

## RSCAS Seminar Series

on

### **Public and Private Regulation in Europe**

in collaboration with the  
**Florence School of Regulation**

organized by

**Fabrizio Cafaggi** (Seminar series' coordinator)

**Pippo Ranci** (Director of the Florence School of Regulation)

**Stefano Bartolini** (Director of the Robert Schuman Centre for Advanced Studies)

21 February 2008	<i>Network Governance in Energy Services</i>
6 March 2008	<i>Public and Private Regulation in European Banking</i>
24 April 2008	<i>Public and Private Regulation in the Telecom Industry</i>
16 October 2008	<i>Final Conference</i>

### **Public and Private Regulation in the European Telecommunications Industry**

**Thursday 24 April 2008**

Sala Europa, Villa Schifanoia, Via Boccaccio 121, Firenze

#### **Programme**

08.45	Registration
09.00	<b>Introduction</b> <b>Stefano Bartolini</b>
	<b>Session 1</b>
	<b><i>The role of private regulation in the Telecom industry: Reduced by privatisation or enhanced by regulatory failures?</i></b>
	<b><i>A dynamic view on the public-private regulation puzzle</i></b> <b>Brigitte Preissl</b> , Intereconomics
	<b><i>Coordination of investment decisions</i></b> <b>Claudio Leporelli</b> , Sapienza University, Rome
	<b>Comments</b> by industry representatives
	<b><i>Combining policy initiatives to encourage broadband</i></b> <b>Jason Whalley</b> , University of Strathclyde
11.00-11.30	Coffee break
11.30-13.15	<b>Session 2</b>
	<b><i>Public and private regulation in the new institutional setting designed by the Commission proposals</i></b>
	<b><i>The EU Reform Proposals for the e-Communications Sector</i></b> <b>Bernd Langeheine</b> , EC, DG Information Society and Media
	<b><i>Private Regulation in AGCOM experience</i></b> <b>Stefano Mannoni</b> , AGCOM

**European Regulatory Agencies versus Joint Body of National Regulatory Authorities - Implications of the Meroni Judgements**

**Christian Koenig**, University of Bonn

**Cross-border regulation of network industries**

**Mark Thatcher**, LSE

**Comments** by industry representatives, national regulators

13.15-14.15 Lunch

14.30-16.30 **Session 3**

**How does competition law affect the combination of public and private regulation? The interaction of competition law and sector regulation**

**When should sector-specific regulation of electronic communications cede to general competition law? Problems and potential of the 3-criteria test**

**Heike Schweitzer**, EUI

**Comments** by Industry representatives, national regulators

16.30

**Concluding remarks**

**Fabrizio Cafaggi** and **Pippo Ranci**

**The issue:**

**Public and Private Regulation  
in the European Telecommunications Industry  
An Introductory Note**

**The increasing importance of private regulation in regulated markets has imposed a rethinking of the entire design of regulation** [see "A single European Market for the XXI century" COM (2007) and SEC (2007) 1518]. Taking into account different characteristics of regulated markets we propose to assess the role of private regulation in the telecommunications sector.

Among various types of regulation it is useful to distinguish: formal regulation, co-regulation, private regulation and market forces. Are the goals for each type of regulation different or are they the same?

For the purpose of the seminar the following definition of co-regulation and private regulation may be considered.

**Co-regulation** means the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations).

*p. 18 of the Interinstitutional Agreement on better law making, (2003/C 321/01)*

**Private regulation** is defined as the possibility for economic operators, social partners, non-governmental organisations or associations to adopt among themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements).

*p. 22 of the Interinstitutional Agreement on better law making, (2003/C 321/01)*

In general, a free-market competitive economy heavily relies on private negotiations. Is this also the case in the telecommunications sector? In order to provide an answer to this question, the following issues will be discussed:

1. The role of private regulation in the context of the evolving relationship between competition law and public regulation.
2. The role of private (self-) regulation in relation to public regulation; in particular when does it operate as a complement and when as a substitute?

### **1. The role of private regulation in the context of evolving relationships between competition law and public regulation**

The process of privatizing previously state-owned telecommunications providers has witnessed the emergence of new trends. Regulatory functions, namely service standardization and pricing strategies are regulated by the competitive market forces rather than by state-owned enterprises. The role of the industry players has furthermore been strengthened by the influx of foreign firms' capitals.

The liberalization process, which opened national telecommunications markets, was aimed at introducing effective competition. However, the fact that incumbent telecom operators have still managed to retain a high market share called for additional measures that would dismantle the incumbent's dominant position, namely sector-specific regulation.

In the light of the new Commission's Document "Impact Assessment" (SEC(2007) 1472) it is important to observe that the Commission is now considering three different policy options:

- a. Encouraging more industry private regulation
- b. Update and strengthen the current provisions
- c. No change to the Regulatory Framework

Crucial questions arise: **Is removal of public regulation in telecommunications desirable? How does competition law and policy affect the combination between public and private regulation? How can private regulation contribute to the process of increasing effective competition in the pan-European telecommunications sector?**

### **2. The role of private (self-) regulation versus public regulation.**

Private and public regulation can interact mainly in two ways: they can either complement or substitute each other. The question is which one of these two models prevails in the telecommunications sector.

### **3. Typologies of private regulation in telecommunications.**

We observe different typologies of private regulation in telecom.

- a. private regulation in infrastructure
- b. private regulation in the contractual relationship between the parties (both B2B and B2C)
- c. private regulation concerning content.