

Germany: Reform Efforts

by

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In Germany, more than any other European country except for Britain, there is a relatively sophisticated discussion of telecommunications policy matters by a handful of academics, most with some connections to American scholarship. The Bundespost, in a farsighted move, set up an economic research group which is well connected with the international situation and sophisticated in its methodology. But one should not extrapolate this into a lively public discussion of the Bundespost's role in network ??, in contrast to the intense discussion of its role in cable television.

Of all European countries, West Germany is probably the one with the greatest involvement of academic researchers in issues of telecommunications policy. Though the assessment is frequently ideological in nature, it is diverse and includes, more than in most countries, a variety of disciplines from economic and law to sociology and technology. (Hoffmann-Riem, 1983) [Hoffmann-Riem, Wolfgang, 1983, Vincent Mosco, editor, "Policy Research on Telecommunications in West Germany," in Airlie Proceedings. Full cite needed]

However, the compartmentalization of academia creates problems. A major legal observer of the German telecommunication system, Wolfgang Hoffmann-Riem writes, "... there has not yet been a fundamental discussion on regulation and deregulation comparable with the comprehensive debate in the USA. One major reason is, without question, the lack in the Federal Republic of Germany of adequate professional links between, on the one hand, social scientists and economists and, on the other hand, the legal profession." (Hoffmann-Riem, year: 1-2). [Hoffman-Riem, Wolfgang, year. "Regulation and its Reform, Comments on the Response to

the American Debate in the Federal Republic of Germany," Unpublished paper]

Within the Bundespost, policy discussion is carried on primarily in engineering terms. An economist in the Bundespost's economic research center writes, "In the discussion of the telecommunications monopoly of the Bundespost, economic arguments play only a minor role. Rather this discussion is dominated by engineering considerations. And this has an influence on the topic and outcome of the debate." (Neuman, year: p. ?) [check quote, page] [Neuman, in Marcellus Snow book, pp. ]

Attempts to study the German postal system and recommend reforms go back to 1579, when Emperor Rudolf II appointed a panel to report on the (Thurn-und-Toxis) postal monopoly. 400 years later the question was still being studied.

In 1969 a commission was set up to investigate the organization of the Bundespost and its role in the body politic. In 1970, the panel proposed the removal of political supervision from management of the Bundespost. It recommended a presiding body of five, without the traditional civil service status, to manage the PTT in the manner of a private company. The commission also recommended that the Bundespost would have to contribute financially to achieve certain social goals.

The government attempted a reorganization of the postal administration by creating a supervisory board system similar to those of corporations, instead of the present relatively weak administrative council, and by reducing the role of the Minister of Posts. But even this first step toward reorganization was not to be. There was no agreement on the extent of co-determination participation of the postal unions in the governing boards that would have been formed by a reorganization. Later,

pressure by the postal unions prevented a re-emergence of the proposal (Knieps, Mueller, and von Weizsaecker, 1981). [Knieps, Guenther, Juergen Mueller and Carl Christian von Weizsaecker, 1981. Die Rolle des Wettbewerbs im Fernbeldebereich, Baden Baden: Nomos Publishers]

There were further attempts to reorganize the Bundespost into a more independent public enterprise in the early 1970s, but these foundered due to the opposition of powerful groups (Scherer, 1985: 312) [Scherer, Joachim, 1985. Telekommunikationsrecht und Telekommunikationspolitik. Baden-Baden: Nomos]

But more than interest group politics is at work in Germany. The roots of belief in an economic system that mixes the private and the public are part of long-held beliefs. An important school of thought in Germany is the Gemeinwirtschaftslehre, an institutional view of the economy as divided into two spheres, private and social. While the Gemeinwirtschaftslehre concedes that the boundary between political and social economic spheres depends on historic circumstances, and is not fixed, it does not require the same elaborate justification for the public economic sector as is common in the United States or Britain (Thiemeyer, 1983). [Thiemeyer, Theo, 1983. "Deregulation in the perspective of the German Gemeinwirtschaftslehre. Journal of Institutional and Theoretical Economics, Vol. 139: 405-418] The Gemeinwirtschafts theory goes back to Adolph Wagner, who, in "Wagner's law," postulated the necessary growth of the public sector (Wagner, 1887) [\*Wagner, Adolf, 1887. "Finanzwissenschaft und Staatssozialismus." Zeitschrift Fuer die Gesamte Staatswissenschaft, no. 43: 37-122, 675-746]

It should be noted, however, that while Wagner advocated in the nineteenth century public ownership of the railroads as essential,

another German institutionalist economists, E. Sax, argued that a regulated form of private enterprise could fulfill public tasks just as well (Sax, 1887). [Sax, E., 1887, Die Verkehrsmittel in Volks-und Staatswirtschaft, Grundlegung der Theoretischen Staatswirtschaft, Vienna] Institutionalist economists have recognized that public ownership, by itself, does not solve all problems: "Modern [social economic] theory long ago abandoned the naive idea that public ownership and the establishment by law of due process insures entrepreneurial behavior in the public interest" (Thiemeyer, 1983: 416).

American circumstances cannot be simply transposed into other countries. As Hoffman-Riem puts it, "Were the government to try to step down from its active role in shaping economic and social life, it would not only be confronted by legal limitations, but such a move would also trigger substantial crises of legitimacy" [Hoffmann-Riem, Regulation and its ??, Comments and the Response to the American Debate in the Federal Republic of Germany." Unpublished paper, year: 7]

The controversies in the 1970s led to the appointment of the commission on communications technology (KtK), when influential social democratic politician Prof. Horst Ehmke happened to be simultaneously the Postal Minister and the Minister for Science and Technology, a merger of postal and technology interests at the top governmental level.

The KtK Commission was set up in 1974 [?] by Ehmke to formulate a proposal for the development of a "socially desirable and economically feasible telecommunications system for the Federal Republic of Germany." The Commission was chaired by Professor Eberhard Witte, director of a research institute at the University of Munich. The Commission met for 147 days in plenary sessions, working parties or subgroups and issued a

lengthy report. (Commission for the Development of Telecommunications Systems, 1976) [Commission for the Development of the Telecommunications System, 1976. Telecommunications Report, The Federal Ministry of Posts and Telecommunications, Bonn] In the area of telephony, the report touches institutional concerns only lightly in matters of technology and methods of financing. Concepts of institutional change such as liberalization of equipment supply or the opening of communications services to carriers other than the Bundespost were rejected without being discussed. [check] The KtK also examined media policy issues of cable television. As a result, the federal states, traditionally in charge of broadcasting, initially refused to cooperate with its investigation, and political maneuvering was required to effect a compromise. The vice-chairman of the commission was therefore appointed by the states' prime ministers. The chairman of the commission was Professor Eberhard Witte of Munich, an economist. In addition, unions, business associations, the broadcast networks, and the publishers and journalists associations were nominated by their representatives. Several members of parliament and of state and municipal governments completed the commission.

The KtK report established general guidelines that were adopted by the government cabinet in 1976 (Scherer, 1985) and were the foundation for the subsequent establishment of pilot cable projects in order to test the technical, economic, and social feasibility, of the new medium, and perhaps most importantly as it found out, create politically acceptable institutional models. The report also encouraged the development of data networks, and recommended the setting up of a planning body for telecommunications outside the postal authority. The latter, however, never happened.

In 1977, the German Constitutional Court found that the Bundespost's exclusive rights for the construction and operation of telecommunications facilities covers the entire telecommunications sector, including transmission, switching facilities, and terminal equipment, and encompasses all new forms of information transmission in network and user segments.

In 1981, the German Monopoly Commission, an advisory commission to the government, issued a report on the Bundespost's role in telecommunications. (Monopoly Commission, 1981) [Monopoly Commission, 1981. "Die Rolle der Deutschen Bundespost im Fernmeldewesen," including Deutsche Bundespost, "Stellungnahme der DBP zum Sondergutachten der Monopolkommission (May 1981)] This report is unusual because it was the first time the commission investigated the market power of a public enterprise. Normally, it concentrated on private sector market power. It was also unusual insofar as it traced in detail problems of the telecommunications monopoly, and forcefully advocated liberalization in some areas. Even where it recommended maintenance of the existing policy, it did so typically as the lesser of the evils, and rarely without a fairly negative analysis of the existing system.

The main problem which the Monopoly Commission tackled was vertical integration of monopoly power into competitive areas. The government telecommunications monopolies operate in four different roles, all of which are potentially in conflict with each other. First, as governmental authorities in charge of the planning and standard setting of telecommunications equipment and facilities; second, as suppliers of these facilities; third, as competitors to private suppliers of some of such services, and fourth, as customers of their own competitors. The built-in conflicts of interest from these multiple roles has led to suggestions

to set up separate companies that would be involved in activities that are in competition with private firms. The law against competitive restrictions (GWB) technically applies only to firms that are publicly owned -- a different legal status from that of the Bundespost, which is a public authority; on the other hand, it may well apply to those activities of the Bundespost which are in the nature of operating a business rather than fulfilling a public function.

To some legal observers it is a "mercantilistic view of the state" to believe that the public interest is adequately served by a monopoly enterprise, simply because it is the state which operates it (Mestmaecker, year: 196). [Mestmaecker, Ernst-Joachim, year. "Fernmeldemonopol und Nachfragemacht-Wirtschaftsrechtliche und Ordnungspolitische Probleme der Hoheitlichen und Unternehmerischen Funktionen der DBP." In Book Title, edited by Mestmaecker, pp. 161-200. Place: Publisher.]

The Monopoly Commission report, outlawed by a prestigious government panel, and based on significant staff work, put the Bundespost in an unexpected defensive position. Its reaction was to publish a lengthy counter-report, in which it juxtaposed each paragraph of the Monopoly Commission's report with its own detailed position. It is rare to see a government document in which two positions, that of efficiency based on market forces, and that of efficiency based on technical integrity, are as purely juxtaposed. [citation]

The Bundespost argued its position in a mixture of both positive and normative statements. That is, it sometimes defended the existing system as objectively the best. At other times, the argument was that it was only doing its mandated job. But it is not unreasonable to assume that much of the legislative mandates are not, in fact, unwelcome to the



Bundespost, or otherwise one would expect the same vehement opposition that is directed against liberalization. Thus, when the Monopoly Commission explains its interest in telecommunications "because the rapid technological change in this area leads to the danger, that the Bundespost will expand its monopoly claim to the newly developing telecommunications markets." (Monopoly Commission, paragraph 3) The Bundespost responds that it is not an issue of a "monopoly claim of the DBP," but rather, the "duty" that has been assigned to it. [Rest of chapter integrated elsewhere]

The German Monopoly communication provided a lengthy discussion of the U.S. experience with liberalization. The Bundespost, in response, described the American circumstance in a significantly distorted fashion. For instance, it claimed that pre-1934, the year of the Telecommunications Act, there were "chaotic conditions" in the American telecommunications sector. This statement is incorrect; chaotic circumstances existed in the area of broadcasting, and the expansion of the Communications Act to common carriers was largely in order for one agency, the newly created FCC, to regulate all electronic communication. "AT&T," the Bundespost continues, "received [sic] a natural monopoly" and had a considerable operating monopoly (as distinguished from a production monopoly), which the Bundespost claims that it never sought in Germany (Deutsche Bundespost, year: para. 173). [check quote, sentence] In fact, the operating monopoly of the Bundespost goes significantly further than AT&T ever did. AT&T, even at its high point, never had much more than 80% of the subscribers and 50% of the land area of the U.S. It was excluded from telegraphy service, and it had no monopoly in international voice communication. In satellite transmission, it had to compete domestically

with other satellite providers. AT&T had no control over other forms of communications, such as cable television networks, broadcasting services. In contrast, the Bundespost, with the exception of minor communications services by the national railroad and highway administration, the military, and grandfathered broadcast transmitters, has had a complete monopoly over telecommunication services which it has tenaciously protected.

The Monopoly Commission concluded, among others, that economies of scale were not particularly important for the connection of network and terminal equipment, but that the DBP's involvement with the terminal equipment market had negative effects for market structure and competition. The Commission also concluded that the argument of natural monopoly has to be doubted, based on the American experience, particularly for long-distance communications, but that for the time being it was better not to recommend the development of parallel network infrastructure given the investments necessary. It estimated the replacement value of the telecommunications network at approximately DM 90 bil. At the same time, the Commission pointed to the fact that its conclusions could be modified with the development of technology, a potential deterioration of services, and the reduction of internal subsidies to some of the DBP's services. All in all, given the scathing criticism of the existing system, the Monopoly Commission's conclusions are somewhat timid, and probably represent an adjustment to the political realities tacked on to the main report.

Also in 1981, the German Bundestag, in a major effort to formulate public policy in this field, created the Inquiry Commission on "New Information and Communications Technologies." The Commission had as its

mandate the exploration of the constitutional, legal, privacy, social policy, economic, financial, technical, organizational, national, and international aspects of the new technologies. The three major political parties appointed their communications experts to the commission (for example, the Christian Democrat was Christian Schwarz-Schilling, who soon thereafter became Minister for Post and Telecommunications). The parties also appointed seven non-parliamentary experts from the outside, including three university professors, a director-general of a broadcasting authority, and others from industry and local governments.

The commission was quite active in its two years of existence. It held 63 plenary and subcommittee meetings, several public hearings and undertook four foreign trips. But the heavy politicization of media issues which is prevalent in Europe, and especially partisan in West Germany, prevented constructive proceedings. Another set of conflicts existed between the commission and the federal states. During the Commission's tenure, the government changed hands, and elections were held sooner than expected. No final report could be agreed upon by the deeply divided commission. However, a large preliminary report was backed by part of the commission, and eventually printed as a publication of the German parliament.

The report reflects what must have been frustrating proceedings. Dissenting opinions, even on factual matters, appear constantly, as do references to the fact that no agreement could be reached on many questions. Even on the simple statement that technologies do not provide only "opportunities" but also "could lead to dangers" the commission could find no agreement. (Scherer, year: 335)

The Inquiry Commission discussed the liberalization of the Postal monopoly for innovative communications services. Specifically it discussed the Monopoly Commission's recommendation that the network should be opened up by admitting more specialized networks and giving general permission to lease resale lines in order to increase competition. The Inquiry Commission listed several arguments for such service competition, including an improved utilization of resources in telecommunications, that would not negatively affect the economies of scale of the telecommunications network, since the DBP would remain the sole network carrier. Allowing private suppliers to offer additional telecommunications services not yet offered by the DBP, such as information and communications services, would also improve the potential for innovation. Furthermore, the Bundespost in the initial phase is needed to subsidize new services.

The commission cited approvingly the German Constitutional Court's decision that private parties can be prevented from offering only lucrative services, while the Bundespost, due to its legal obligation, must also supply less lucrative services. [BVerfGE 46, 120, 152] The Inquiry Commission therefore concluded that "the Post is entitled to exclude such 'cherrypicking' by private competitors." (Inquiry Commission, year: 180)

(Add: Marcellus S. Snow, 1982) [Marcellus S. Snow, 1982. "Telecommunications and Media Policy in West Germany: Recent Developments." Journal of Communication (Summer): 10-321]

The Inquiry Commission, also discussed the liberalization of the postal monopoly for innovative communications services, and specifically the Monopoly Commission's recommendation that the network should be opened up by admitting more specialized networks and giving general

permission to lease resale lines in order to increase competition (Inquiry Commission, 1984). [Inquiry Commission on New Information and Communication Technology, 1984, Gegierungsbericht Informationstechnik]

The inquiry commission lists several arguments for such service competition, including "an improved utilization of resources in telecommunications." This would be done without negatively affecting the economies of scale of the telecommunications network, since the Bundespost would remain the sole network carrier. Allowing private suppliers to offer additional telecommunications services not yet offered by the Bundespost, such as information and communications services, would also improve the potential for innovation. A third argument made in favor competition was that private resalers are more flexible than the Bundespost because they can offer their services selectively on an introductory basis. The Bundespost could then take over any successful service offerings and make them universally available, so that all would benefit from innovation. Similarly, service supply offerings by private suppliers could provide early standardization and development of technical opportunities from which the Bundespost could later benefit.

The Commission's report also lists arguments against competition. Cream-skimming is a possibility, given a tariff structure based on the Bundespost's social policy obligations such as universal service and uniform tariffs. Furthermore, the Bundespost, at least in the initial phase, must subsidize new postal services such as Datex-P, teletex, and BtX videotex.

On competition in basic networks themselves, Inquiry Commission came out negatively. "Permitting competition would easily lead to an economically inefficient duplication of investment" (Inquiry Commission,

1984: 174). The report conceded that it is empirically unclear whether telecommunications is indeed a natural monopoly, and admitted that there are no such investigations going on for the Federal Republic. However, empirical studies of economies of scale for the United States, Canada, and Great Britain are cited which almost conclude the telecommunications sector as a whole is a natural monopoly, although the economies of scale have decreased over time. (This literature, some of which was commissioned in support of embattled service monopolists, are more ambiguous than the Commission's reading.)

In discussing leased lines, the report essentially accepted the classic PTT argument. Observing that leased lines could result in resale by arbitrageurs unless rates are "harmonized," the Commission agreed with the Bundespost's introduction of volume sensitive leased line tariffing. The Commission cited approvingly the German Constitutional Court's decision that private parties can be prevented from offering only lucrative services, while the Bundespost, due to its legal obligation, must also supply less lucrative services. The report therefore concluded that "the Post is entitled to exclude such 'cherrypicking' by private competitors."

The Inquiry Commission's stance on the Bundespost's role in standardization and standard setting is evasive. After a description of the complexity of the equipment licensing process the report concludes that: "Whether there are real [distorting] effects cannot be determined." (Inquiry Commission, 1984: 185) The report stresses the usual argument that the network needs to be protected technologically, and that users of equipment need to be protected from malfunctioning or incompatible equipment which they have acquired. The registration procedure of the

FCC is based on a mere registration of equipment that is certified by the producer as conforming to certain safety protection standards. Thus the administrative apparatus is minimal. The entire registration section of the FCC consists only of a department head, two engineers, two lab assistants and one secretary (Knieps, Mueller and von Weizsaecker, 1981: 112).

In March 1984, the government published a "governmental report on information technology," as a conceptual document for the advancement of information technology. (Lange, Bernd-Peter, 1984. "Dokument Einer Einseitigen Politik." Medium (May)) The report -- Regierungsbericht Informationstechnik 1984 -- stresses the importance of governmental initiative in order to keep German information technology competitive.

In the 1980s, even the Social Democratic party, which has backed the Bundespost monopoly began to criticize the slow rate of some technological upgrading of the network. The general secretary of the SPD, Dr. Peter Glotz, criticized the Bundespost's low level of investment in digital switching, which amounted to only 90 million DM in 1982 of which only 40 million DM were for 1984 [clarify] (Glotz, 1983) [Glotz, Peter, 1983. Unpublished text of speech given on (October)] Social Democrats urged a rapid development of the Bundespost networks. As Glotz asserts, if no modern public networks would be offered, then private networks would emerge on the leased lines, which would provide the same efficiency benefits, but would be less sensitive to social politics and other requirements such as data protection.

[Add Witte Commission]

In 1982, the European Commission filed a case over modem and base band equipment against the German Bundespost, citing it in violation of Articles 85 and 86 of the Treaty of Rome.