Appendix 2. Case study on the ONP Committee (now Communications Committee) meetings on the ONP Voice Telephony Directive

This appendix presents a case study on the changes made to the ONP Voice Telephony Directive as a result of two meetings of the ONP Committee (the Committee).¹ The changes made to the proposal by the Commission following the discussions with the Member States are evaluated by comparing the discussion in the Committee meetings on the November 1991 proposal with textual revisions made to the proposal forwarded to the Council and the EP in August 1992. The following analysis of four key voice telephony issues is based on the November 1991 proposal (Commission 1991c), the official minutes of the Committee meetings on 12–13 December 1991 (Commission 1991d) and 15–16 January 1992 (Commission 1992a), and the 1992 draft directive that was agreed to by the full Commission in July 1992 and forwarded to the Council and Parliament in August 1992 (Commission 1992b). Once again, it cannot be demonstrated with absolute certainty that individual comments made during the meetings led to specific textual revisions. The Commission officials who formulated the 1992 draft directive contend, however, and the draft itself (Commission 1992b, p. 9) acknowledges, that the proposal took ‘into account … discussion in the ONP Committee’. Therefore, the discussions at least influenced the redrafting of the proposal.

ADVANCED SERVICES PROVISION

During the Committee meetings, several of the national delegations expressed concern over the mandatory provision of advanced features (for example, call forwarding, freephone services, director services) in Articles 7 and 8 of the November 1991 proposal (Commission 1991d, pp.4–5). The French and German delegations argued that some conditions in
the November 1991 proposal were too demanding. In particular, these
degagements felt that it would be too difficult and too costly to provide several
of the advanced service features. They contended that their provision would
not be possible on the analogue public telephone network, but only on an
Integrated Services Digital Network (ISDN). On this issue, the arguments
put forth by the French and German NRAs were in line with the interests
of their national TOs (which would have been burdened with the provision
of these advanced services). The Netherlands and the UK delegations, on
the other hand, which had liberalised their domestic markets previously,
generally supported the 1991 proposal and merely pointed to areas of the
text that needed clarification.

In line with the comments expressed by the UK and Netherlands
degagements, the Commission simplified and clarified the text. The
Commission combined what had previously been two articles into one
article (Article 8) in the 1992 draft directive (Commission 1992b, p. 28).
Despite the comments expressed by the French and German delegations, the
substance of the text and the advanced services to which Article 8 applies
remained the same. On the issue of advanced services provision, therefore,
the policy output from the new institutional setting was in line with the
position taken by the more liberal Member States.

INTERCONNECTION AND SPECIAL NETWORK
ACCESS

The conflict over an ONP interconnection policy continued into Committee
discussions (Commission 1991d, pp. 5–6). Several delegations, including
the UK, the Netherlands and Denmark, expressed concern that parts of
the interconnection and special network access articles (9 and 10) of the
November 1991 proposal (Commission 1991c, pp. 23–24) were unnecessary.
For example, the Danish delegation pointed out that interconnection
agreements were already being pursued in Denmark without ONP. Having
already liberalised significantly, these Member States were concerned that a
developing, comprehensive ONP interconnection regime would conflict with
elements of their functioning, previously established national regulatory
frameworks. Both France and Italy called for the elimination of Article
9.2, which had been added to the 1991 proposal following the public
consultation period. Article 9.2 disadvantaged the national TOs in that it
further developed the principle that both the TOs’ own ventures and their
competitors should face equal access conditions. The national positions of
France and Italy can be explained, at least partly, by the close ties that their
NRAs maintained with their national TOs. On the other hand, not having
yet established a comprehensive national framework for interconnection, both the German and French delegations called for a detailed text on interconnection.

In line with historical institutionalism, the Commission’s preference for a comprehensive interconnection policy led it to ‘imprint its own image’ (Hall 1986, p. 233) on the 1992 draft directive. This institutional bias was demonstrated by Ungerer’s comment at the Committee meeting that ‘without a policy on interconnection, ONP will be a joke!’ As early as the 1987 Green Paper, the Commission (1987, p. 157) had argued that an ‘interconnection [policy] is urgently needed if distortion of trade and competition within the Community is to be avoided’. The Commission thus expanded the text on interconnection in line with the comments from the French and German delegations. ‘Special network access’ and ‘interconnection’ were separated into two more detailed Articles (9 and 10) (Commission 1992b, pp. 28–30). The Commission was also a ‘policy broker’ and made changes to the text in accordance with other comments of the national delegations. As the UK suggested, cross-border interworking was included in the interconnection article, while, as the French and Spanish delegations commented, the scope of the article was limited to ‘reasonable’ interconnection requests. Although the Commission did not respond to the UK and German request for clarification of the article’s application to mobile telephony in the 1992 draft, these two Member States, through their increased institutional authority in the Council of Ministers, were able to get a detailed description of the article’s application to mobile telephony included in the 1995 directive.

**TARIFF PRINCIPLES**

In the Committee discussions on tariff principles, the French and Italian delegations expressed concern that both tariff equalisation and the cross-subsidisation of business and residential users would not be allowed under Article 11 of the November 1991 proposal. France and Italy were concerned that the provision of a universal service would not be possible under such conditions. The French tradition of telecommunications as a *service publique*, as examined in chapter two, continued to influence the position of French officials at the EC level. The UK and the Danish delegations, on the other hand, merely sought to clarify the text in some areas. In spite of the comments put forward, the Commission (1992b, p. 31) included essentially the same Article 11 in the 1992 draft directive. This demonstrates the institutional autonomy that the Commission maintains in the ONP policy formulation stage. In a subsequent Council of Ministers meeting
over the draft proposal, however, France was able to ‘logroll’ and link its approval of an unrelated issue in order to establish tariff equalisation in the 1995 directive. The increased influence that the Member States maintain over ONP policy making in this different institutional context is examined further in chapters five and six.

COMMITTEE PROCEDURES (COMITOLEGY)

Several articles of the 1991 draft referred to a type IIIa regulatory committee to oversee the community-wide convergence and technical adaptation of the directive. This committee gives the Commission, in consultation with the ONP Committee, the right to make binding legislation aimed at ensuring the proper implementation of the directive within the Member States. Under the type IIIa regulatory committee, the Member States can reject Commission proposals only through a qualified majority vote in favour of rejection. The French and German delegations, with the support of the Dutch, Irish, Spanish and Portuguese delegations, argued that some of the provisions subject to the committee procedure were too broad, and that some references to the committee should be replaced by reference to the normal legislative procedure for the approximation of internal market legislation (Commission 1992a, pp. 3–6). In putting forth these arguments, France and Germany sought to limit Commission influence over the harmonisation of their national regulatory frameworks. The UK, on the other hand, was the only delegation to favour a type IIIa regulatory committee. Having deregulated the UK telecommunications market well ahead of the other Member States, British officials favoured the type IIIa regulatory committee because they felt that the Commission was on their side.

In the 1992 draft directive, the Commission changed the references to a committee procedure from a type IIIa regulatory committee to a type I advisory committee. The advisory committee gives the Member States even less authority over implementation of the proposal. Docksey and Williams (1997, p. 134) note that it ‘represents the most diluted form of Member State influence’. Under the advisory committee, the Commission maintains autonomous control, while the Member States can only put forth non-binding advice.

This change demonstrates both the Commission’s autonomous ability to draft legislative texts in the policy formulation stage and its own preference for increased institutional authority. That is, the Commission reduced the ability of the Member States to inhibit reform (that is, delay implementation of ONP legislation) and increased its own power to achieve the re-regulation of telecommunications at the EC level (that is, ensure implementation of
ONP legislation). The rules and procedures governing the formulation of ONP legislation (that is, the institutional design) have thus enabled the Commission to become a key supranational actor in the harmonisation of European telecommunications policies.

NOTES

1. As noted in Chapter 4, the ONP Committee was renamed the ‘Communications Committee’ in 2002.
5. Interview, UK Permanent Representative, Brussels, May 1999.