

THE WTO AND GLOBAL CONVERGENCE IN TELECOMMUNICATIONS AND AUDIO-VISUAL SERVICES

This edited collection consolidates research on the current and future perspectives of international trade law applicable to telecommunications services and audio-visual services in a context of convergence. It is divided into three main parts. The first part analyses the current regulatory framework applicable to telecommunications services in the context of the WTO, including the controversial issues of accounting rates and international competition rules. The second part discusses and analyses the current regulatory framework applicable to audio-visual services. Particular focus is given to the impact of content regulation and network convergence on international trade rules. The status of negotiations on safeguards, subsidies and public procurement is also discussed. The final part analyses convergence from different angles. One chapter explains what convergence means in technical terms. Other contributors review the legal and economic consequences of convergence for trade in telecommunications and audio-visual services. This research leads the editors to summarize the findings made in the chapters and to draw up a tentative set of issues to be discussed in the context of the Doha Round of negotiations.

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edited by
DAMIEN GERADIN
and
DAVID LUFF



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FOREWORD

The very recent dispute between Mexico and the United States concerning access pricing in telecoms by the former was, for most trade insiders, another dispute in the ever growing WTO docket. A deconstruction of this mundane phrase, however, should help raise a few eyebrows: telecoms, access pricing, compulsory third (WTO) party adjudication. Surely all of this seemed to be a distant future in the aftermath of the Tokyo Round. So what happened these last twenty-five years?

Essentially, domestic policies became more and more rational under the influence of exogenous parameters (technology) which greatly helped mobility of production factors around the world to reach unprecedented levels. Rationalisation of domestic policies meant, *inter alia*, rethinking the extent of the state along more or less economics-friendly lines.

Now, it is true that rationalisation did not occur everywhere and, even where it did, it evidenced different speeds. Regulatory diversity continues to be very much the case in most state expressions of societal-revealed preferences. This observation notwithstanding, however, it is this process of rationalisation that made it possible to discuss within and across national borders issues which remained ‘untouchables’ over the years.

Telecoms is one of the areas where the prevailing orthodoxy (general service means only state carriers can undertake such operations, natural monopoly, etc.) was put emphatically into question. Some states started a de-monopolisation process which, although looked at with suspicion by less than innocent bystanders, found imitators around the globe in record time.

There was, it is true, a growing discomfort with the fact that, in many democracies (there is not much room for public discomfort in non-democracies), monopolies like telecoms were often used as outlets for dumping unemployed people. Beneficiaries would return the favour by voting for those who placed them in the job market. The result was ever growing phone bills since at the end of the day someone had to pay for those initiatives.

Traditional tools, like price caps, were used in an effort to calm down consumers. Occasionally, as the British experience shows, they worked, in the sense that price caps led to rationalisation of the administration of operations by the state telecoms actor. Unfortunately, there is not much empirical evidence that this is a safe way to go.

Hence, sooner or later, something more dramatic was about to happen. The break-up of AT&T in 1982 and the emergence of the ‘baby bells’ dropped the cost of phone calls drastically in the US and sensitised policy-makers about the merits of competition. The positive externalities of the AT&T break-up has been, first, the acknowledgment that we can live in a world where more than one carrier will compete in the telecoms market, and, secondly, the effective implementation, in other parts of the world, of policies designed to do away with monopolies in the telecoms market.

It was only a matter of time before the trade authorities would be brought to the table of international negotiations: de-monopolisation (privatisation) of telecoms services was soon followed by a discussion on liberalisation (and, sometimes, liberalisation was used as the tool to incite de-monopolisation). This is what happened in the Uruguay Round. The resulting agreement is the first multilateral effort to liberalise trade in telecoms.

The Telecoms Agreement and its Annexes are an incomplete contract: subsequent case law is necessary to shed light on notions like ‘reasonable interconnection rates’. It is this angle of the Agreement that has managed to attract most of the criticism, at least in the literature. There are other angles as well: for example, eventually, that is when more and more states join the current sixty-nine signatories of the Agreement and more ‘daring’ liberalisation commitments have been made, negotiators will inevitably have to discuss to what extent the Agreement, as we now know it, can happily live and produce the expected results within the current context of regulatory diversity in the field of competition law. This is not an issue for tomorrow, but is an issue which will become more and more relevant as liberalisation progresses. And the list of questions can go on and on.

The discussion on audio-visual services has followed a different trend so far. At the domestic level, one can witness a series of initiatives aiming to undo the state monopoly on broadcasting services. There is still some debate as to the wisdom of such approaches: for example, competition authorities are struggling with the idea of the quality of intervention in the audio-visual market (the term as such not being acceptable to all) and the ensuing issues of imposing some harmonised content on private carriers;

information can be a positive or a negative externality in itself and there is still an often-voiced anxiety in trusting it outside 'official' channels.

Then there is the international trade angle of the issue: should we treat audio-visual products like any other product? Should we treat them as services? There are widespread differences among the various actors in the international scene as to the approach to be taken on this issue. Proponents of the 'cultural exception' point to the uniqueness of audio-visual services as 'carriers' of civilisation and national tradition. On the other side, there are those who believe that nothing in principle distinguishes such products (services) from other products and that, for democratic reasons as well, the public should be offered the widest possible choice. This debate is still very much alive: as a consequence, there is no progress when it comes to liberalising services. But the item is very much on the WTO agenda and hence the interest in discussing it.

In this remarkable book, the editors (Damien Geradin and David Luff) achieve two targets: they provide us with an excellent discussion of the Telecoms Agreement and a clarification of the issues blocking progress in the context of trade in audio-visual services; and they sensitise us to what we should expect in this field in the years to come. Choosing a star selection of authors, of course, greatly helped their endeavour. But the editors should be credited with this achievement as well.

The discussion on the Telecoms Agreement is far from being a mere analysis of the most relevant provisions. It is placed in the wider policy context and it thus brings to the reader information valuable in understanding what was really at stake when negotiating and concluding the Agreement. At the same time, all technical aspects of the Agreement are presented in a series of careful and detailed contributions.

This book is one of the many that focus on this subject-matter. It is, though, probably the first that discusses from an authentically interdisciplinary angle one of the most important achievements of the Uruguay Round. And, as I mentioned above, the book, because of the quality of the contributions, is also an inventory of future issues.

I have left for last what I consider to be the most important achievement of the editors: they manage to make a coherent 'whole' out of a series of individual 'parts'. The reader, having finished the book, will be left with the impression that he or she has read one piece on the present and the future of the Telecoms Agreement.

On the other hand, the editors and the contributors managed to provide us with a very comprehensive inventory of the preliminary questions that need to be addressed in order for progress in the field of audio-visual

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services to occur: from purely technical issues, such as the question of whether such services should be covered by the GATT or the GATS (a question the resolution of which has not been helped by the WTO jurisprudence so far), to more ‘loaded’ concerns such as the uniqueness of this particular field. This is the first book that examines together the two issues and the ensuing interplay between them.

The inescapable compromise between the legitimate optimism derived from the fact that we now have a Telecoms Agreement and a series of holes and loopholes in the Agreement constitutes the appropriate recipe to distinguish between optimists and pessimists. Works like this one will help us avoid the mistakes of the past and move into the future armed with knowledge. On the other hand, trade practitioners and negotiators will greatly benefit from the groundwork done here on audio-visual services: this book explains in very detailed terms the current disagreements and provides thoughtful ideas as to what should be done for progress to be achieved.

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Clearly, research like this, in a field which is by nature multidisciplinary, and which promotes speedy adaptation of the law to technical and societal evolution, is most successful when handled internationally and collectively.

Damien Geradin and David Luff

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