of the state monopoly's legitimacy). Rather than the ubiquitous but vague concept used in public debates in the late 1960s and 1970s, the

service public of the 1980s emphasised continuity, equality, adaptability, excellence of service, and its impact on the French competitiveness.

The frequent references to how the French model and idea of *service public* was successfully being transferred by French politicians to the European level indicated that a challenge in one essential element of the sectoral state tradition (Parliament's ultimate authority) was met with increased emphasis on the public ethos of *service public*.

In Germany, the public ethos of efficient management of infrastructure provision remained stable. However, the preferred policy instrument to obtain this goal changed from economic efficient direct provision to establishment of a legal framework to ensure 'just and fair competition'. Telecommunications were no longer seen merely as infrastructure to other sectors and a general social good but rather as a locomotive for German industry as a whole, whose research and development efforts the economy could not forego if it wanted to stay competitive in a global environment. 'Just and fair competition' therefore became the main aim of public policy, and 'political considerations' were catered for through sector-specific regulation.

Criteria for legitimate decision-making methods and discourse

Criteria for legitimate decision-making in France changed in the 1980s. The Prévot commission used open consultations in the preparation of its report, where it involved actors from industry and user groups, as well as the general

public. An open, public consultation on such a scale had never before been employed in French telecommunications policymaking. Although it is not suggested here that the 'inner circles' of elitist policymaking ceased to exist, the new forms of communication clearly indicated a change in the sectoral state tradition. The type of discourse and decision-making methods used in the late 1980s corresponds more with a coordinative type than the former, clearly communicative discourse.

German criteria for legitimate decision-making and discourse remained based on the participation of a wide set of actors, employing a coordinative discourse.

Chapter 6: The 1990s: Full competition and privatisation

The new telecommunications regimes of 1996 (France)/1997 (Germany) brought full competition in all segments of the telecommunications sector, in line with European Union legislation. After more than a century of monopoly telephone provision, France and Germany both opened their markets to competition. Despite this big change in institutional terms, it is argued that the sectoral state tradition remained constant compared with the 1980s in both France and Germany.

Ultimate authority, relevant actors, and their relative power

In the process leading up to the competition regimes of the late 1990s the notion of authority in French telecommunications policymaking remained with Parliament, despite its *de facto* powers being reduced because of EU legislation.

The set of actors perceived as relevant to policymaking remained similar to that of the late 1980s, although the role of the PTT administration was performed by the DGT/DGPT.

In Germany, legislation retained its role as ultimate authority, and the set of relevant actors and their relative powers were similar to the situation before the Postreform I of 1989. The reunification in 1990 did not alter this.

Public ethos

The public ethos of *service public* remained central in French public debates. Although introduction of competition in the sector was argued to be inevitable, important documents (including parliamentary reports) invariably referred to *service public*, often emphasised to be '*à la française*'.

The German state again asserted its fundamental role as efficient manager of infrastructure provision, to the benefit of the German economy. The introduction of private capital and extended borrowing possibilities was in the debates on the Postreform II of 1994 presented as an obvious answer to contemporary financial problems, emphasising the role of the state as efficient manager.

Regulation, however, remained a federal responsibility, as it had been back to the times of the *Regal* of the late 19th century.

After 1994 'just and fair competition' remained a cornerstone of governmental policy. The Postreform II had opened the way for privatisation of the DBP and

the federal government's main argument for the development of the regulatory regime was not continued economic prosperity for the future private company, but rather to ensure the highest possible sales revenue for the German state (as the rational manager of federal resources should do).

Criteria for legitimate decision-making methods and discourse

In France, the DGPT saw it as crucial to maintain an open and transparent process when developing the new regulatory regime, and therefore conducted several open consultations and issued draft legislative documents to ensure a wider participation in the policymaking process, in line with criteria for legitimate decision-making methods from the late 1980s. The industrial actions of 1993 showed that increased participation in the policymaking process was not a sufficient criterion for legitimacy of policies, whereas the continued emphasis from the DGPT on open consultations indicated that legitimacy was sought increased through participation from a wide array of interests, and, consequently, by using a coordinative discourse.

No evidence was found to indicate a change in German criteria for legitimate decision-making and discourse.

Stability and change in national sectoral state traditions

It is now possible to answer the first of this thesis's two main questions:

whether the sectoral state traditions of French and German telephone policy changed between 1900 and 1997.

As the above argument indicates, sectoral state traditions are highly resistant to change. The ultimate authority of Parliament in France and legislation in Germany remained stable throughout the period, despite national legislation potentially being constrained by EU legislation in the 1980s and the 1990s.

The set of actors perceived as relevant to policymaking remained constant from the consolidation in 1900 until the 1980s. The telephone/telecommunications sector experienced important technological development in the 20th century, and the potential for the emergence of new policymaking participants (both from equipment manufacturers, fringe industries, and user groups) could be expected to be significant. The relative absence of 'new' actors, therefore, illustrates that access to the policymaking environment has been limited, contributing to stability of the sectoral state traditions. In the 1980s, however, industry and the general public were incorporated among relevant actors in France.

The public ethos of sectoral policies also remained remarkably constant throughout the period under investigation. The two overarching principles, *service public* in France and efficient management of infrastructure provision in Germany, remained central in all public political discourse throughout the

period, although the precise content of the *service public* changed several times during the 20th century, and despite Germany's temporary emphasis on democratic structures immediately after the Second World War.

The *service public* concept was adapted to contemporary demands for industrial management methods in the 1920s, and for a competitive regulatory regime in the 1980s and 1990s. The concept's absence from debate among technocrats in the post-war era and its subsequent revitalisation in the 1970s and 1980s illustrates its inherent value as a political symbol and as a myth crucial to Parliament's efforts to legitimate its actions *vis-à-vis* the general public. The introduction of a state monopoly in France in the late 19th century had been justified in public discourse by the state being the only organisation that could guarantee equal treatment of all customers and by its proven superiority in service provision, both subsequently central elements of *service publics*. The same list of arguments was heard in the 1980s when competition again was on the public agenda. At this time, however, the unambiguous rights of the state to intervene shifted from direct provision to regulation. Equal treatment of customers could only be guaranteed by the state through its *service public* obligations.

The content of the *service public* concept thus changed over the period investigated by this work, as has been confirmed by several other studies (Chevallier 1989, 1997; Bonnetblanc 1985). However, the fact that the concept retained its central place in political debate and as legitimating rationale for state intervention, for discussants from all sides of the political spectrum, from

its early appearance in the 1890s and throughout the 20th century, is strong evidence for the stability of the French public ethos. This does not imply that policies remain the same, nor that French politics does not evolve, only that the ways in which policies are justified for the public, and implicitly, what is considered legitimate rationale for state intervention, has for telephone policy remained remarkably constant throughout the period investigated in this thesis.

The perception of the German administration primarily as a responsible economic manager of federal resources also remained constant throughout the period investigated. When the telephone was first introduced, the RPTV held that it was a potential competitor, as well as a cost-effective substitute to the telegraph, that any rational, conscientious manager would utilise to improve the financial situation of its overall services. The strong emphasis on democracy and accountability in the early post-war period, as well as Parliament's negligible participation, could be seen as a potential change in the German sectoral state tradition. However, the increased importance of social issues was subsequently met with demands to separate 'business and politics' (later regulation and operation). Thus, it can be argued that the public ethos remained constant because the increased societal importance of telephony and telecommunications was referred back to political institutions, insisting that the task of operating telecommunications networks and services could and should be separated from wider political considerations.

In the 1980s it was argued that voice telephony should remain a public monopoly because a monopoly remained the sole rational option to ensure

sufficiently healthy finances to undertake future necessary investments. When legislation to open voice telephony to competition was introduced in 1996, political justification referred to established principles: maximising the Deutsche Telekom share price before floatation (rational, optimal management of federal resources); ensuring optimal conditions for German industry, particularly through its effect on innovation (infrastructure provision); and ensuring better and cheaper telecommunications services. The German authorities in the 1990s had no qualms about employing market competition to fulfil their task as efficient manager of federal resources, and were thus in line with a century old sectoral state tradition.

As shown in this chapter, the criteria for legitimate decision-making and discourse did not change in Germany throughout the period. In the case of France, however, the criteria for legitimate decision-making, and the type of discourse, both changed in the late 1980s. New actors were perceived as relevant for policymaking, and public discourse increasingly displayed features characteristic of the coordinative type. These new traits remained constant throughout the 1990s reform process.

Thus, with few exceptions (the abolishment of budgetary unity in France in the early 20th century, new relevant actors, criteria for legitimate decision-making and discourse in the 1980s, also in France), the elements of the sectoral state traditions of French and German telephone policy remained constant. One must therefore conclude that sectoral state traditions are highly resistant to change. Despite changes in preferred policy instruments (that can be seen as the

translation of ideas into practical policymaking), the fundamental ideas themselves, as presented in public political discourse, were largely the same in 1997 as they had been in 1900.

Did the two sectoral state traditions converge?

Can the identified changes in the French set of actors, criteria for legitimate decision-making and discourse, be interpreted as a convergence between the French and German sectoral state traditions?

Decision-making traditionally involved business interests to a much larger extent in Germany than in France. German legal obligations to consult business interests and the involvement of the *Länder* ensured participation from a broader set of interests than the French centralist, elitist method of policymaking. However, from the mid-1980s French policymaking incorporated more open consultation and more dialogue between government officials and business interests, similar to a German decision-making model. There were, however, important differences. Policymaking in France never reached the same degree of consensus-seeking as in Germany, and, more importantly, there were never any legal obligations on the public administration to consult the wider interests.

The use of open consultations in France was paralleled by a development in the type of French discourse. The increased level of specificity reflected that the relevant policymaking actors were perceived as knowledgeable interlocutors whose participation was important for the legitimacy of the new legislation, in

line with V. Schmidt's model of a coordinative discourse. Thus, from the late 1980s onwards, a coordinative discourse was employed both in France and Germany.

Despite the use of coordinative discourse in both France and Germany from the late 1980s onwards, this is too weak evidence (in the presence of the stability in other elements of the sectoral state tradition) to conclude that the sectoral state traditions converged. French policymakers consistently referred to their *service public* whenever telephone policy entered public political debate, and German policymakers continued to view the state's optimal role in telecommunications policy as one of efficient manager of infrastructure provision.

Final note

Sectoral state traditions have enabled a long-term empirical comparative analysis of ideas by making it possible to operationalise these ideas, as expressed in public political discourse. The long-term investigation made it possible to identify continuation or reoccurrence of modes of discussion and form of arguments in French and German telephone policy debates. It was also possible to assess how new ideas, which often had their intellectual origins in other countries, were shaped by national practice and traditions. The analysis has shown that French and German ideas about legitimate policymaking and discourse have remained highly constant throughout the 20th century.

Summary of findings and implications for theory

The empirical analysis has shown that sectoral state traditions, which were defined as a specific set of ideas about political authority and legitimate state action in the relevant sector, expressed and identified through public political discourse, are highly resistant to change. Despite important similarities (legislative reforms resulting in similar institutional structures and choice of policy instruments – in later periods partly originating from the same supranational legislation, similar technologies and socio-economic development, common participation in international organisations), the public political debate in the two countries remained different, and showed continuity with former national debates. The empirical evidence does not support a convergence hypothesis.

This thesis identified two main problems with the current body of literature on the role of ideas in policymaking. First, there is no common agreement as to the relevant content of ideas, illustrated by the wide range of ideas studied, from narrow, programmatic ideas, to broad, general perceptions about the state. Second, there is a tendency to use changes in policy outcome to indicate changes in ideas (assumed rather than empirically substantiated) rather than studying ideas where they in this author's view are more likely to be expressed, which is in political discourse.

The sectoral state tradition concept was developed to meet these two difficulties. It offers clarity regarding the content of relevant ideas: being broader than programmatic ideas but less so than fully-fledged political

theories, it offers an instrument to study the development of specific ideas relevant to policymaking, and in particular, to separate ideas from policies. This meso-level approach, combined with the use of discourse as main indicator of ideas rather than policy output, allows for operationality (which was identified as a problem with general, macro-level political theories) while at the same time avoiding the problem with confusion between the power of ideas and the power of their advocates (which was seen to be difficult in studies on narrow, programmatic ideas).

Regarding the second problem with the current literature on ideas, the empirical investigation has demonstrated the feasibility of using discourse to identify the existence and development of ideas in policymaking. By analysing large amounts of empirical material it was possible to show the prevalence of certain ideas throughout the 20th century. Policy output was not used to indicate change in ideas; rather, periods of institutional reform were used to locate empirical material because of the prevalence of debate about ideas contained in the sectoral state tradition in such periods.

An evaluation of the empirical findings compared to the reviewed literature on the role of ideas in policymaking reveals certain interesting results. A major empirical validation offered by this thesis is that ideas about policy instruments are interpreted with respect to the national setting in which they are presented. This is here most clearly illustrated in chapter 3 on the financial reforms of the 1920s. The basic ideas about 'managerialism', the advantages of financial and managerial autonomy, the importance of long-term objectives and plans, all had

their roots in Anglo-Saxon academia, and the general ideas introduced to the policymaking environment in the two countries were originally similar. Despite these common roots, the ideas subsequently received very different comments and treatment in the two countries, treatments that showed great coherence with existing ideas about legitimacy of state intervention in the telephone sector. Similarly, the debate on competition in the 1980s showed that the concept of competition was interpreted with reference to the national sectoral state tradition (see chapter 4). Whereas French debate saw competition as 'inevitable' and used this to argue strong regulation of competition to preserve the tradition of *service public*, German academic debate – and subsequently political debate – investigated whether the monopoly structure was beneficial for the pronounced goals of telecommunications policy in particular and industry policy in general. These results emphasise the importance of a contextual, ideational understanding of policymaking.

The empirical analysis also showed that changes in choices of policy instruments do not necessarily indicate changing ideas. This finding is clearly at odds with some of the convergence literature, where general concepts' (such as competition, privatisation, efficiency) presence in different countries' policymaking are interpreted as evidence of convergence of ideas. The lack of convergence demonstrated here is all the more surprising given the nature of the policy area under investigation. Telephone policy is an area where external pressures for policy change are conventionally seen to be largely similar across countries. Technological inventions are generally internationally available, and the literature on convergence reviewed in chapter 1 presents technological

means of fast communication, geographical closeness, and economic and political interdependence as the most important factors for explaining policy convergence. These conditions all hold for the cases studied here. Despite all these similarities, however, ideas as expressed in public political discourse remained different in the two countries.

One might envisage that part of the discord between this thesis's findings and convergence literature is the failure of the relevant convergence literature to specify the content of ideas under discussion, which might lead to confusion about the limits of conclusions offered by the literature. However, there seems to be a more fundamental point to be learned from this evidence, which is that the relationship between ideas and policy outcome is in no way straightforward. This boosts the case for further research into causal mechanisms between ideas and policies. Such research needs clarity and stringency regarding the ideas studied. Relevant ideas' central features (such as stability and resilience to different pressures for change) should be studied separately from the causal process, and *a priori* assumptions about change in ideas should be avoided. While other approaches to the study of ideas have conflated investigations into ideas and their stability with analysis of their role in the policymaking process, this study advocates to separate the two tasks in order to achieve clarity about the possible stability or change in a certain set of ideas before embarking on an investigation about the role of ideas in the policy process. This thesis's demonstration of the important resistance to change in sectoral state traditions can subsequently form the basis for a study of the role of ideas in policymaking.

Another important result from the empirical investigation is the potential longevity of sectoral state traditions even through fundamental regime changes.

Dyson (1980) stated that changes in the perception of the 'state' concept were seen as inevitable, because the 'idea of the state' is open-textured. However, his suggestion that the state concept was in a 'crisis' at the time of writing (late 1970s) has by this thesis been demonstrated to be unfounded. This strength of sectoral state traditions over time and across changes in formal institutions was demonstrated particularly strongly in the case of Germany in the post-war years. The empirical evidence shows that despite being severely challenged for a long period of time, first over a decade during a war regime, then through new legislation (the PverwG), the public ethos of efficient management of federal resources re-emerged, after more than three decades, in a form very similar to that of the pre-1933 period. This phenomenon is strong support for studying sectoral state traditions in a long-term historical perspective and should serve as caution to studies on convergence, which have shown a tendency to analyse ideas and policy development over short periods only, typically as a result of increased international cooperation and supranational legislative activity or as result of rapid technological change.

These findings point to sectoral state traditions having a large degree of independence from policies, policy instruments, and from formal institutions, a fact that might indicate that the activity of legitimating political choices is fundamentally a different activity from policymaking. Such an implication is in line with V. Schmidt's (2001) model on the role of discourse. She holds that 'when it comes to issues that affect the core beliefs and values of a society (...)'

public communication (...) is of central importance, to legitimate changes already taking place and to persuade the public of the values as well as necessity of proposed changes' (p. 11). Legitimating political actions, therefore, is a necessary action in the political process, but it is not the same activity as the development of policies or political programmes. If this is so, as the empirical evidence presented here indicates, the task of legitimating policies can be studied as separate from (although intimately intertwined with) the rest of the political process.

V. Schmidt (2002) also claims that properly understood and used legitimating discourse can determine the success or failure of reforms, which is supported by evidence presented here particularly in chapter 5 and the case of France on the changing status of France Telecom. It is not *a priori* surprising that a more inclusive form of decision-making (as performed through the public consultations of the Prévot commission) should be regarded positively in a centralist environment like French policymaking, and potentially increase legitimacy of the proposed reform. Whether the general public's participation actually changed the outcome is a different question. The analysis undertaken in this thesis does not try to explain the "real" policymaking process. It does not aim at mapping *de facto* power structures and chronological steps in the policymaking process, and can therefore not draw conclusions regarding the absolute value of the general public's views in the decision-making. It might well be the case that the public consultation was playing for the gallery, but at the very least the case tells us that the form of public rhetoric influences the legitimacy of decisions (cf. the uproar and civil unrest when the same issue had

been discussed in 1974). The shown stability of sectoral state traditions indicates that the fundamental values of a country are also highly stable, which has implications for how legitimating discourse should be constructed.

Explaining stability

This thesis has not presented a causal model for the emergence, maintenance, and development of sectoral state traditions. Rather, the focus has been on empirical assessment of whether the sectoral state traditions remained stable or whether they changed. The main reason for this delimitation of the work is the amount of analysis required to evaluate stability or change of the object under investigation. However, certain potential causes for stability have emerged in this thesis, and although it is emphasised that what follows was not the focus of the empirical investigation, some factors might open up interesting avenues for future research.

First, as shown in chapter 2 on the consolidation period, the original sectoral state traditions were shaped by the general state traditions in place at the time. Arguments about the role of the state in the telephone policy field were coherent with contemporary ideas on the role of the state in general, and particularly with ideas on legitimacy of monopolies. The fact that the French and the German state perceived the economic potential of the new technology differently² furthermore correlated with the respective state's view on its own rationale. The coherence between the general and the sectoral state tradition was expected to

² In France, telephony was initially seen as an unknown technology whose economic potential was far too uncertain for the state to risk involvement with, whereas in Germany the telephone was seen as a direct competitor to the state monopolised telegraph service, and thus perceived as representing potential economic losses to the state administration.

remain, because policies that would be perceived to contradict the general state tradition would be seen as illegitimate. The general state traditions would therefore be expected to have a stabilising effect on their sectoral counterparts.

Another factor that can potentially contribute to the stability of sectoral state traditions is that they are sufficiently open to accommodate many different policy options. The *service public* concept, central to French policymaking throughout the 20th century, is generally acknowledged to be flexible; an important precondition for its longevity. The concept has throughout the century been associated with a large variety of financing formulae, organisational forms, and also different judicial frameworks. It also has a strong position as political symbol and myth. However, the three core elements of the concept: territorial equality, adaptability, and continuity of service, have remained constant over the period investigated in this thesis, as has the role of the general interest as legitimating foundation. It is thus possible to argue that despite (radical) changes in how the concept has been interpreted into practical policymaking in terms of choice of organisation and other policy instruments, there has always been an emphasis on the *outcome* of policies in the legitimating process. The same holds true for the German sectoral state tradition: The principle of efficient management of infrastructure provision was used to justify the monopoly at the end of the 19th century, as well as corporatisation in the 1980s and privatisation and full competition in the 1990s, and a variety of financing methods during the 20th century.

The clearest exception to the remarkable stability of sectoral state traditions took place in post-war Germany, with the German state's need to distance itself from the recent Nazi experience, itself a highly exceptional circumstance. The resulting emphasis on democracy, parliamentary control and transparency was not *a priori* consistent with pre-1933 principles. However, the subsequent return to the principle of efficient management of infrastructure provision might be explained by this principle being embedded in wider administrative structures (at a lower level than central government), not necessarily changed during the war. This historical event could however be used for testing the power of ideas independently from the power of their advocates, because it seems plausible to assume that a substantial part of the decision-makers had changed between the early 1930s and the late 1960s.

Literature reviewed in chapter 1 lists several factors that are seen to potentially incite change in ideas: supranational legislation, economic globalisation, international co-operation, and technological change. For the sectoral state traditions model one would include sector-specific factors such as the result of technological change, in particular convergence between different technologies that brought new actors into the policymaking arena. What conclusion can be drawn from the fact that these factors have generally failed to change the sectoral state traditions?

One possible answer to this question is that sectoral state traditions as an example of ideas become institutionalised at the national level and experience a strong path dependency. Although supranational legislation and international

co-operation take place outside the nation-state, they affect the national level of policymaking. Evidence from this thesis shows that the task of legitimating supranational legislation is done with reference to the specific country's traditions, not only because the polity for whom these policies need to be legitimised are national, but also because of the strong position of the legislative assembly or national legislation as the ultimate authority for policymaking. Moreover, as this thesis suggests, although international co-operation might change the views on specific policy instruments among those partaking in the co-operation, there is no evidence to suggest that it impacts on the perceived need to legitimate policies with reference to established, institutionalised traditions at the national level.

Another answer to the resistance to change might be found in transaction cost analysis, which would argue that the sectoral state tradition would change only if the perceived benefits of doing so would be greater than its costs. However, such conditions are difficult to establish because of the large costs and the uncertain benefits involved. Moreover, such analysis of state traditions is problematic inasmuch as it depends on decision makers' interpretations of transaction costs, and is not simply a matter of a competitive market punishing sub-optimal institutions. In terms of change in state traditions, new ideas about costs and benefits would therefore be more important than their actual changes.

Generalisations

As seen, the telecommunications policy area is characterised by a long list of factors that are often assumed to change what states do, how they do it, and

also ultimately their rationale for action: complex and rapidly changing technology, close links with the general economic development, international co-operation, international and supranational legislation. If the sectoral state traditions do not change faced with this long list of factors, there are good reasons to believe that other fields much less exposed to one or more of these factors would show similar tendencies.

Examples of other policy areas where change in sectoral state traditions are less likely are the electricity sector, where supranational legislation has been much more difficult, and social, welfare and education policies, less directly contingent on technology and also with less binding international co-operation than telecommunications. Even the field of competition policy, seen (in a European context) as strongly driven by EU legislation (at least in periods), debate and legitimating discourse have happened at the national level, thus increasing the probability that the sectoral state traditions for competition policy have remained largely constant.

Geographical closeness is another factor put forward by some convergence literature as fostering the probability for convergence. France and Germany are geographically close. However, as argued in chapter 1, any developed, democratic states could have been used for comparison. It seems reasonable to assume that the results would have been very similar regardless of the cases used within the constraints of economic development and democratic systems. It might be interesting, however, to extend the same type of empirical research into countries that are not necessarily as economically developed as France and

Germany, and/or countries that do not possess similar parliamentary democratic traditions. Such research might teach us much about the limits of sectoral state traditions and about their dependence upon democratic structures and long-term existence of state traditions.

To say that 'French telephone policy debate is a debate about a particular *service public* whereas German telephone policy debate is a succession of technical debates on tariffs, technology and sector-specific legislation' is obviously very crude and cannot be taken to represent the true and exhaustive nature of such a complex policy issue over a span of more than a century. This thesis, however, has provided evidence that the said themes are constantly reoccurring in national debates, and that they remained central throughout the 20th century.

The way in which state action has been legitimated in public discourse in telephone policy has been shown to be highly constant throughout the periods investigated. Sectoral state traditions and national public political discourse have shown a remarkable resistance to change, despite being challenged by international (Anglo-Saxon) fads and fashions about administration and management, non-democratic regimes, and supra-national legislation.

Appendix: Sources

Secondary material provided the first indications of which reforms had been the most important in the sector in both cases. The information thus obtained was subsequently confirmed through parliamentary debates, which often included an overview of former legislative changes. This evidence formed the basis around which the five empirical chapters were structured. For each of the five time periods, public documents were looked at in detail. The selection process was described in chapter 1. This annex provides details regarding variation between the time periods, both regarding type of material available and its accessibility.

The institutions consulted for the primary source material for this research, and some of their relevant collections, were:

France:

Service Archives et Documentation historique, France Télécom, 7 Avenue du Général Sarrail, Paris 16ème

- Bulletin Mensuel des Postes et des Télégraphes 1871-1900 (the in-house journal for the P&T administration)
- Revue Générale de l'Administration 1875-1900
- Annales Télégraphiques

Le Centre des Archives Contemporaines, Fontainebleau

- Archives des Postes et Télécommunications (PTT ministry's internal documents, personal collections)
- Collections consisting of both private and public correspondence

Librairie des Journaux Officiels, 26 rue Desaix, Paris 15ème

- Parliamentary debates and legislative texts 1876 – 1997

Bibliothèque Nationale, Quai François-Mauriac, Paris 13ème

- Parliamentary debates
- Parliamentary and governmental reports

Librairie Sénat

- Legislation and parliamentary debates 1980s and 1990s

Institut d'Études Politiques/Sciences-Po, 30 rue Saint-Guillaume, Paris 7ème

- Newspaper articles on telecommunications policy both for France and Germany in the late 1980s and 1990s

Germany

Bundesarchiv Berlin, Finkensteinallee 63, Berlin Lichtfelder

- Parliamentary debates and documents pre-1945
- Reichs-Gesetzblatt
- Jahrbuch der DRP

- Amtsblatt des Reichspostministeriums
- Internal ministerial documents pre-1945

Bundesarchiv Koblenz, Potzdammerstrasse 1, Koblenz

- Parliamentary debates and documents post-1949
- Bundes-Gesetzblatt
- Archiv für das Post- und Fernmeldewesens
- Internal ministerial documents post-1949

Max-Planck-Institut für Gesellschaftsforschung, Paulstrasse 3, Cologne

- Archiv für das Post- und Fernmeldewesens
- Newspaper articles on telecommunications policy in Germany for the 1980s and the 1990s

Wissenschaftliches Institut für Kommunikationsdienste

- WIK reports and analyses

UK

The British Library for Political and Economic Sciences (BLPES)

- French and German legislative papers and parliamentary reports

The empirical periods

As shown in chapter 1, the selection of relevant material in parliamentary debates, parliamentary reports, governmental reports, and material found in the national archives resulted in a large corpus of empirical evidence, drawn from a variety of sources. The focus of the thesis being public political debate, parliamentary reports and debates remained the centrepiece of the empirical material, but bureaucratic documents found in the various archives provided important evidence to increase the understanding of the issues under discussion. Although it is practically impossible to study all documents pertaining to the telephone policy area from its beginning in the late 19th century, the research for this thesis aimed at achieving a good overview of the relevant sources for issues that could be particularly fruitful for an investigation of the ideas in a sectoral state tradition, as discussed in chapter 1. However, the different time periods presented different challenges for research.

Research into the pre-1900 period proved particularly challenging in the case of France, because of the scarcity of documents due to the flooding of the national archives around 1910. The monthly review for the P&T administration, the *Bulletin Mensuel des Postes et des Télégraphes*, therefore provided the bulk of the material in addition to legislation and parliamentary debate in this period. Legislation and regulation pertaining to post and telegraph services were, however, published in the *Bulletin Mensuel*, together with the government's presentation of major legislation. The closest to complete collection of the *Bulletin Mensuel* from the very early years of telephone policy in France (1876

– 1890) was found in the archives of France Telecom. Other central documents available from this period include the report commissioned by the SGT from 1882, which remains one of the rare documents that did not originate in government or the ministerial bureaucracy. Its origin makes it interesting in its own right, but the document furthermore provided evidence on the contemporary view of the legitimacy of monopolies in general, which made it particularly useful for the discussion in this thesis.

The relatively limited amount of documents specifically showing the public debate on the legitimacy of the state monopoly, both because of the flooding of archives and because of the low attention given to the policy area by Parliament, was compensated by use of other ministerial documents such as instructions and regulations, whose focus was mostly highly technical, but that often included the expression of governmental rationale for their policies (see *Bulletin Mensuel des Postes et des Télégraphes* 1879b, c, d, 1881b, 1887, 1889). Moreover, preambles to legislation and regulation exposed the government's view on the legitimacy of the form of state intervention in the sector. Examples are the preamble to the Arrêté of 1 October 1887 (*Bulletin Mensuel des Postes et des Télégraphes* 1887), the reports by Rouver (1887a, b), and Coulon's circular (1887).

In Germany, the relative abundance of legislative action (with the Telegrapengesetz of 1892, the Telegraphenwegegesetz and the Fernsprechgebührer-Ordnung, both from 1899) ensured frequent and well-documented statements from both government and Parliament. The structure of

the German national archives for the pre-1900 period made research an easier task than in France, because all documents relating to a particular Parliamentary Act were easily identifiable through central indexes, and obtaining all relevant parliamentary and governmental documents for all three laws was a speedier process than in France. The documents from this period were found in the Bundesarchiv Berlin. In addition to the parliamentary debates and legislative texts, the archive also provided material from the ministerial archives (*Bestandssignatur* R4701 and R601), which was selected according to the process outlined in chapter 1. Of particular importance to the understanding of the political process and the issues under debate were various issues of the *Amtsblatt des Reichspostministerium* and material originating in industry associations and chambers of commerce.

The 1920s provided a richer empirical material than the pre-1900 period, particularly in the case of France. Increased attention to the policy area in Parliament implied several consecutive years' statements from the *Commission des Finances*, and the Parliamentary process culminating in the financial and administrative reforms of 1923 contained detailed interventions from politicians across the political spectrum. Moreover, both the difficult financial situation, for the telephone service in particular and for the state finances in general, and the increased clarity regarding the principles of *service publics*, resulted in debates in Parliament that proved highly relevant for the research question,¹ thus providing ample material for this thesis. In Germany, the federal archive in

¹ The discussions in Parliament frequently touched upon not only the technicalities surrounding the financial and administrative reforms, but also on the issue of whether telephone policy should be regarded as an administrative task or as an industrial activity, central to the argument in this thesis (see chapter 3).

Berlin contained public interventions from industry organisations, interest groups, and newspaper articles related to the policy area, in addition to parliamentary and governmental reports and debates. For the post-1924 years the annual reports of the Reichspostministerium and the Deutsche Reichspost constituted the main sources of information.

The absence of legislative reform in the 1950s and the 1960s² implied that the material investigated for this period was of a slightly different nature than for the other four time periods. In France, the national archive in Fontainebleau provided most of the primary source material, including internal policy documents from the PTT ministry. The archive is organised as a set of personal collections (from ministers and higher public officials) donated to the archive at the end of their period in office. One is given access to a large number of documents which can be consulted in detail. The documents from each personal collection were grouped under thematic headings, and researching them implied going through each collection rather than being provided with lists of documents/collections relative to a specific theme. For example, the issue of international comparison of French telephone services, relatively high on the parliamentary agenda in the late 1950s, could be found under the collection of the Director General (F90 bis 7489), but also under 'industrial and international affaires' (F90 bis 3808-3831 and 3874-3875). However, the documents are not the same and research is time consuming. A greater methodological problem is the lack of certainty that all potentially relevant sources are consulted. This thesis's focus on public political debate, however, ensures that the central

² With the exception of the PverwG of 1953

documents remain parliamentary debates and parliamentary and governmental reports, which have been relatively easily available for all time periods.

In Germany, the national archive in Koblenz was researched but relevant material was scarce, mainly consisting of a series of correspondence between the Finance Minister (*Bundesminister der Finanzen*) and the PTT Minister (*Bundesminister für das Post- und Fernmeldewesen*) concerning conditions and regulations for tariff increases. The archive material is classified by theme, which in many ways facilitates research. However, contrary to the situation in France, it is necessary to order photocopies of individual documents, and these documents are subsequently sent by post, with the consequence for researchers spending only limited time in Koblenz (and in Berlin) that hard decisions must be made regarding what documents to consult in detail. However, valuable material was found in the various in-house publications of the PTT ministry (Archiv für das Post- und Fernmeldewesen, Jahrbuch des Postwesens, Jahrbuch des elektrischen Fernmeldewesens), which were generously made available through the Max-Planck-Institut. Although strictly speaking secondary literature, the material presented in these forums does provide reliable evidence about policy debates in a period when legislative debate was lacking.

Throughout the 1970s telecommunications policy increasingly regained attention in France, reflected in a larger amount of empirical material available. Parliamentary debates were more frequent than in the preceding decades, and academia and independent observers produced several influential reports. Moreover, the increased focus on telecommunications in general also resulted in

more newspaper articles and public interventions outside of parliamentary channels. This material was provided by the library of the IEP/Sciences-Po (*Institut d'Études Politiques*) in Paris. Legislative action in 1990 provided rich material with interventions from discussants across the political spectrum, mainly found in the Librairie des Journaux Officiels.

In the 1970s, German social science researchers' focus on competition and regulation provided important material for this thesis. Again, although strictly speaking secondary literature, the academic debate provided important frames of reference to public political discourse, and has therefore been included here as source material. Legislative debate in 1987 and 1988 provided public reports and governmental and parliamentary documents, made accessible through the government's information service and website.

Source material for the last empirical chapter was voluminous for both France and Germany. Public attention implied a large amount of newspaper articles, and the fact that the period was relatively recent meant that most minutes from parliamentary debates could be accessed via the Internet. Moreover, central reports (Dandelot 1993, Stoffaës 1995, Larcher 1996, DGPT 1995, Bauer 1993, Witte 1988a, Ministerium für Post und Telekommunikation 1994a, b) were still in print and were generously provided by the relevant institutions.

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