



Exploring the Limits of Legalization in the WTO:  
The Case of the Basic Telecom Agreement

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## What are the research questions?

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- What is the degree of legalization in the WTO Basic Telecom Agreement?
  - In comparison with general WTO framework and main agreements.
- What does explain the different outcome in the Basic Telecom agreement?
  - In comparison with general WTO framework and main agreements.



## My arguments

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- Explicit positivist arguments:
  - The Basic Telecom agreement is significantly less legalized than the most WTO agreements.
  - This outcome is explained by the diverse nature of interests who have a stake in telecommunications.
- Implicit normative argument:
  - It is not worth the effort to have more legalized telecom agreement in the WTO or in other international organizations.



# Why study the WTO Basic Telecom Agreement

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- Relevance in the context of academic literature.
  - The role of telecommunication infrastructure and regulations in explaining the rates of Internet diffusion.
  - Learning from other models and transfer of best practices (e.g. independence of regulator).
  - Regulatory governance and “regulatory state”.
  - IR/IL perspectives on nature and effectiveness of international organizations.
  - International and comparative political economy approaches (systems v. domestic).
  - “Varieties of capitalism” in comparative political economy.
- Policy implications



## How do I approach the questions?

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- First descriptive part.
  - The legalization of the Basic Telecom Agreement.
  - Commitments of four CEE countries.
- Second part - positive theorizing.
  - Rationalist IR/IPE theories.
  - Secondary sources.
  - Some empirical examples.



# The Concept of Legalization (Abbott et al 2000)

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- More legalized implies less political.
  - Constrains political discretion of states
    - E.g. “lock-in” for domestic interests
- Obligation
  - Legal rule-boundness
    - Not changed because of political reasons
- Precision
  - Exactness and specificity of rules
- Delegation
  - Third part dispute settlement system for implementing, interpretation and application of the rules.



## The legalization in the WTO

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- The concept implies looking at procedures
  - Not consequences
- Obligation is present in highly binding rules
  - Single undertaking, reciprocity, threat of retaliation et al
- Precision
  - Specific opening of sectors, tariff rates et al
- Delegation
  - Independence and legal role of GATT/WTO dispute settlement has increased since 1995.
    - E.g. no consensus required for forming a panel, adopting panel report, for suspension of concessions et al.



## GATS/The Basic Telecom Agreement

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- General Agreement on Trade in Services.
  - MFN treatment to all WTO member regardless of their commitments.
  - Positive list approach.
    - Schedule of specific commitments.
    - List of exemptions from general obligations.
- The Agreement on Basic Telecommunications Services is an annex to the Fourth Protocol of GATS.
  - Provides national treatment and market access in telecommunications.





## The telecom agreement - obligation

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- Deviation from the general principle of reciprocity and single-undertaking.
- Variations in time and areas of telecom services covered.
- Unclear relations between national commitments and general obligations.
- Allows withdrawing after three years when commitment has been made



# The telecom agreement – precision and delegation

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- Precision – deviation
  - Architecture of the agreement is highly complex and obligations differ greatly which makes it difficult to discuss precision in a general manner.
  - The wording of reference paper.
    - Interconnection – terms like “economically feasible”, “sufficiently unbundled” et al
    - Universal service obligations, licensing, regulatory independence are even more imprecise.
- Delegation – no deviation
  - Disputes are solved under the WTO dispute settlement mechanism and under special GATS agreement.



## The commitments of four CEE countries

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- All small, middle-income countries
- Joined the EU in 2004
- EU Telecommunications Acquis
- Expect homogeneous obligations but find significant variations instead.
- From no commitments to concrete commitments under the telecom agreement.



## Possible explanations –hegemony and neos

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- The US hegemony.
  - Why the agreement is so weak?
    - First step in the reciprocal adjustment?
- Neorealism
  - Relative gains of major players vis-à-vis other states or vis-à-vis each other.
  - Why the weak agreement or agreement at all?
- Neoliberal institutionalism.
  - Absolute gains of major players.
  - If the assumption is that more legalized telecom agreement increases their absolute gains, then the outcome is failure.



## Possible explanations – domestic interests

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- Investment and competition-related provisions in the agreement reach deeply into domestic politics.
- Regulatory regimes differ significantly.
  - Not just developing v. developed.
  - But among the developed countries as well.
    - Tenbuecken (2006) on the EU-level regulations.
      - Contrary to factor-endowment theories which would suggest that we would observe quite homogeneous telecom regulations in the countries with the same level of development.



## Possible explanations – diversity of interests

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- Corporate interests.
  - Telecom businesses
    - Take many different forms.
      - Incumbent telcos, small start-ups, more or less technology-intensive et al
    - Non-telecom businesses (e.g. American Express et al).
    - Different national characteristics
  - Firms differ in their preferences for regulation (Murphy 2004).
    - Not just race to the top or to the bottom
    - Heterogeneous regime in the telecom agreement
      - Structure of industry and specificity of assets in the domestic market determine these preferences.



## Illustration: Estonia v. Slovenia

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- Estonia.
  - Privatization in 1992 and IPO in 1997.
  - High level of FDI in the telecom sector.
  - Many different telecom companies, start-ups (Skype) et al.
  - Banks introduce the Internet banking in 1996
  - Diverse interests in the market – concentrated interests not as powerful.
- Slovenia.
  - State-owned telecom company.
  - Some privatization but only to domestic firms and individuals.
  - Almost no FDI in the telecom sector.
  - No other powerful players – banks state owned et al.
  - Strong concentrated interests.