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The European Legislation on the New Media: An Appropriate Framework for the Information Economy?

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Zusammenfassung

Der Beitrag analysiert die allgemeine Rahmenordnung für Telekommunikation und neue Medien in Europa. Unter Verwendung eines institutionenökonomischen Konzeptes werden die europäischen Marktstrukturen analysiert. Verglichen mit der amerikanischen Regulierungsphilosophie ist festzustellen, daß Europa über einen vergleichsweise stärker regulierten Markt verfügt. Allerdings ist die europäische Rahmenordnung für Medien und Telekommunikation insgesamt durchaus zufriedenstellend. Die Gründe für die vergleichsweise schwächeren Wachstumsimpulse des IT-Bereiches in Europa dürften weniger in der Medienordnung, sondern vor allem in den stark regulierten Arbeitsmärkten zu suchen sein.

Summary

This paper analyzes the legal framework for telecommunications and the new media in the European Union. Based on an institutional economics model, the different levels of institutional interaction within the EU media regulation are explored. Compared to the US, the European market seems to possess comparable human resources and technical infrastructure. And even though the EU's regulation philosophy is less market-friendly in the field of digital media, the overall performance of the legal framework is quite satisfactory. The reason for the relative smaller impact of IT investment for economic growth in Europe can be found in the less market-oriented institutions in the surrounding business environment and strong restrictions on the labor markets.

1. An Institutional Perspective on the European Media Regulation

"The term New Economy points at the fact that today's economic transformation is driven by the development of modern electronic-based information technology. The term emphasizes that the ongoing shift is a change in structure, and not primarily a macroeconomic or cyclical phenomena. The New Economy is a structural shift, bringing transformation and disruption. But it is not about macroeconomic landings, smooth growth, permanently rising stock prices, government budget surpluses, or permanently low rates of unemployment, interest and inflation."

Alan Greenspan, 1999

The 90s have been a decade of unprecedented technological and institutional innovation in the electronic media worldwide. The emergence of the Internet and the World Wide Web as a global medium of communication, information and entertainment brought about an interconnection of different countries and cultures. Technological innovation within the electronic media and telecommunications increased the capacity for various new services and products for companies and customers alike. E-commerce and e-business emerged as new fields for promising business transactions. Investment in information technology almost exploded worldwide: The "New Economy" was born, described by many scholars as a new, long business cycle, the so-called fifth Kondratieff wave, which would dramatically change the traditional patterns of trade.

But, actually, the "New Economy" was anything but a "new" economy. The economic logic behind most transactions remained unchanged (van Hoose, 2003). "Globalization" and "information society" became buzzwords for and in the media. But, basically, globalization is nothing else than traditional, but intensified international trade (Wentzel, 1999). And the information society is nothing other than a very strong reduction of transaction and communication costs. In fact, there was international trade and information exchange before the Internet and e-commerce were born. The only little difference between the past and the presence of international trade is the so-called "Internet Mantra" (Frieden, 2001: 23) which simply means that processes run faster, better, smarter, cheaper, and more convenient.

A surprising observation can be found if the diffusion of IT technology and the effects for economic growth are analyzed in a cross-national framework. As an economist, one would assume that the invention of a new technology that reduces transaction costs and therefore increases profits is warmly welcomed in all market economies and would be distributed almost equally all over the globe – at least within the industrialized countries. We would expect that Europe and the United States of America, for example, show more or less the same pattern in the application and diffusion of that new and cost reducing technology. But surprisingly, the US expenditures for new software and hardware surmounted the European for more than 2% of the GDP (Bryson, 2001) and the American investments in information technology costs (ITC) almost doubled the European efforts. It is not surprising that the labor market performance and investment in related markets was much more vigorous in the US compared to the old continent. Europe experienced a significant delay in the development and distribution of that new technology. What are the reasons?

From the perspective of institutional economics, it could be presumed that the institutional framework in Europe is less supportive towards new technologies than the framework in the US. If this is true, then it should be possible to identify institutions from European legislation that reduce the speed with which a new technology is spread. Another hypothesis could be that informal European institutions stemming from the general attitude towards new technologies reflect greater skepticism and reluctance. If the first proposition holds, than it should be possible to suggest improvements for the formal institutional framework to accelerate the use of new information technology. If the second proposition holds, amelioration might be more difficult. Attitudes or “mental models of the world”, as North (1999) has called it, are the result of a long and time-consuming learning process. And it might even take more time to change attitudes and basic convictions than to reform the legal framework.

This paper presents an analysis of the formal institutions of the European media and telecommunications market – with an open eye for the informal institutions as well. In a first step (section 2), we will discuss the basic elements of the European integration process. According to Browne (2001), the comparison of media systems has to take into account the cultural, geographical and legal characteristics of every country. The European Union has 25 members and a long line of new applicants. All European countries had national monopolies in telecommunication and most of them had also national monopolies in public broadcasting. Germany still has the largest public broadcasting system worldwide with an annual budget of almost seven billion EURO. It is only logical that this structure also affects the way and the velocity in which new media technologies are adopted and distributed. After discussing the basic elements of that integration process, an institutional model of media regulation will be presented that fits the EU framework and that allows a comparison of European institutions with those found in international markets.

In section 3, the properties of the European legal framework will be discussed more in detail. We will present the most important rules and regulations concerning television in Europe, concerning telecommunication and, finally, the legal framework for the Internet and e-commerce. The paper concludes with a short summary of the results and comes back to our initial question: Is “the European delay” caused more by formal institutions and state-induced restrictions or are Europeans on average more anxious to make use of new technologies?

2. The Special Case of European Integration

2.1. Integration Principles and the Common Market

European integration is perhaps one of the most complex and fascinating processes to be observed in modern history. The political and economic achievements involved are enormous. Only 60 years after World War II, former foes have become close trade partners and friends. The countries within the core of Europe have realized the highest possible level of economic integration, a single European currency and an economic union.

European economic integration actually has two different faces: first is the negative image of agricultural policy (Common agricultural policy, CAP), which squanders billions of Euros, erects trade barriers against developing countries, and misuses scarce economic resources. It is the appearance of gargantuan, economically harmful bureaucracy. The second visage is the pleasant visage of the consumer-friendly institution that opens markets, restricts national monopolies and opens borders for European companies and people. It is undisputable that the liberalization of telecommunication, the opening of public broadcasting monopolies or the privatization of electricity producers are the direct result of European legislation and the principles of a common market as introduced with the Single European Act of 1986.

The main economic feature of European integration is the so-called common market principle. This code guarantees the free flow of goods, services, capital, and labor between the members of the Union. The idea of nondiscrimination involves the reduction of trade barriers and should increase business activities in Europe. Every product or service is qualified for cross-national trade if it is accepted in the member country where it was initially produced. This “country of origin principle” is an expression of liberalization and a pragmatic and market-friendly integration approach.

The European telecommunications market is a very good example what this approach means in reality. After the end of WW II and in the beginning of commercial telecommunications, this sector was seen as a natural monopoly that had to be managed by state regulation (Frieden 2001). Due to that interpretation of telecommunications, every European country had its own monopolistic telecom sector with specific technical and institutional standards. Radio and television were almost only accessible for public broadcasting stations. Telephony and communication equipment were only provided by national monopolies. The technological development of the 80s increased the necessity of improving the regulatory framework in this sector.

The EU’s policy for the information society opened those telecommunication monopolies, mainly using Article 95 (Internal Market Harmonization), Articles 81 and 82 (Competition and Anti-Trust) and Articles 47 and 55 (the right of establishment and services) of the Treaty establishing the European Community (TEC). Private companies got access to formerly restricted media and telecom markets as well as international competitors. The further promotion of trans-European networks

(TEN) in the field of transportation and communication laid the groundwork for an improved infrastructure and an open market approach. Today the costs of telecommunication, short-distance telephony and long-distance telephony for example, have sharply declined. This is caused by Moore's and Metcalfe's laws of modern telecommunication, but of course at the same time by intensified competition in an enlarged market. The merger between Vodafone and Mannesmann D2 in the market for mobile telephony became the largest takeover in history.

But liberalization in Europe has a twin who always needs to be taken into account: it is the case of harmonization. This problem can also be easily illustrated with the case of telecommunications. When Article 95 TEC legally permitted to offer telecom services all over Europe, there still was the problem of differing technical standards. All Europeans have still the experience how inconvenient it was to use a cell phone on a trip through Europe. As soon as you crossed a border, e.g. the German-Austrian border, the cell phone went out of business because of the differing technical standards in the two countries. So the need to harmonize standards in order to maintain operability of technical equipment was obvious. Seen that way, harmonization is a necessary precondition for the further development of markets and goes hand in hand with liberalization and market expansion.

But, at the same time, harmonization is also the greatest threat for the competition of systems and ideas within the European market. Harmonization can also lead to centralization of economic decision by bureaucratic institutions. The economic theory of standardization illustrates the difficulty of finding the best standard in so-called winner take all markets (Wentzel, 2003b). The state often appears as a "blind giant" lacking sufficient knowledge to choose the best standard. But if it intervenes in the selection process, it might easily favor the wrong norm, leaving better options behind as "angry orphans" (Wentzel, 2002b). There is neither theoretical nor empirical evidence how far harmonization should reach. There is clearly tension between the essential level of common standards to secure and facilitate communication and the centralization that restricts competition. It is one of the most difficult challenges of telecommunications policy in Europe to develop an optimal policy mix to match these competing goals.

2.2. Why is Europe different?

Every comparison between American and European markets could simply start with the same phrase: "Europe is different". There is of course an American media market, but there is no such thing as the European market. This is easily understood if the different levels for legal decision-making are considered.

Since May 2004, the national level of the European Union consists of 25 member states, using 20 different languages. Further important countries in the center of Europe as Switzerland and Norway are not members of the EU. Both countries preferred to stay politically and economically independent. Nevertheless, both are of great importance for European trade and finance. Cultural and economic history and development are extremely diverse across the established EU countries, the transition countries of Central and Eastern Europe and the important countries on Europe's periphery. These include large and fast developing markets, e.g. the Russian market, especially with respect to the diffusion of new media. All of those countries have there own legal and formal institutions that have to be considered in an analysis of a European media market.

Below the national level of EU states, there is also the level of regional or local entities (e.g. German "Bundesländer"), possessing independent legal options. The Bundesländer have strong regulatory influence and can permit or restrict access to television markets. The European Constitution invokes the principle of subsidiarity (Art 9 Draft Treaty Establishing a European Constitution) guaranteeing the independence of those regional entities. The legal framework becomes more complicated when the legislation of the lower entities also has to be considered.

In Europe, the transnational level of media activity includes, e.g., political parties or consumer groups with branches in numerous countries. The socialist and the conservative parties from all countries convene frequently to define their common interest within a European framework. Environmentalists have already founded a transnational European party (the "Eurogreens"). Labor unions enjoy trans-European cooperation as do other stakeholders. Large European companies have networks across the continent to pursue their specific business interests. When a given issue is discussed within European institutions and the Parliament, it is difficult to predict what coalition of stakeholders will be formed.

Finally, supranational European institutions have emerged over recent decades, e.g. the European Council, the European Commission, and the European Parliament. Even for insiders and legal scholars it is sometimes very difficult to know who possesses competences and legal powers in particular fields. Many different General Directorates within the EU Commission contribute to media legislation, e.g. the directorate concerning education and culture, the directorate concerning the common market, the directorate concerning enterprises and information society and, finally, the directorate concerning antitrust legislation. Especially antitrust policy is important, because due to a decision of the European Court of Justice, media and film are regarded as services. Therefore the principle of nondiscrimination and the free flow of goods and services has to be applied also for media and telecommunications. But sometimes EU members have different perceptions and interpretations of the complex system of rules and regulations concerning media in Europe. In the absence of a specific and harmonious European media policy, the European Court of Justice is practically the only authority to resolve disputes in that field.

2.3. An Institutional Model of European Media Regulation

To compare international media systems, it is helpful to have an analytical framework that focuses on different institutional settings and therefore allows more far reaching conclusions than a simple description of a regulatory framework at a given point in time. A morphography of media systems, as earlier developed in Wentzel (2002a: 39), gives evidence about the key institutional elements within a media system, e.g., ownership, financial restrictions, public interest obligations, program content, diversity and innovation, openness towards international programs and owners, control of the public, and profitability.

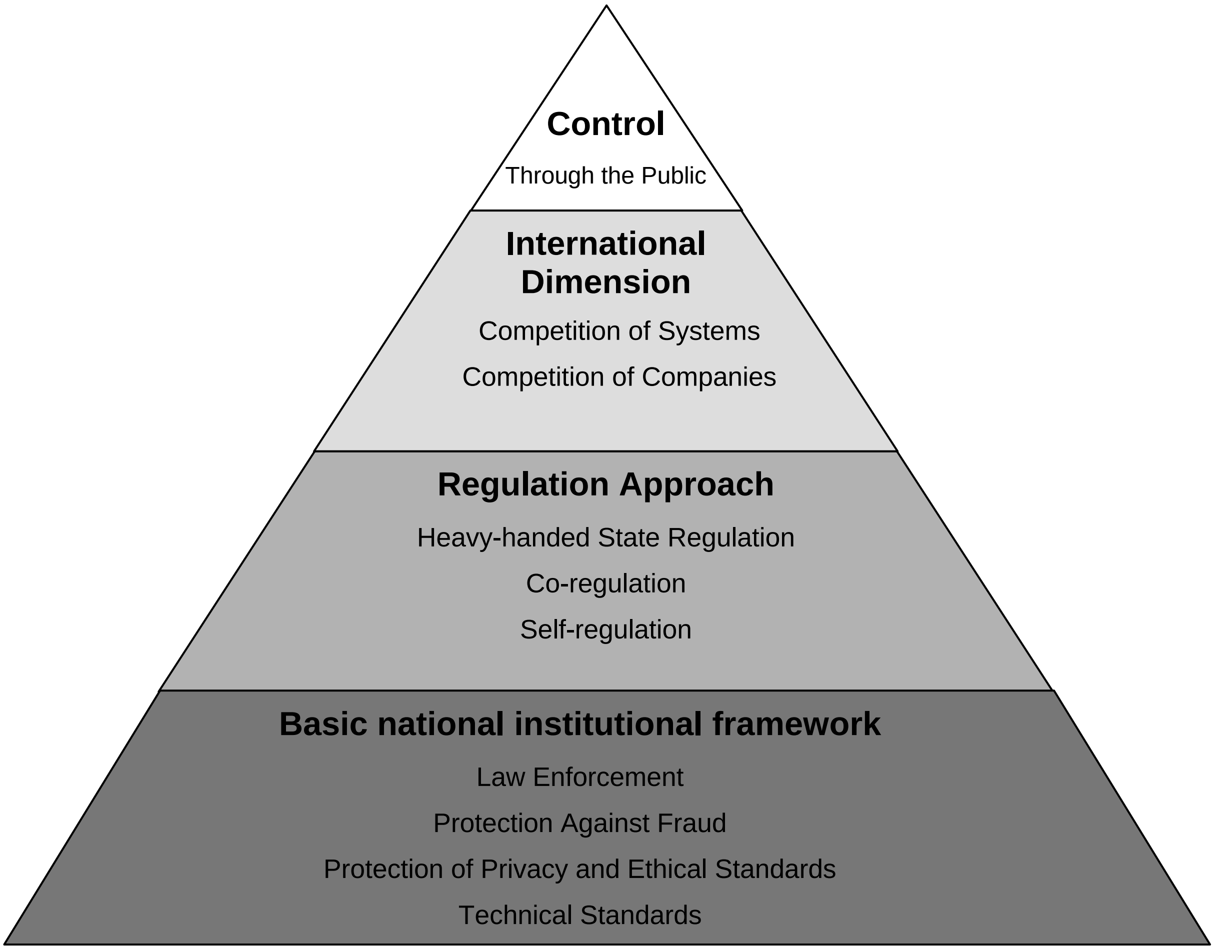
To apply an institutional approach to European media regulation, it is useful to distinguish between three characteristics of a complex media system:

- The Human Resources Involved (the Human or Knowledge Factor)
- The Technical Infrastructure (Standards, Quality, Institutional Agreements)
- The Surrounding Market System and Business Environment.

The successful development of digital media markets depends on all of these features simultaneously and will also be defined more or less by the bottleneck factor. As we know from traditional comparative economics, many of the former socialist countries, e.g., had highly qualified work force and technical equipment, at least in some fields, but did not improve overall productivity due the restrictions of central planning and an insufficient business environment.

The last of the three characteristics, the market system and the business environment, consist of different levels of interaction as illustrated in graph 1. The first level to be analyzed is the basic level of national regulations, or, as in the case of the EU, of national and transnational institutions. Market access, antitrust legislations, privacy and ethical standards, taxation, protection against fraud, illegal transactions, and numerous other issues must be addressed. Basically, the state of those institutions seems to be more consistent within a national state than in a confederation of nations with still extant (and conflicting) national levels of legislation.

Graph 1 – Levels of institutional interaction within the EU media regulation



The second level that has to be considered is that of a general regulatory approach or regulation philosophy. Each single issue of the basic legal framework is directly affected by the general sentiment favoring or opposing state regulation. Technology, content, ownership, and conflict settlement can be handled with either more or with less involvement by the state. The US administration under President Bill Clinton, for example, expressed their point of view in 1997 that the guiding principle of modern media policy in global markets should be self-regulation in order to promote fast growth in that sector of the economy ("Framework for Global Electronic Commerce"). Five principles underline that general market-friendly attitude:

1. The private sector should lead: Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.

2. Governments should avoid *undue* restrictions on electronic commerce: Government attempts to regulate are likely to be outmoded by the time they are finally enacted, especially to the extent that such regulations are technology specific.

3. Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce.

4. Governments should recognize the unique qualities of the Internet.

5. Electronic Commerce over the Internet should be facilitated on a global basis.

Extending the analysis to the international level, self-regulation becomes even more necessary (and successful) as seen in the case of the Internet. Obviously, two different levels of competition can be observed on the global media market. First the level of competing companies, fighting for profits and market shares, and second the more general competition of systems, which means the competition of different regulatory frameworks that attract (or repel) international investors. The competition of systems gives investors the choice to select the most market-friendly environment for his investment. “Voting with the feet” becomes a real option in open markets. But it would be premature and against all empirical evidence to affirm that the freedom to choose the best standard would lead to a race to the bottom of quality. Actually, even though competition in the fight for market shares is necessary, some kind of cooperation is unavoidable in order to guarantee certain common standards, e.g. on the level of technical and transfer protocols.

Finally, the last level taken into account is control through the public or through independent agencies and nonprofit organizations. The most important preconditions for successful self-regulation are transparency and procedural fairness (Wentzel, 2002b; 2003b). Therefore, control through the public and transparency are very helpful to avoid illegal procedures and collusive actions.

Applying these theoretical and institutional considerations on the EU media regulation, a first conclusion is straightforward. Given the existing structure of a European market between the differing forces of competition and harmonization, it is only logical that the resulting framework must be some kind of a compromise between sometimes conflicting economic and political interests of 25 member states. And as we know from institutional economics, these compromises are not necessarily the most efficient available option.

3. The European Framework on the Electronic Media: An Overview

The European media market consists of many different parts: For the purpose of our analysis, we can distinguish three different segments: radio and television, telecommunication and the Internet and electronic commerce. All sectors are closely interconnected through media regulation, content, private or public ownership, transportation capacities, ethical standards, and more.

The first significant milestone towards a single (West) European media market was taken in 1986 with the “Single European Act”. The rules of that act were also applied to the media and telecommunication sector and therefore enhanced liberalization of what has been a tightly restricted field. Of course, this liberalization process was also geographically expanded after the fall of the iron curtain and the development of free market systems in Eastern Europe. The year 1998 saw a completely liberalized telecommunications market in Europe and a partially liberalized television market with private competitors and intensified trade in media and television content within Europe.

The emergence of the Internet and the World Wide Web at the beginning of the 90s caused new activities of the EU authorities to provide an appropriate framework for those newly emerging business activities. The Lisbon Summit in March 2000 set out a very ambitious plan called “e-Europe – An Information Society for

All". This plan was adopted by the EU Council: it defined a strategic goal for Europe to become "the most competitive and dynamic knowledge-based economy in the world". In order to achieve this goal, two action plans were decided upon, the so-called action plans e-Europe 2002 and e-Europe 2005. The first plan focuses on the further intensification of Internet use among Europeans, while the second concentrates on effective access, on responsible use and universal availability, thus providing a more comprehensive and effective approach towards media regulation.

3.1. Rules and Regulation Concerning Television

The economic history of radio and television demonstrates that divergent attitudes towards regulation determine market institutions (Wentzel, 2002a). Broadcasting started worldwide in the late 1920s as a private enterprise. But while the American broadcasting system developed more or less on market-based, individual entrepreneurial decisions, the European experience was quite different. Almost all European broadcasters came under heavy-handed state control of the government, which used the new media to "educate" their own people and to convey positions of the government.

During the Nazi period, Germany experienced the use of broadcasting purely as a propaganda machine. No other opinion than the dictator's could be aired. Illegal listening to the British BBC was sanctioned with the death penalty. After the war, the American High Commander for Germany, Lucius D. Clay, considered launching a broadcasting system after the American model, which means mainly based on private initiative and ownership. But in the difficult economic and political post war times, neither the financial nor human resources were sufficient to secure a market-oriented media system. Therefore the decision was made to introduce a public broadcasting system, mainly after the role model of the BBC, which was also used for "reeducation purposes". This decision turned out to be a major institutional path dependency, because many attempts to reform that system and to allow private competitors to enter the market were blocked by the incumbent stake holders (Wentzel, 2002a).

The opening of the German public broadcasting monopoly was mainly caused by European legislation and European competitors at the same time. In 1984, the EU launched a “green book” for a “European Television Market without Frontiers” (TVWF). The main idea developed in that brochure was the mutual acceptance of TV programming within the European common market. At the same time, private companies, e.g. in Luxemburg, were broadcasting very attractive music and entertainment. This program was available via antenna TV almost all over Germany so that a private competitor had sneaked into that public broadcasting monopoly like a Trojan horse without official legal permission.

In 1989, the “Television without Frontiers Directive” (89/552/EEC) was launched in order to establish the legal and institutional framework for a free movement of radio and television services within the European market. It set up rules for advertising, the mutual acceptance of content, cooperation of audiovisual programs, protection of the youth, and more. Basically, the “country of origin principle” was introduced also for broadcasting. But, at the same time, the first little “fortress Europe notion” became observable, namely by the attempt to promote the production and distribution of European works. In 1997, the television without frontiers directive was amended in order to ensure that the new technological and political developments (with the fall of the iron curtain) were also appropriately addressed.

The use of directives is a very important legal instrument in the development of the European market. Those directives are not directly transformed into national law. But the member states shall bring into force all the necessary regulations and organizational and administrative provisions to comply with the revised directive. So the nation states cannot ignore the European directives: They have to adjust their legal framework in order to match EU standards and the so-called “aquis communautaire”.

The EU also takes a supervisory role for the member states. According to Article 3a of TVWF Directive, member states shall notify the EU Commission of all measures taken concerning the licensing of broadcasting stations and the licensing of “events of major importance for society”. The latter point sounds very reasonable at first, but actually turns out to be a major obstacle for private broadcasters and a restriction for market access. Basically, events of major importance for society are usually sports events like the soccer world championship or the Olympics. Due to the still extant, strong influence of public broadcasting stakeholders, major sport events should be banned from pay TV and should be accessible only on free TV. Since the broadcasting rights for major sports events are usually extremely expensive, no private stations can afford to purchase those rights when the only revenue they can make out of it comes from advertising. Therefore, public broadcasting stations which receive huge state subsidies (as in Germany) can sneak in again in the very competitive market of sports broadcasting.

The EU Commission is also involved in an active consultation process, resulting in a "Communique on the Future of European Audiovisual Policy" (COM (2003) 784 final). The first intention is to monitor new advertising techniques (such as split screen) to ensure that the TVWF standards are complied with. The second purpose is to guarantee the protection of minors and of human dignity in general in new program formats. Broadcasting is in general a very competitive and innovative market, and at least sometimes standards of decency and ethics are challenged or violated (Campbell, 1999). But at this point it should be underlined that self-regulatory agencies also in Europe make a major contribution to provide high quality standards in television markets.

To sum up, the liberalization of European television markets and the Television without Frontiers Directive have tremendously improved the quality and diversity of European Television. With the use of the right technical equipment, European customers can watch more than 200 programs from other European countries. International stations are available as well, e.g. CNN, NBC, but also Arab and Asian stations. Regarding ownership and market access, the EU has also achieved a remarkable amount of economic freedom. As the EU Commissioner for television markets, Vivian Reading has illustrated her credo in a speech in Berlin in March 2005: "In dubio pro libertat".

At the same time, certain tendencies of a new protectionism within the EU must be monitored carefully. Naturally, the protection of a nation's own culture and heritage is a legitimate effort, but it should not be abused for short term nationalistic purposes. Obviously, EU legislation has had trade creating effects for the common market. This asset should not be squandered by restricting EU commercial transactions with overseas and developing countries as well.

3.2. Rules and Regulation Concerning Telecommunication, Internet and E-commerce

The European telecommunications market is also quite a success story of economic liberalization within the common market. Every European market (and the US as well) had a monopolistic telecommunication sector up until the beginning of the eighties. Privatization was the result of new technical opportunities and of a new economic philosophy concerning the regulation of monopolies. The policy of "dismantling the monopolies" in the United Kingdom and in the United States at the beginning of the 80s led to new economic management of that sector.

The first important step taken by the European Union was the liberalization of services and equipment (1988 and 1990). Until 1988, the Deutsche Post, for example, had a monopoly on the provision of telephones and equipment. The product they offered was technically obsolete and extremely expensive as well. Many Germans brought telephones and answering machines over from the US. Technically, it was very easy to hook up those telephones, but it was illegal and could be fined with severe penalties. Actually, for an Economics 101 class there is no better example of the low quality standards and the high prices of a monopoly than the performance of the Deutsche Post (and AT&T in the US) up until the end of the eighties.

The first liberalization step allowed customers to buy telephones from international providers and use them in their own national telephone system. In addition to that, the so-called Open Network Provision (ONP) guaranteed free access to telecommunication networks and therefore set up the basic framework for competitive market behavior.

The second step in upgrading economic performance in the telecommunication sector was the liberalization of infrastructure, including the new emerging sector of mobile communication and cable industries. Especially for mobile communication it was important that the incumbent monopolies would not be permitted to misuse their market power to take over the newly developing sector of mobile telecommunication. Cable networks were also very important, because they were the technical precondition for the European-wide provision of private television as mentioned above. Cable TV was crucial to overcome the scarcity of frequencies for traditional antenna TV and allowed also for the first time the provision of mass communication with an interactive option. But, of course, private television that has to go through the bottleneck of state-owned cable infrastructure would not work efficiently in the long run. Therefore the free market access for private companies and the liberalization of services had to go hand in hand.

The third step taken was a full liberalization of infrastructure and services, also including voice telephony. European customers gained access to a greater variety of choice, better quality and greater value added. Within less than twenty years, European markets had changed from a purely monopolistic (and nationalistic) structure towards a very competitive transnational market creating great value.

As in the sector of television, the EU used the tool of directives to build a framework for a competitive market. Services directive (90/388/EC), cable directive (95/51/EC), mobile telephony directive (96/2/EC), full competition directive (96/19/EC) and cable ownership directive (99/64/EC) can all be characterized as liberalization directives. Other directives like the open network provision directive, the data protection directive, the interconnection directive, the European emergency number decision, the voice telephony directive, to name only a few, directly refer to the legal framework for digital markets. This network of directives and regulations is difficult to oversee even for insiders and is therefore a major obstacle for market access, since it is difficult for newcomers to get a detailed insight into the relevant rules and liabilities. Therefore, the EU is trying hard to consolidate its media legislation into only a few directives to make it more clear and transparent for potential investors.

The status quo of the regulatory framework within the EU is characterized by the following (see Schulze, 2002):

- The “General Framework”, Including the “E-commerce Directive and The “Electronic Signature Directive”
- Jurisdiction and Applicable Law
- Transaction and Consumer Protection, e.g. the “Electronic Money Directive” or the “Distance Selling Directive”
- Content Related, e.g. “Copyright Directives”, “Youth Protection and Cyber Crime Communique”
- Governance, e.g. “Domain Name Communique”
- Telecommunications, e.g. the Unbundling of Local Loop Regulation

The further development of the New Economy in Europe will be strongly influenced by the Union’s attempts to consolidate the huge variety of legal restrictions and to transform them into a more consistent framework that enhances entrepreneurial activities.

4. Consequences and Effects of European Media Regulation

In comparing European media regulation with other media systems such as that of the US, it is helpful to distinguish between knowledge infrastructure, technical infrastructure and standards and, finally, the corresponding action infrastructure. Starting with knowledge and computer skills, Europeans and Americans have reached almost the same standards. Internet penetration and the diffusion of personal computers are almost equal. High school and college education in fields related to the information society are comparable. Also the technological standards and equipment seem to be roughly equal in Europe and in the US.

Both markets have clear rules concerning consumer safety and protection against fraud. Privacy and ethical standards are almost equally protected in Europe and the US. Antitrust legislation seems to be more clear and foreseeable in the US because of the structure of the Federal Communications Commission (FCC). In Europe, the coexistence of national antitrust agencies and the EU Commission leads to a more complex and sometimes confusing business environment. This is also the case in the field of law enforcement. While the FCC and the Federal Trade Commission (FTC) have quite efficient tools at hand to restrict the influence of media monopolies, things turn out to be more complicated in Europe. Moreover, European decisions are not limited to economic issues. Every European decision is subject to nationalistic considerations. A consistent antitrust policy in the field of the media is not yet extant in the European market.

The action infrastructure for e-commerce and e-business in Europe seems to be quite satisfactory – at least from an economic standpoint. Europe has created a quite competitive and open media market for television, telecommunication, e-commerce and the Internet, especially as compared to the initial situation from which they started twenty years ago. But, as already mentioned, purely virtual transactions in the digital economy are rare. Therefore digital markets and the impact of IT investment must be analyzed in combination with traditional labor and factor markets.

Even if European legislation on digital media seems to be reasonable in many aspects, the infrastructure for business transactions following the initial contact in the digital economy seems to be more business friendly in the US. Europe has a very strong position concerning consumer and data protection. Labor markets are still very restricted and most European countries suffer under comparatively high rates of unemployment caused by overregulation from the state and strong interest groups. Thus, it is not surprising that the growth multiplier resulting from IT investment is higher in the US than in Europe. If you do not liberalize traditional factor and labor markets, you cannot expect economic miracles and a recovery from sloppy growth rates from e-commerce and digital media. Both are interesting new fields of institutional and technological innovation, but not a cure against the malfunctioning of an overwhelming welfare state.

Another difference between Europe and the US is the general economic orientation and the amount of self-regulation used in both markets. Especially in the field of media content, the US approach leans more toward self-regulation and private initiative. An interesting expression of that viewpoint is the abovementioned “Framework for Global Electronic Commerce” issued by the US administration on July 1, 1997. The first two principles declare that private sector should lead and that governments should avoid *undue* restrictions on electronic commerce. Such a self-commitment is quite unusual for European governments and legislation: This is surely an expression inter alia of cultural differences in both continents. Europeans seem to be more skeptical about the application of new technologies than Americans usually are. And Europeans are more trustful towards the state’s capacity to solve problems. Nevertheless, some developments in the field of digital media and especially in the emergence of the Internet might have changed this attitude somewhat.

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