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Foreign investment policies, sovereignty and growth

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Abstract

Policies on foreign investment in the communications sector have often been regarded as an indicator of a government's stance on sovereignty vis-a-vis economic growth. Since some of the poorest members of the World Trade Organization agreed to open basic telecommunications services to foreign investment in 1998, many more had followed suit. Are these nations surrendering sovereign control for foreign investment, and hopefully, economic growth?

Despite an overall trend towards the open market ideal, this study has found significant differences among Third World countries regarding foreign investment policies related to telecommunications services. From the analyses a pattern of regulatory control over foreign ownership in basic services emerges when the key determinants of policy decisions are taken into consideration: the size of domestic market, the competitiveness of national industries, the quality of policy design and decision making, and the urgency of needs and availability of different options.

The key to the issue is perhaps that control is not the best representation of sovereignty, but rather the autonomy in making decisions regarding the retention or surrender of control in the interests of the state and the public, through a commonly accepted procedure. In other words, surrendering control does not necessarily lead to the erosion of sovereignty, yet having to surrender control for reasons of sheer survival.

Keywords: Economic growth; Sovereignty; Telecommunications policy

1. Introduction

In 2001 when the world was watching China negotiating its terms for WTO membership, in a move that perhaps only made headlines in regional newspapers, the Nigerian government announced the $1.3 billion sale of a controlling stake in Nitel, Nigeria's state telecommunications company. The deal was noteworthy, however, not only because of the amount of money that was involved—the largest in Sub-Saharan Africa's telecommunications sector, but also for the

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message it carried: with sovereignty and security as the primary reasons for keeping Nitel under state control in the past, decision makers in Nigeria, like those in China, have changed their attitude toward foreign investment.[1]

This policy change in Nigeria was by no means an isolated case. In 1998, 72 members of the World Trade Organization (WTO) signed an agreement to open basic telecommunications services to foreign investment. Of the 41 signatories that chose to forego restrictions on foreign ownership, 15 had a per capita income of under $2000. As the WTO negotiations continue, more developing nations are expected to follow suit.

This development drastically differed from what was seen as typical of a third-world stance on issues regarding communications and information. With scarce resources and few competitive advantages, these poorer countries fought bitter battles to defend their sovereign rights when issues regarding transborder data flows and direct satellite television broadcasting emerged on the agenda of international negotiations (Wang, 2001).

Sovereignty, like patriotism, has frequently been utilized as a grand cause to shroud the complicated workings of forces and interests (Mueller & Lovelock, 2000). However, in this age of globalization, it has not ceased to be an issue of major concern, and policies on foreign investment in basic services—services that make the backbone of a nation's communications and information infrastructure—are often regarded as the indicator of a government's position on sovereignty vis-a-vis trade opportunities and economic growth. What, then, is the significance of a developing nation's open-door policy? Is exploitation by transnationals no longer a concern; or is it perhaps the choice between sovereignty and growth not an issue anymore?

Using country cases as examples, this paper examines national policies—primarily those of third world nations—on foreign investment in telecommunications, and the factors involved in related decision-making. The discussion is focused on, but not limited to, telecommunications, since convergence has made it increasingly difficult to separate media communications from telecommunications. It would be a mistake to equate restrictions on foreign ownership with sovereign control in telecommunications. However, it is hoped that the endeavor will provide a clearer picture of the ways in which sovereignty is defined through policy measures and trade agreements, and the role and function of the nation-state in this age of global communications.

2. The golden alliance: economic growth and telecommunications

Telecommunications has long been regarded as an important economic sector not only because of its size, but also because of its indispensable role in communication and information dissemination that, in turn, is the key to market competitiveness and socioeconomic development either within a national, regional, or global context.

Empirical evidence showing the link between telecommunications and economic growth appeared as early as the 1970s, and continued to emerge beyond the 1990s (Butler, 1983; Cronin et al., 1993; Saunders, Warford, & Wellenius, 1994). In the US, one of the major driving forces

[1] See further http://www.vii.org/papers/nigeria.htm. The preferred bidder, Investors International of London Limited, was Nigerian-financed but Portuguese-backed, while the reserve bidder, Telnet Consortium, was formed by a subsidiary of Sweden's Telia and Korea Telecom.

behind the national information infrastructure (NII) initiative was growth: the prospect of a billion-dollar increase in gross domestic product (GDP), and US$75 billion in private sector investment in telecommunications that would nearly double the size of the sector by 2003 (Geller, 1995). This close link between growth and telecommunications was by no means evident in industrial nations only. A study of 143 Egyptian villages, for example, found the cost–benefit ratio of telecommunications investment to be 1–40. If social cost were to be excluded, the ratio could balloon to 1–85 (Pool & Steven, 1983, p. 151).

Closely related to its contribution towards economic growth is telecommunications' vital role in global trade and investment. Even though in 1994 the Mexican peso was devalued by 45 percent, Southwest Bell's US$1 billion investment in Mexico's largest telecommunications company Telemex still doubled in value (Mody, Bauer, & Straubhaar, 1995, p. XV; Wang, 1998, p. 36). In 1999, telecommunications services market in OECD areas was estimated at more than US$756 billion, representing a 13 percent increase over 1998, and a 21.8 percent increase since 1997. Similar growth was witnessed in relation to investment in the sector. In 1997, per capita public telecommunications investment in OECD nations averaged about US$140, nearly doubling that in 1987 (OECD, 1999, 2001). According to statistics compiled by the International Telecommunications Union (ITU), the overall telecommunications services market was about four times larger than that of goods (Minges, 1996, p. 29). Despite uncertainties with the future of third-generation cellular phones and reports of unprecedented losses for some of the world's largest telecommunications companies (Barker, 2000), many executives saw the shakeout as a natural, or even healthy process (Mehta, 2000).

3. Investment in third world countries: where does the money come from?

This importance of the telecommunications industry has led to some very ambitious projects in third world countries. In China, for example, a total of US$28 billion was spent on building a 100,000-km-long optical fiber network that links 85 percent of the country (FlorCruz, 1998). India, with a per capita income of under US$400 (*World Development Report*, 1999), has devoted massive resources to developing satellite communications since the 1970s (Wedemeyer, 1985). In 1999, the last of its second-generation satellites was launched. With 170 fixed-satellite earth stations, the wireless network not only facilitates the provision of telecommunications services to remote areas (Visnawath & Karan, 2000), but it also offers high-speed data transmission and serves as the backbone of the Indian counterpart of ERNET, a global academic and research network (http://www.mit.gov.in/infra/htm). Unfortunately, examples such as these are extremely rare in the developing world.

The dire situation faced by the least-developed areas of the world needs to be taken into consideration. According to statistics, the income gap between the richest fifth of the world's population and the poorest fifth increased from 30:1 in 1960 to 74:1 in 1997 (IIC Italian Chapter, 1999, p. 21), and the share of the world's 49 least-developed countries (LDCs) in world merchandise exports declined from 0.7 percent in 1980 to 0.4 percent in 1999 (WTO, 2001). OECD countries accounted for 86 percent of the world's GDP, 74 percent of world telephone lines and 91 percent of Internet users. The bottom fifth of the poorest countries accounted for about one percent in each sector.

What may be more alarming in this situation is that the same widening gap exists in telecommunications, the key to growth. According to Hudson (1995), the 19.7 percent increase in telephone density from 1980 to 1990 in the low-income nations not only paled when compared with that of the middle-income nations (77.9 percent), but the change brought about by their growth rate was also extremely modest given the basis of growth.

Recently, there have been reports of drastic growth, e.g., the annual growth rate of mobile phone subscribers in China has increased by an average of 87 percent in the past 4 years, and in Thailand, the increase in Internet users has reached 1000 percent (Lee, 1999) over the same period. However, the growth has been sporadic. In Africa, few nations have undersea cable access to the rest of the world (Gifford & Cosper, 1998; Wang, 1999), and teledensity has in fact declined in nine countries. As of 1998, the average telephone penetration of high-income nations was nearly 100 times (96.1) that of the lowest-income group (Wang, 1999).

As technological advancements have made telecommunications industries increasingly knowledge- and capital-intensive, they have become less affordable to the smaller, resource-poor countries. The need to build the information and telecommunications infrastructure, however, remains a pressing concern. In Africa for example, it was estimated that just to bring the basic telephone service up to world standards would require $30 billion a year (Ngwainmbi, 1999). Who, then, would shoulder the bill?

Some nations have managed to achieve certain policy goals with international aid and loans. The Indian ERNET, for example, was built with initial partial funding from the United Nations Development Program (UNDP) (http://www.mit.gov.in/infra.htm). Others insisted on self-reliance, e.g., China (Yan, 2000). However, in almost all cases financing was met with great difficulties. In Nigeria, the first National Development Plan (1962–1968) provided only 35 percent of the money budgeted for telecommunications development. The problem not only persisted over the years that followed but worsened as a result of the currency's devaluation and shortage of foreign exchange in the country (Ajayi, Salawu, & Raji, undated). In China, funds were allocated to telecommunications under a preferential policy from 1982 to 1993. However, the same problem emerged once the policy was abolished in 1994 (Yan, 2000). The Economic Policy statement issued by Sri Lanka's President Madame Chandrika Bandaranaike Kumaratunga serves as a good example of the plight faced by a majority of developing nations:

> "Public investment would be needed to build the infrastructure that is required as a necessary complement to rapid private sector growth. However, as the resource requirements for the provision of adequate infrastructure are so overwhelmingly large, a significant portion of the infrastructure investment effort will have to be undertaken by the private sector."[2]

The question is in how many of the developing nations do we see a private sector that is capable of coming up with the investment required for such a mammoth task? To make the situation worse, the provision of aid and loans by major international financial institutions and organizations has declined significantly in recent years (Minges, 1996, p. 33; OECD, 1999). Between 1985 and 1996, the World Bank Group and regional banks extended over US$8 billion in loans to developing nations. The total amount of such loans and aid, however, started to

[2] National Policy on Telecommunications, speech delivered on November 30, 1998, http://www/trc.gov.lk/ntp.html

fall in the early 1990s. The records show that the aid allocated by OECD's Development Assistance Committee (DAC) countries fell by almost half over the period from 1992 to 1996.

A majority of the Third World nations, therefore, are faced with pressures from two directions: declining aid and loans and falling accounting rates on the one hand, and pressing needs for investment on the other. When the national private sector is incapable of responding to such needs, foreign investment becomes the primary—if not the only—solution. As a Mongolian official stated (Minges, 1996, p. 40): "Only foreign investment can save Mongolia. We must do everything to attract it."

4. Foreign investment: one stone to kill three birds

Indeed, foreign investment seems to be the solution to the growth problem, not only from the perspective of developing nations, but also from that of transnational corporations, lending institutions, and major trade organizations.

Over the past few decades, international efforts to bridge the gap between developed and developing nations have brought no fundamental changes, and attempts to solve the debt problem have made little progress. As the world enters the 21st century, privatization and liberalization are bringing new hope to the situation. According to ITU statistics, in countries where the telecommunications sector has been open to competition, the growth of networks has been twice as rapid as in those countries where monopolies have prevailed. Privatization has also been shown to have had a positive impact on network penetration, as evidenced by a study of 30 developing countries in Africa and Latin America.[3] To encourage such policy measures, major lending institutions such as the World Bank have made privatization a precondition for lending.[4] In markets where private financing has been available, international organizations have "gladly ceded their role to the private sector (OECD, 1999, p. 237)." As in these nations where "private financing" almost always comes from foreign sources, such lending conditions have served to pave the way for foreign investment.

To investors, on the other hand, the opportunities thus created could not have come at a better time. Since the privatization and liberalization of the telecommunications sector took place in the 1980s, former public telecommunications operators (PTOs) in industrialized nations have been forced to venture beyond their national borders when faced with competition from abroad on their own turf. Mergers and joint ventures—such as the deal struck by British Telecom (BT) and AT&T—merely climaxed a trend that has been fermenting for more than a decade, a trend that is accompanied by a growing need for new markets.

According to United Nations statistics, in 1985, investment in foreign telecommunications company stocks amounted to US$390 million, but in 5 years this amount increased to US$16.5 billion (Joseph, 1995, p. 632; Wang, 1998, p. 36). It was estimated that the WTO agreement on

[3] ITU Special Sessions on Telecommunications, Council for Trade in Services, June 25, 1999, Geneva.

[4] J. Hills, "International issues in telecommunications: The end of national regulation?" Public lecture, National Chiaotung University, Taiwan, December 19, 1999.

basic services would bring US$600 million worth of business to the global telecommunications market.

5. Trade agreements: clearing the barriers to foreign investment

Despite controversies and disagreements over market liberalization in telecommunications and audiovisual services during the 1994 GATS negotiations, 72 WTO member nations signed the Agreement on Basic Telecommunications Services and its associated Reference Paper in 1998. According to the Agreement, all signatories agreed to open their domestic markets in telecommunications to operators based in other WTO member countries on a most-favored-nation (MFN) basis (Wang, 2001). In addition, they agreed to implement pro-competition regulatory principles, including cost-based pricing schemes, interconnection rights and an independent regulatory authority. Although it is possible for member nations to file an MFN exemption on a measure affecting trade in basic services, in order to ensure open competition, the Agreement has set up a dispute settlement mechanism enabling WTO members to challenge the laws, policies and regulations of other member countries. The major remaining barrier to foreign investment in the sector was concerned with restrictions on foreign ownership, a clause that was kept by about one-third (25) of the countries that signed the Agreement.

The WTO agreement on basic services attracted widespread attention because it succeeded, on a large scale, in establishing the free trade principle in an area previously closed to foreign intervention. The Agreement, however, was not the only, nor even the first, such attempt. Over the years, communications has appeared on the agenda of almost every major negotiation concerned with international trade, including meetings of the Asia-Pacific Economic Council (APEC) and the European Commission (EC), and agreements such as the Maastricht Treaty and the North American Free Trade Agreement (NAFTA) (Galperin, 1999).

As convergence increasingly blurs the distinctions between common carriers and cultural industries, the inclusion of cultural products in trade talks seems to have become an issue that is increasingly difficult to avoid. In December 1998, the Multilateral Agreement on Investment (MAI), another treaty that was concerned with international trade in communications, was abandoned by OECD members after the French government's refusal to participate. One of the most controversial issues with MAI was its language regarding "barriers to trade" and "expropriation and compensation," as pointed out by Calabrese (1999, p. 324). According to its provisions, a foreign investor was allowed to take a government to an international tribunal if the investment conditions in the host country were felt to have undermined the plaintiff's future earnings, and the government could have been forced to provide compensation on his or her behalf.

One thing that is uncertain, however, is whether sovereign control will yield to market pressures. Some have suggested that the question is not one of "if" but "when" a treaty like MAI will be passed (Calabrese, 1999). In the WTO, the inclusion of cultural products in future negotiations was sounded out as soon as the agreement on basic services was reached (Pogorel, 1998).

There is little doubt that the free trade principle is gaining ground in its tug-of-war against protectionism in telecommunications. What, then, are the implications of this development for national sovereignty?

6. A clash of objectives: sovereignty and growth

Sovereignty, as the right of governments to control matters and events taking place within their borders, has frequently been considered to be in decline with the rise of globalism (Hamelink, 1993; Braman, 1995) and the development of global media. Many believe that national sovereignty and cultural autonomy can be safely guarded—only if foreign influences are kept at bay.

This vigilance over things foreign in the communications sector was clearly outlined by the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty (Globerman, 1995) which stated: "Canadian sovereignty in the next generation will depend heavily on telecommunications." To maintain the Canadian identity and independence, the statement emphasized, a measure of control over data banks, transborder data flows and the content of information services available in Canada must be ensured.

This position on sovereign control over communications content and channels was reflected in Canada's policy with regard to bringing in foreign products and investment. In negotiating for the 1989 Free Trade Agreement, restrictions on importing cultural products became a subject of hot debate between Canada and the US (Galperin, 1999, p. 631). Canada, deeply concerned with the high percentage of imported audiovisual products from the US, was unwilling to make concessions on the issue. Eventually, a double standard was adopted by NAFTA, whereby trade in audiovisuals between Mexico and the US was regulated with minor exemptions, that between Canada and the US was altogether exempted from the agreement.

While Canada seemed to be the party adopting a protectionist strategy in the NAFTA talks, the US, the most powerful advocate of the free trade principle and the world's leading exporter of products and services in the field of communications, never entirely let go of its control over the communications and information sector vis-a-vis foreign influences. One example was the licensing of satellites to operators with more than 20 percent foreign ownership (Hills, 2001). Not only did the Federal Communications Commission (FCC) retain the right to deny a license to a foreign operator on the grounds of trade, foreign policy, or competition considerations, in 1997 it adopted a further ruling to regulate mergers and other foreign participation in the US market. Another such example was the forced divestiture of Televisa, a Mexican company that controlled the US Spanish-language broadcasting business through a subsidiary, because it violated the country's foreign ownership rule. Ironically, while Televisa became a minority shareholder in the US's leading Spanish-language television network Univision after divestiture, Hollywood distributors continued to control 80 percent of the Mexican film and video markets (*Variety*, August 12, 1997; Galperin, 1999, p. 633).

Given the above examples, it is not surprising that some of the nations that housed the world's most powerful transnational telecommunications corporations, e.g., the US, France and Japan, still maintain some forms of restrictions on foreign ownership in basic services. If even the most powerful player in the global market saw the need for restricting foreign investment in the communications sector, then why should Third World leaders not feel the same way? China, for example, made no secret of its intentions to keep all foreign influences away from the sector for security and sovereignty reasons (Fan, 2000; Yan, 2000). Despite pressures to open up the telecommunications market in its intensive WTO membership negotiations and the country's urgent need for capital, throughout the 1990s the Chinese government remained unshaken in its ban on foreign investment in basic and value-added services (Saywell, 1998; O'Neill, 1999; Mueller & Lovelock, 2000).

Nevertheless, as the situation varies drastically from one nation to another, and also from one period of time to another, the emphasis placed on sovereign control versus on growth differs significantly across countries.

7. Prioritizing policy goals

A significant number of developing nations in Asia, Latin America and Africa in the mid-1990s began the intricate task of opening up the telecommunications market to competition and setting up an autonomous regulatory body, and the endeavor is expected to continue well beyond the new millennium. According to the 1998 WTO agreement, 26 of the 42 developing nations have committed to liberalizing their telecommunications market within 4–5 years, including several of the low-income nations on the list, e.g., Senegal, Ghana and India. Although financial crises in Asia and complications in ratifying the agreement may have caused delays in a few nations[5], the move towards free trade in telecommunications services remains consistent, if fragile (Bergsten, 1998).

Within this general trend toward liberalization, however, is an interesting difference among developing nations regarding restrictions on foreign ownership in basic services. As shown in Table 1, of the 39 Third World nations that signed the Basic Services Agreement, only 11, including Mexico, Brazil, South Africa, Malaysia, Colombia, Indonesia, Morocco, the Philippines, Tunisia, Ghana, and India, and more recently China, have chosen to keep some form of restrictions on foreign ownership. Despite differences in their levels of per capita income, there is at least one common feature among these nations: all except Ghana and Tunisia had a population of over 20 million in 1998. The sizes of their populations indicate that these are nations with a sizeable domestic market, and in such cases as India and China, there is also a budding national industry that has the potential to compete in the global market. While they continue to be urgently in need of capital, e.g., China needs a staggering US$422.7 billion (Yan, 2000), both of these conditions are good reasons to closely guard national interests and sovereign rights when it comes to negotiations on foreign investment.

South Africa, for example, made clear its intentions to maintain a balance between international cooperation and the national interest with regard to the construction of its information infrastructure (Cogburn, 1998). In a keynote address delivered at the First G-7 Ministerial meeting on the Global Information Society, Deputy President Thabo Mbeki outlined five principles in relation to the Global Information Infrastructure, of which international

[5] Tunisia, Hungary, Poland, and Senegal, for example, have committed to market liberalization by 2002, but will likely postpone it until after 2003.

Table 1
Restrictions on foreign ownership by income level[a]

	Restrictions	%	No restrictions	%	Total	World total
High income (> \$9266)	Canada, France, Japan, Korea, New Zealand, USA, Singapore, Israel	9(36%)	Australia, Austria, Belgium, Denmark, Finland, Germany, Greece, Hong Kong, Ireland, Italy, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland	16(64%)	25	52
Upper–middle (\$9265–2996)	Mexico, Brazil, Hungary, Poland, Slovak, South Africa, Malaysia	7(47%)	Argentina, Chile, Czech Republic, Dominica, Trinidad & Tobago, Turkey, Venezuela, Mauritius	8(53%)	15	38
Lower–middle (\$2995–755)	Colombia, Indonesia, Morocco, Philippines, Tunisia	5(28%)	Bolivia, Bulgaria, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Jamaica, Peru, Romania, Papua New Guinea, Sri Lanka, Thailand	13(72%)	18	54
Low (< \$755)	Ghana, India	2(33%)	Bangladesh, Ivory Coast, Pakistan, Senegal	4(67%)	6	63

[a] 1998 figures.

cooperation was listed side by side with regional integration and local content. In 1998 Telkom, South Africa's national carrier, acquired a strategic partner: a consortium comprising SBC Communications International and Telkom Malaysia Berhad. The purchase price of Telkom shares, R5.58 billion, was the single biggest inflow of capital ever into South Africa. After the deal was made, 30 percent of Telkom shares went to the international consortium. Although the shares it sold were only 3.33 percent more than those sold by Senegal's Sonatel to its foreign partner in 1997 (Wang, 2001), there was a difference. In South Africa, 30 percent was the upper limit, according to law, of foreign ownership in any telecommunications company.

Perhaps there was no place in which changes in foreign investment policy were more newsworthy than in China. In 1999, during a visit to the US, Premier Zhu Rongji announced that China would open up its telecommunications services market; a move designed to pave the way for the nation's entry into the WTO. However, just as foreign-funded ventures involving the Internet, including the one by Yahoo!, scrambled to enter the world's largest single market, an official from the Ministry of Information Industry (MII) stunned foreign companies with a flat denial of such a policy change: "Our government has never agreed to allow foreign investment in telecommunications services, including Internet ISPs and ICPs (O'Neill, 1999)."

Finally, in November 1999, after painstaking negotiations with the US on its WTO accession, China agreed to gradually open up its telecommunications sector to foreign direct investment (FDI). On December 11, 2001, China became a member of the WTO, on the same day the Provisions on the Administration of Foreign-Invested Telecommunications Enterprises (the FITE Provisions) were promulgated by the State Council. In accordance with China's commitments under the GATS schedule, the FITE Provisions provide that the ceiling percentage of foreign investment in value-added services other than wireless paging will be raised to 50 percent in 2 years, and that in basic services to 49 percent in 6 years. There are, however, other limitations: foreign investment in the telecommunications sector is permitted only in the form of a Chinese-foreign equity joint venture. Furthermore, there are minimum requirements regarding the registered capital of a national or inter-provincial telecommunications joint venture: RMB$2 billion for basic services, and RMB$10 million for value added services.

Several factors, including top-level political interventions and a tug-of-war among government agencies, have been attributed to China's policy change regarding foreign investment in telecommunications (Fan, 2000, http://web.syr.edu/-ztan/main.html). However, whatever its future policies may be, as pointed out by Mueller and Lovelock (2000), the relative weights attached to sovereignty versus growth will continue to be determined by the same interplay of political and economic forces that have, over the years, helped to sustain the hard-line stance in China.

In contrast to the large developing economies, only a few of the smaller and resource-poor Third World nations that signed the WTO Basic Services Agreement maintained restrictions on foreign ownership in basic services (Table 1). This openness to foreign investment did not come out of the blue, either. Private funds, unlike aid, do not go to places where there is no profit to be made; hence the greater the risks that are involved, the harder the host governments have to try to foster a reassuring and favorable investment environment. To offset concerns over structural problems such as political instability, in several of these nations, e.g., the Ivory Coast, Sri Lanka, and Peru, foreign ownership has been actively promoted by the government in most sectors (http://www.ustr.gov/html), including telecommunications. The Peruvian constitution, for example, guarantees national treatment for foreign investors. In Senegal, the exclusive right of the country's national telecommunications carrier was ceded to a French company as a long-term concession.[6] Such measures have brought social economic returns to the host countries, yet their potential impact on sovereign rights are difficult to ignore, and Jamaica is a case in point.

During the 1980s and early 1990s, run-away inflation rates in Jamaica led to the sale of government shares in its dominant service provider, Telecommunications of Jamaica (TOJ) to the London-based Cable & Wireless (C&W). While the government indicated that it intended to maintain a controlling 40 percent share in the company, a worsening financial situation resulted in a further transfer of its shares in 1989, and eventually a sell-out in 1990. In order to secure a high price for the sale of its remaining shares, the government agreed to make necessary regulatory amendments to guarantee TOJ exclusivity in all areas of telecommunications traffic into, out of, and through Jamaica for 25 years, with an option to renew the license for another 25 years (Lodge & Stirton, 2002). Although C&W eventually bowed to pressures to open up the market to competition, it was allowed to control the pace of liberalization and negotiate for favorable terms in the new legislation—matters that normally fall within the realm of sovereign control.

8. Caught in between sovereignty and growth

There is little doubt that the pressures for abolishing all trade barriers in communications will continue to rise. Three areas were identified as targets for future negotiation at the WTO council meeting that was held immediately after the signing of the Agreement on Basic Services: restrictions for new entrants and small companies, limitations on the number of suppliers, and investor participation.[7] These measures will further enhance the liberalization of telecommunications on a global scale. However, as the world celebrates the wonders of market power, it is perhaps worth making the effort to examine the implications of what we have seen happening during the process of privatization and liberalization in the poorer Third World nations:

1. The vulnerability of the government in selling off shares in the dominant service provider. While a great majority of developing nations have had few options but to liberalize and privatize their telecommunications sectors, their pressing need for capital, the unpredictable nature of the international economic and financial situation, and domestic problems such as corruption, double-digit inflation, staggering foreign debt, inefficient bureaucracy, and political instability all too frequently leave them with few bargaining chips at the negotiation table. Often in question is not just the terms of contract, but whether there are buyers. The Nigerian government's plan to sell off its controlling stake in Nitel ran aground three months after the announcement was made, as the preferred bidder failed to come up with the balance to make the payment by the deadline. The Ghanaian government also announced plans to privatize its major carrier, but market analysts were pessimistic about the prospects of finding a buyer. Under similar circumstances, the Jamaican example whereby the government introduced laws that were favorable to the buyer to increase the selling prices of its shares would by no means be an isolated case.

[6] The situation is described at http://www.dakarcom.com/econ_telecomm.html

[7] WTO, Council for Trade in Services, January 14, 1999.

2. The lack of a protective mechanism in regulatory design. As technology advances, market competition intensifies and the economic system becomes increasingly global, the design of policy, regulatory control and contract negotiations also become knowledge-intensive. To make intelligent policy decisions in relation to foreign investment, management style, technology transfer, and personnel training all require a certain level of expertise. Unfortunately, such expertise is often hard to find among Third World policy-makers (Ngwainmbi, 1999, p. 140; Jayasuriya & Knight-John, 2002, p. 7).

   The key issue here, therefore, is whether Third World leaders and trade representatives have the ability to negotiate for terms that would allow for sovereign control with an open-door policy. The Jamaican example illustrated a delicate, yet highly significant difference between high-income nations and Third World nations in terms of the meaning of "no restrictions on foreign ownership." In many high-income nations, including the United Kingdom, Norway, Italy and Ireland, a mechanism has been built into the law to make sovereign control possible when needed, either by setting a minimum state shareholding percentage in the national carrier, or giving the government or parliament the power to block certain transactions. In other words, what C&W managed to achieve in Jamaica will be highly unlikely in high-income nations even though all of them were listed as nations with no restrictions on foreign ownership in basic services.
3. The political economy of policy decisions in Third World nations. In addition to the increasing sophistication of technologies, the interplay of political and economic forces in a country presents formidable challenges to the integrity of policy-makers. After an examination of the new regulatory structures in Common Market for Eastern and Southern Africa (COMESA) members in terms of their composition, decision-making process, functions, and funding, Ngwenya (2001), the organization's Assistant Secretary-General, came to the conclusion that in most—or nearly all cases, the regulator "falls short of being truly independent." While initial concerns for the autonomy of the regulatory body were focused on its independence from government and political influences, what seems to be equally, if not more, problematic now is its independence from the operators. Jayasuriya and Knight-John (2002), for example, noted a key factor in the Sri Lankan government's enthusiasm over privatization and competition: politicians' and bureaucrats' opportunities for rent extraction. While privatization offered the possibility for rent extraction on a scale "unimaginable in the past," even greater rents would be in place for those controlling the process if the enterprises to be privatized could be guaranteed monopoly profits. Under such circumstances, policy decisions often ended up serving personal, rather than social, needs (Ngwainmbi, 1999).

The influence of former colonizers could lead to similar results. An example is the sale of a 33 percent share of Sonatel, Senegal's national telecommunications carrier, to France Cable Radio (FCR), a subsidiary of France Telecom, after privatization in 1997. According to the contract, Sonatel's exclusive rights in telephone services were ceded to FCR as a 7-year concession to the strategic partner. Telia, a Swedish-based consortium and the first bidder for the sale, offered a higher bid for the deal and bargained for a seven-year contract. Four months later the negotiations broke down, and the long duration of the contract was suspected as a cause (Humphreys, 1997, p. 25). Although the deal with FCR did bring significant growth to Senegal's telecommunications sector, the choice of FCR over Telia has led to suspicion of a "French

Table 2
Determinant factors and the level of control

Per capita income	Market size	Industry competitiveness	Policy design and decision making	Alternatives	Restrictions on foreign ownership	High
Middle	+[a]	—	0	—	Restrictions	
High	+	+	+	+	Restrictions	Level of
High	—	0	+	+	No restrictions	Control
Lower-middle, Low	—	—	—	—	No restrictions	

Low

[a] A "+" indicates a positive condition, e.g., a large market, a competitive national industry, quality policy design, and alternatives for funding telecommunications projects, while a "—" indicates a negative condition, and a "0" a neutral condition.

connection" (Humphreys, 1997, p. 25). Similarly, a "British connection" and a "Spanish connection" (Cogburn, 1998, p. 6/13) have also had their respective roles to play in former colonies in the developing world.

From the above analyses, a pattern of regulatory control over foreign ownership in basic services emerges when the key determinants of policy decisions are taken into consideration: the size of domestic market, the competitiveness of national industries, the quality of policy design and decision making, and the urgency of needs and availability of different options. As shown in Table 2, nations that tend to retain very strict controls over foreign ownership are ones with a large domestic market, a weak or budding national industry, and which also have pressing needs growth and few options available. Like nations in the low-income, or lower-middle income group, they too are in urgent need of capital. However, they stand to lose their own industry once restrictions on foreign investment are lifted. The lower income nations, on the other hand, worry less about their national industries because they barely—if at all—exist.

Like the middle-income nations in the first category, several of the high-income nations that also have a large domestic market seemed to be reluctant to give foreign investment a free hand in order to retain the competitive edge of their national industry. However, to them the perceived threat of foreign ownership is obviously much smaller than in the case of the first group, and hence less restrictive measures are needed. The smaller low-income and lower-middle income countries, therefore, opened their doors wide to foreign investment, not because sovereignty is no longer a concern, but because there simply are no other options.

9. Conclusion

The question here, therefore, is not whether, but which, developing nations need to choose between sovereignty and economic growth, why, and how the implications of this affect our understanding of the workings of sovereignty. In 1997, when the WTO Agreement on Basic Services was signed, Pekka Tarjanne, the then Secretary General of the International Telecommunications Union, noted that the old regime of telecommunications based on national sovereignty and corresponding relations had passed.[8] However, he also held that we are not likely to go beyond the limits of national sovereignty in the near future.

Tarjanne did not point out where these limits to sovereignty lie—perhaps it is impossible to do this. In a constantly changing world, the boundary of sovereignty, as defined and redefined in international conflicts, negotiations and treaties, not only varies from time to time, or event to event, but also from nation to nation. It is never constant, absolute, or universal. Yet, however interpreted, the suspected loss of sovereignty seldom fails to trigger concerns. Globalization and agreements such as GATS threaten sovereignty because decisions that were made by the states are now made at the international level. However, if it is not possible to delineate the boundary of sovereignty, how can we declare its loss?

The key to the issue is perhaps that control is not the best representation of sovereignty, but rather the autonomy in making decisions regarding the retention or surrender of control in the interests of the state and the public, through a commonly accepted procedure. In other words, surrendering control does not necessarily lead to the erosion of sovereignty, yet having no alternatives but surrendering control will most likely lead to the erosion of sovereignty. A WTO brochure rebutting attacks on the dispute settlement mechanism has painstakingly emphasized that, although the GATS agreement entails some surrender of sovereignty, the surrender is "voluntary, conditional and temporary".[9] The difference between the voluntary and involuntary surrender of control lies, precisely, in the autonomy in decision-making.

This issue of autonomy has helped clarify some of the issues that emerged in the process of privatizing and liberalizing the telecommunications market. If sovereignty is interpreted as the state's power in making autonomous decisions, then what have appeared to be clashes between sovereignty and economic growth are frequently a conflict of policy objectives, e.g., growth, cultural integrity, and national security—whether the government should surrender control to facilitate growth, or retain control to ensure security. In such cases, national sovereignty remains intact; it is endangered only when a government no longer makes autonomous decisions whether to, or not to, surrender control. Unfortunately, such is the situation many of the small low-income and lower-middle income nations find themselves in.

Some have insisted that market liberalization and transparent management are the right prescriptions for solving the problem, whether it be a conflict of policy objectives, or a clash between national sovereignty and economic survival. The Jamaican case is a perfect example when the pressure to liberalize the market has in fact helped, rather than undercut, the Jamaican government's position in negotiating for licensing conditions that are in accordance with the national interest. We are reminded that when forces beyond our national borders have increasingly directly or indirectly influenced our lives, the state is not the only power challenged; also on the list are transnationals that have been used to enjoying monopolistic privileges. Globalization and liberalization have in such cases served to reinforce, rather than undermine, the role of the state as the most powerful of social actors.

[8] Tarjanne, Pekka. "The limits of national sovereignty: Issues for the governance of international telecommunications." Public lecture, the Law School, University of California, Berkeley, September 28, 1995.

[9] WTO, 2002 GATS: *Fact and Fiction — Misunderstandings and Scare Stories: Is Dispute Settlement a Threat to Democracy?* www.wto.org/english/tratop_e/serv_e/gats_factfiction12e_.htm

It may be true that the state remains powerful, and that liberalization and globalization remains the best means of achieving growth for even the poorest of nations, but we are also reminded that there are certain preconditions to maintaining both growth and sovereign control, preconditions that do not always exist in Third World nations. Recently, further efforts have been made to help improve telecommunications services in developing nations. The ITU, for example, has set aside US$270 million to assist in the establishment of an e-commerce center, and InfoDev, a World Bank project to boost growth in telecommunications, has been unveiled. These efforts, undoubtedly, will help bridge the gap between developing countries and the rest of the world. However, for developing nations to safely maneuver through the minefield of liberalization, privatization and global market competition, technical support and opportunities are not sufficient. To quote the statement on Canadian sovereignty, "[T]elecommunications, as the foundation of the future society, cannot always be left to the rigours of the market."

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