

DEREGULATION IN TELECOMMUNICATION SECTORS OF MEXICO
AND TURKEY

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ABSTRACT

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National telecommunications policies have been differentiated together with the extension of international trade, increasing importance of information in trade and the convergence of telecommunications, broadcasting and computing sectors. With the influence of these global developments, the subject of this thesis is the study of Mexican and Turkish national telecommunications policies regarding with the deregulation of the telecommunications service sector.

Keywords: Globalization, Telecommunications Sector, Telecommunications Policies, Regulation, Deregulation

ÖZ

MEKSİKA VE TÜRKİYE’NİN TELEKOMÜNİKASYON SEKTÖRLERİNDE DEREGÜLASYON

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Uluslararası ticaretin gelişmesi, enformasyonun ticaretteki öneminin artması ve telekomünikasyon, yayıncılık ve bileşim sektörlerinin yakınsamasıyla birlikte ulusal telekomünikasyon politikaları da farklılaştı. Bu küresel gelişmelerin etkisinde, bu tezin konusu, Meksika ve Türkiyenin ulusal telekomünikasyon politikalarının telekomünikasyon servis sektörün deregulasyonu çerçevesinde incelenmesidir.

Anahtar Kelimeler: Küreselleşme, Telekomünikasyon Sektörü, Telekomünikasyon Politikaları, Regülasyon, Deregülasyon

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CHAPTER 1

INTRODUCTION

The subject of this thesis is telecommunication service sector policies of states in the changing global environment. The telecommunication policies at the national level are affected by globalization because globalization is a factor of economic, social and cultural changes affecting the policy making of telecommunication sector at international and national levels, which constitutes the construction of my thesis.

Globalization in telecommunication sector can be explained by its common trends. The first trend is the convergence of the sectors of communication, computer engineering and broadcasting which has enabled the great flow of information all over the world. Especially the connection of computer to the telecommunications network created the global enterprise and global market in which the information can be stored, analyzed, compared and retrieved with speed. The global enterprises use computers and telecommunications to combine inputs from all around the world in the production of global goods and services.

The second trend has started with the flow and exchange of information and knowledge through the new channels all over the world. It created the new economic environment that fostered the technological developments and innovations. The infrastructure of information, that is the telecommunications system in all sectors of economy became the most necessary tool for the competitiveness and success in the market due to the fact that the competition and success is related with the cost of transmitting information, the kind and form of information that can be transmitted, the accuracy and reliability of transmission, the confidentiality of information, and the capacity of the network. Therefore, it can be assumed that information became the strategic resource in this new economic era. As a direct result of this, the

infrastructure for economic competence turned out to be the telecommunications system which makes the world the strategic territorial unit for organizing production.

Hence, the first assumption of this thesis is that globalization, as one of the historical transformation processes, has brought out the new telecommunications system as the “nervous system”. By using the term “nervous system”, I mean the necessity of the telecommunications infrastructure connecting the world markets and decision-making centers. As time passes telecommunications industry has abandoned its limited point-to-point communication features to grow into a highly sophisticated “intelligent network” that carries valuable services and products in the form of information. The telecom companies in the world like AT&T and NTT became the most important companies in 1993. To coordinate the activities of production units located in different countries and to centralize many managerial and administrative functions telecommunications became necessary. Especially international trade in data processing, databases, and computer based telecommunications, finance, and entertainment services became dependent on the telecommunications system.

The second assumption is that the globalization and the telecommunications innovations have been affecting each other in an interrelated way. The quality of communication has been affecting the quality and speed of economic activities. So as the time goes, newer, more efficient and faster means of accessing information are to be found and used in winning strategic advantages in the market. The fiber optic cables, microwave transmitters, communication satellites, multiplexers, broadband integrated services digital network (BISDN), digital data service (DDS), integrated services digital network (ISDN), open network architecture (ONA), private branch exchange (PBX), private network, value added network (VAN) and, very small aperture terminal (VSAT) are some innovations in the telecommunications highway driven by the global creation, processing and electronic distribution of information. Global information economy, by means of these innovations, increasingly started to control the production and distribution of the goods and services produced around the world.

Saunders, et. al (1983: 306), in connection with the above discussion, made a brief schema of the driving forces of reforms in telecommunications sector. They stated that increased information intensity, globalization of economic activity and

technological innovation are affecting each other and together causing the rapid growth and diversification of user demands, thus causing the sector policy reforms. With these reforms many more players entered the telecommunications business, competition increased, new services emerged, distinctions between users and providers became less, search for new businesses has started and global market has developed.

The third assumption is that telecommunication infrastructure of a state is both important in economic, social, and cultural ways. The telecommunication services became important in education and increasing human capital in society. The abilities of getting knowledge to educate people and the abilities to communicate with others in the world became more easily with the effective usage of Internet technologies. People, places and societies became closer and closer. But the subject of this study is limited to the effects of most important economic and political actors in the national telecommunication policy making. The related actors are firstly, the standard constructing bodies like ITU, WTO, EU and global financial institutions like IMF and World Bank. The second type of actors is the multinational corporations especially the ones which are the suppliers of worldwide telecommunications infrastructure. The third group of actors is the policy makers of the telecommunication infrastructure at national levels. The policy makers have to meet with some decisions about the restructuring the telecommunications sector.

The telecommunications sector can be divided in to four main areas; the telecommunications equipment sectors, basic voice telecommunication services, value added services and the broadcasting services. Related with deciding on sector reforms; Saunders et. al (1983: 326-27), distinguishes four areas for policy makers to give attention. Firstly, the structure of telecommunications supply influences the pace and direction of the overall informatization of the economy. Secondly, the choice of technologies to modernize and expand the main telecommunications network influences the development of the sector and other information technologies of future. Thirdly, the supplier of nontraditional, mainly value-added services is important in the technological innovations and competition of the suppliers of telecommunications services. Fourthly, the pace of informatization of economy

depends on the responds of telecommunication service providers to innovations and new technologies.

In the second chapter all of the actors will be examined. Afterwards, some typologies about the country policies would be explored. The intention is to explore suggested through which economic, political conditions the restructuring of telecommunication infrastructure is done.

There is strong need to differentiate the restructuring activities from each other. To differentiate them, Petrazzini's definitions (1995: 16-17) will be used. Privatization was defined as the conversion of a state enterprise to private sector ownership by the total or partial sale of shares of a state-owned telecommunications company to the private investors. Liberalization can be seen as the removal of entry barriers or opening the domestic telecommunication market to competition. It requires the harnessing of the free market enterprise to accelerate development, careful planning and design since the process of liberalization includes the interest mediation and conflict management between competing operators and public interests by an independent regulator. Deregulation can be seen as the loosening of state's control from the telecom sector. However, this view have some lacking points since deregulation is bounded to the liberation politics and aims and needs the redesign and control of related institutions of state to make these organizations independent from political pressures of party politics or the influences of powerful bureaucrats and the like. As Petrazzini (1995: 17) argues:

...dismantling of legal controls would presumably provide the adequate control for a healthy competitive business environment operating under market control. In telecommunications, however, experience has indicated that achieving fair competition requires the re-regulation of the sector.

The decisions relating with liberation are implied through the institutional reorganizations or re-regulations in the issues like; which services to open to competition, the issues relating to the exclusivity period after privatization or the quality and investment requirements from the telecommunication carriers after that enter the market. Moreover, in practice the aims of privatization and liberalization can be contradictory because the investors hesitate to buy telecommunication companies in a highly competitive market which makes privatization difficult. In turn liberation would be more difficult after the construction of private monopoly.

Therefore, the sequence of privatization and liberalization are rather important in the attempts of restructuring activities in telecommunications. In these conditions the institutional background of the country in regulatory practices became very important to prevent the predatory behavior of the private monopoly or the dominant carrier from anti-competitive behaviors.

There are both optimist and pessimistic views about the effects of globalization in telecommunications for the developing countries. All these views about the globalization in telecommunications sector include both the reasons behind globalization and the foreseen results of it. These theoretical insights will be analyzed in the first section.

Hypothesis of this thesis is that in the global environment of telecommunications with giant international firms the conditions of competition is not so fair. So, the developing countries often found themselves in the difficult policy decisions regarding with the issues privatization, liberalization and especially regulation. The thesis's point of view is that still in these conditions, the developing or less-developed countries can manage to restructure their telecommunication system that is compatible with the global telecommunication service demands and the national development targets. As argued; globalization in telecommunications sector can be adopted through efficiently planned and coordinated policies of restructuring which requires strategic viewpoint.

The research question of this thesis is that "Can national telecommunications policy be formulated in order to liberalize telecommunications service sector (implementation of deregulation or liberalization policies in telecommunications sector) and to sustain the access to universal service at the same time?" The first aim is about increasing the competitiveness of telecommunications sector in world market while the second aim is about increasing and sustaining the access to basic telecommunications services.

Special emphasis will be on more on the practice of restructuring telecommunications in country cases. The process of privatization (how it is done), effects of privatization in the quality of telecommunication services, the regulation implications and the current liberalization status in telecommunication services market will be viewed.

In the third chapter, besides the issues above (regulation, competition and liberalization) privatization, which is more practiced, will be analyzed. In the fourth and fifth chapters, Mexico and Turkey will be analyzed consecutively. Finally, the thesis ends with a concluding chapter.

CHAPTER 2

GLOBALIZATION AND TELECOMMUNICATIONS SECTOR

2.1. Globalization of Telecommunication Sector: How and Why it Happened?

2.1.1. Recent Situation of Telecommunication Sector Worldwide

Recent research on Telecommunications show a gloom as the authors Cheng et al (2003: 65) suggested in their article. But they consider that the downward tendencies will diminish as new solutions are found. The gloom in the telecommunications industry was presented by the oligopoly in the market and the decreasing returns of investment.

According to the authors (2003: 65-81), telecommunications sector, till the beginnings of 2000, experienced a bloom. Its business drivers explain the bloom. These business drivers are deregulation of global telecommunications infrastructure, E-commerce, high-speed Internet access, IP packet technology, mobile telecommunications, the new digital economy, acquisition strategies, equipment vendor financing.

The new technologies enabled the data traffic to exceed the voice traffic. Circuit switching, which is the foundation of public switched telephone network has started to be supplanted by packet switching. “Soft switch” and IP based telecom equipment spectrum are other innovations that took place. The vision of “all IP” network has been promoted by the industry. IP over DWDM (Dense Wavelength Division Multiplexing), optical transmission system, “wireless IP”, are the R&D areas.

The new digital economy is new economic era, which changes the ways of doing business with highly sophisticated tools of information storing, analyzing and

transmitting. This era was constructed by innovated information infrastructure and the investments in telecommunications service supply.

The acquisition strategies are the acquiring of small and innovative technological companies by the suppliers telecommunication services to gain access to new technologies and new products such as IP, optical, broadband and wireless. The huge amounts of capital needed to build telecommunication infrastructure was gained from the financial assistance from telecom equipment vendors. The financial assistance ranged from money investments in the new startup company, accepting startup company stock in exchange for equipment, or making loans with flexible payment provisions to enable the purchase of equipment. With this source of capital new startups as well as incumbent telecom service providers further accelerated their network buildups to expand their market size and compete for market share.

However, as the Cheng et al (2003: 16) declares the telecommunication sector's growth was too much for the economy to handle. As the authors argue, the telecommunications sector is going to a future that the smaller and weaker carriers cannot survive, and the assets of bankrupt companies will be sold to existing stronger players. Those that survive will focus on more profitability and return on investment. Thus, as the authors believe, competition of telecommunication services in the world markets is difficult to manage. They stated that (2003: 16) this worldwide telecom downturn may very well be a process that 'weeds out the weak' and eventually provides a better foundation for healthy growth in the future. Moreover, new digital information technologies will be developed with new business models to make the sector more efficient and profitable.

2.1.2. The History of Telecommunications Sector Policies

In explaining the historical development of the telecom sector, Hill's article (1998a: 99-121) will be used. In developed countries, the favorable economic conditions of 1950s and 1960s turned to stagnant economies with high inflation with the price rises of OPEC in 1973 and 1979. With the microchip revolution, during the early 1980s, the costs of computing decreased but the cost of communications did not fall. In order to increase their own internal efficiency, major users' required

customized communications differentiated from those of small business and residential consumers. The traditional PTO's were not meeting the needs of them with their low investments and technologically backwardness. From the postwar period until 1980s, the telecommunications sector in the industrialized countries was a monopoly oriented, state-owned sector. Until the late 1970s, in terms of markets, technology and institutions the sector was stagnate. Each country was having its own posts and telecommunications operator, which was regulating itself. The customer's equipment was perceived as an integral part of the local and long-distance networks. The organizational structure and institutions of telecommunications sector was the result of post-war arguments of state security and national self-development. Broadcasting was seen as a tool for creating national unity and coherence.

In the developing countries, the telecommunication services were nationalized after the colonization period as the sign of national sovereignty. In both developed and developing countries the cross subsidization was evident. The high charges on international and long-distance lines paid towards low residential rentals and low local call tariffs.

In developed countries, the telecommunication revenues were reinvested in capital-intensive networks, operating tariffs contributed to high prices for equipment. In the cold war period after 1950s, the satellites were seen as a national security tool and a component of military-industrial complex. Compsat was set up by Kneedy, to create a legitimate government-backed cartel of the American international common carriers, AT&T, ITT, GTE, and RCA. Because of the shortages of launch facilities, escalating costs of insurance make the system uneconomic, Intelsat revolutionized transatlantic communications and opened up long-distance television transmission and it was never used in PTOs. Inmarsat modeled on Intelsat was used in European PTOs in the 1970s to provide mobile communications in ships and later in Airplanes. By time it lost its sufficiency in new technology and intra-regional communications. Thus, the privately-owned satellites operating nationally on regional became popular. Beaten off by European PTOs on the cable issue, the U.S. allowed private satellite operators into the international market first for enhanced services and then transmission of voice services. This made the explosion of satellites in the Asia-Pacific for voice, data and image markets. But the private satellites were not the

competitors of the Intelsat but instead the submarine optic fiber across the Atlantic became the major competitor technology.

By time the PTO's upgraded their networks. The memory microchip and microprocessor, which was introduced in 1970's, had revolutionized computing. The convergence of computing and telecommunications had begun with the digitalization of exchanges. These exchanges needed to be amortized over larger markets. Exports became across the Atlantic. During the 1980s, optic fiber began to be economic over long distances. Optic fiber could transmit massive amounts of information without the repeaters necessary for the coaxial cable. As its capital costs came down, the spatially distributed companies invested in their own private companies in US. This enabled the construction of international private communication infrastructure networks. Massive investments in fiber optic over transatlantic route made the Intelsat move into loss in the 1990s.

Moreover, cellular radio-based technologies were introduced during 1980s becoming an adjunct to the fixed network in some Europe countries. In Europe the manufacturing system changed when Siemens of Germany took over the GEC and Plessey and Alcatel of France gained control of telecommunications market. The demand for cellular services increased by 45 percent per annum between 1991 and 1993 according to the ITU estimations. This led together with saturation of analogue networks and the proliferation of standards to the development of digital cellular with increased capacity.

In Europe in 1987, the European Commission asked national governments to reserve spectrum space for the Europe-wide introduction of Groupe Special Mobile (GSM). While US delayed the introduction of GSM because of the fragmentation of the domestic market, the EU decision resulted in the export of GSM overseas. A Worldwide battle was between US, Japan and Europe standards of digital cellular, in which Europe was dominant with GSM. In the search for cheap international telecommunications, the Internet has developed into a distributed computer network utilizing telecommunications infrastructure to transmit packet switched data.

With these technological developments telecommunications sector has started transforming itself from being security-related, primarily state-owned monopoly of supply of equipment and network, to being privately owned, company

based service industry. The industry is now customer needs oriented through innovations in technologies to become faster and efficient. These customers are generally the large multinational users. In 1984, the Antitrust decree of US the long-distance market of AT&T was separated from its local network monopoly, split between regional companies; making possible to move overseas for the first time. At the same time, the regulator FCC with its new regime supported the investments of long-distance with optic fiber and digital switches. Britain and Japan also introduced liberation politics in the telecommunication services.

With the end of 1980s, the Latin American countries sold their telecommunication sector to the consortiums made up of US banks and Spanish operators. These consortia was able to buy the assets cheaply in a highly advantageous debt-to equity exchange, in which non-performing debt was swapped for the assets base and revenues stream of telecommunications operator.

During the 1980s the European governments saw the telecommunications sector as the savior of the economic recession. Thus, technological innovations in telecommunications sector were supported and a unified European market re-formulated to compete with the US and Japan. The liberation of value-added services was started in many countries. The European Commission Paper of 1987 prepared the changes for the European single market of 1992. Especially the equipment industry and the opportunities of single market were discussed in 1987 Commission. The Commission saw the Integrated Services Digital Network (ISDN) as the potential unifying technology within the Europe market. The original intention of ISDN was to develop worldwide standards in equipment. But the countries interests contradicted with the ITU commission's hopes. Therefore, a unified global or European market could not be achieved with ISDN.

The optic fiber took the place of ISDN; in linking the European Union in one "broadband" highway with transmitting voice, data and images over an interactive network, when its cost decreased. Afterwards, New regulatory changes were needed.

To sum up the developments in telecommunication sector can be explained step by step. Firstly, the declining costs of technology moved the sector from nationally based to being internationally based. The mature and emerging competition in the domestic markets of Western network operators produced an

incentive to look overseas for higher profits. Moreover, the multinational companies have created demand for more advanced globally constructed networks; enforcing the global telecommunication companies to invest in the strategic markets of United States, European Union and the Far East.

The private ownership of network operators was the second major event. Whereas in the industrialized West such privatization has done through the sale of equity, generally the developing countries sold and gave the management control of the companies to the foreign operators. It has become necessary for privately-owned enterprises to invest in international infrastructure like; satellites and cable. Also exclusivity rights were given to new operators to make sure of their investments in network.

The third event is the changes in international regulation of the sector. These changes in the rules of international communication were for fostering and reinforcing private supply of the telecommunication services. International regulation of telecommunications sector started to be controlled by World Trade Organization rather than ITU. With this change the international forum has commenced to support the idea of telecommunication service sector to be a customer driven, trade-related, service industry rather than public utility, security related monopoly.

2.2. Globalization in Telecommunications Sector: World Bank, ITU, and EU

2.2.1. The World Bank: Policies About the Telecommunication Reform

Hills (1998b: 460-467) mentioned that the policies of World Bank are interrelated with the role of World Bank in assisting the development projects of Developing countries. World Bank works with loans and projects in developing countries. The policies of World Bank related to Telecommunications since the late 1980s was to increase the efficiency of public operators and resist the ideas of privatization. After the 1980s crises especially in the Latin America, World Bank together with the IMF formulated the structural adjustment programs rather than state-project based aids. According to the author (1998b) these reforms of developing countries were mainly based on minimizing the state in national economics, or restructuring the state-owned enterprises. As the author claims the perception of the

World Bank was that the public sector was inevitably inefficient. According to this belief of World Bank, restructuring of telecommunications company was needed to i re-balance the tariffs (raising local tariffs and rentals with reducing the long-distance charges) and to end cross-subsidization. Tariffs were raised after the privatization, which increased the revenues of telecommunications services. The activities of World Bank in this period included assistance in sector policies, reforms and preparing new legislation and regulations, organizing and carrying out the privatization of state enterprises, and establishing telecommunications regulatory institutions.

The first proposed solution included the privatization of the state-owned telecommunication infrastructure. The privatization usually includes the selling of the company to the western and foreign corporations. The restructuring of telecommunication services mainly the privatization process includes information intensive activities. In the ideal privatization of telecom operators an internal auditor, local and international law firms, an international business-technical consulting firm and an international investment-banking firm is required. All this information obtaining process from these experts requires spending money which is very hard to obtain if not impossible for the developing countries.

Till to the 1994 document of World Bank, the telecommunications policies were mainly seen as technical issues not integrated into the development policies. World Bank was giving loans for the restructuring of telecommunications in the form of Standard World Bank Telecommunications loans or Telecommunications Portions of Structural Adjustment Loans (SAL) till that date. In 1994, after the failure of privatization in some country cases; the World Bank started to advise the liberalization of the market with regulatory tools. Hence, exports, devaluation, liberalization and integration into the world economy were imposed on reluctant governments. Regulation became necessary for the introduction of competition in supply, and particularly to give foreign investors security from risk. This regulatory agency should be made responsible to the legislature. The primary concern in the 1994 document was the liberation of telecommunications infrastructure in the developing countries. In this view of World Bank policies, the regulatory function of state is the tool to intervene the market in the best way.

2.2.2. ITU: The Mission and the Policies

Before the regulatory changes happened in the in telecommunications field, the ITU was mainly related with the multinational joint agreements. The co-operation and activities of ITU was dependent on state monopolies on telecommunication service providers. The role of ITU was subject to change with the standardization processes like, GSM or ISDN and with the new providers of telecommunication services. With GATT negotiations and the WTO's attempts about the restructuring telecommunications sector, ITU's structure and policies also have changed.

As a global organization which includes public and private sector participation, ITU have three areas of interest; technical domain, development domain, policy domain. Technical domain's aim is to improve the efficiency of telecommunications services, their usefulness, and their general availability to the public. While the development domain's aim is to promote and offer technical assistance to the developing countries and to promote the extension of the benefits of new telecommunications technologies to the people everywhere; policy domain's aim is to promote the adoption of a broader approach to the issues of telecommunication in the global information economy.

As Zhao (2002: 295-296) explains that ITU's organizational structure is composed of six main elements. The first is the Plenipotentiary Conference; meeting every four years to strategically plan the activities of ITU. The second is the World Conferences, which are aimed at periodically review and revise the international regulations. It provides broad, basic framework for telecommunications administrations and operators. The third is the radiocommunication sector, which establishes technical characteristics and operational procedures for wireless services, radio frequency spectrum. The legislative and policy functions of the radiocommunications sector are performed by world telecommunications conferences, which adopt and revise Radio Regulations. The fourth is the Telecommunications Standardization Sector, which coordinates the international telecommunications standards-setting activities. These activities are used for the ITU recommendations. The legislative and policy functions of Standardization Sector are carried out through World Telecommunication Standardization Assemblies. The fifth

is the Telecommunications Development Sector, which is the executing agency for implementing projects under the United Nations development system or other funding arrangements. The last one is the General Secretariat, which manages the financial and administrative aspects of ITU's activities.

In terms of regulatory functions, the International Radio Consultative Committee (CCIR), the International Telegraph and Telephone Consultative Committee (CCITT), World Administrative Radio Conferences (WARCs), World Administrative Telegraph and Telephone Conferences (WATTCs) and the International Registration Board (IFRB) are the related bodies of the organization.

WATTC 88 was the turning point in which PTOs lost control of international telecommunications. Two blocks of conflicting views about the regulation of international telecommunications emerged. While France and Spain wanted to keep the existing regulatory structure with private networks operating in its old system, US and UK wanted to let the investments in international infrastructure by multinational corporations without any restrictions. At the end, international resale of spare capacity to third parties by private networks was allowed.

According to Urey (1995: 127), in 1992 ITU established World Telecommunications Advisory Council (WTAC) which asserts the need for global scale "social contract" for the globalization of telephone services within the ITU policies. WATC proposed to accommodate and adapt new ways to achieve this task.

In the ITU's World telecommunications Forum in 1996, the private companies and the representatives of governments were brought together. The general principle agreed upon was that the satellite operators should work to bring prices down so as to serve rural areas in developing countries and sovereignty of regulation should be respected. But the Forum was without the regulatory force.

According to the article of MacLean, D. J. (1999: 147-158), in ITU Minneapolis Plenipotentiary Conference in 1998, a strategic plan for the next plenipotentiary period sets out five overall goals. The first goal is to strengthen the multilateral foundations of international telecommunications. The second is to promote global connectivity to the GII (Global Information Infrastructure) and global participation in the GIS (Global Information Society). The main policy priority is to define the role of the ITU in relation to the development of IP-based networks. The

third goal is to coordinate action to manage scarce resources. The fourth goal is to assist developing countries in drawing maximum benefit from the changes that are taking place in the international telecommunications environment. In relation with this aim; continued development of telecommunication indicators database and policy research program as well as more active effort to provide workshops, seminars and other forms of assistance to members on policy and regulatory issues related to liberalization, convergence and globalization were active. The fifth goal is to continue the efforts to improve the efficiency and effectiveness of ITU structures, activities and processes.

According to Mansell and Wehn (1993: 183), ITU's main functions are related with the radio-communications, standardization, development issues. The first function is related with ensuring the efficient use of the radio frequency spectrum by all services including using geostationary satellite orbits. ITU is the main actor in the international management of radio frequencies. Spectrum Utilization and monitoring, inter-service sharing and compatibility, scientific services, radio wave propagation, fixed terrestrial services, mobile services, sound broadcasting and television broadcasting are the elements of it. The second issue is the standardization which included the recommendations concerning all aspects of telecommunication standards like; services and network operation, tariffs and accounting principles, maintenance, protection of outside plant, data communication, terminals for advanced information services, switching, signaling, transmission performance, systems and equipment. The third issue is the assisting of the developing countries to advance their telecommunication services. It aims to promote the development of telecommunication networks and services through cooperation with regional telecommunication organizations and global and regional development financing institutions. Also it offers advice, and carries out or sponsors studies on technical, economic, financial, managerial, and regulatory and policy issues.

To sum up as the WTO and other international institutions called for liberalized telecommunications market, ITU changed its policies and standard procedures based on national PTO's but moved on policies based on the dominance of multinational companies. The new policy environment firstly gave the ITU the

mission to effectively continuing controlling the radiospectrum and fostering standardization at international level. Secondly the new policy environment gave the ITU the mission to persuade and orient the National states to liberalize their telecommunications market.

2.2.3. EU Policies and Standards in Telecommunications

According to Hudson (1997: 153-176), the telecommunication sector in European Union is not only an important industry itself, but also seen as a vital component of the expansion and integration of European Economy. The European telecommunications market became compatible with the new operators like; AT&T, GE, and others. The responsible policy-making body for telecommunications in the European Union is the Information Market and Exploitation of Research. It has established three major objectives to reach a compatible and integrated European Market in Telecommunications. The objectives are to promote competitiveness in the European telecommunications industry; to enable the customers to reach a wide range of services with maximum efficiency and minimum delay at a minimum cost; to assist the network operators to face the technological and industrial challenges in the sector.

The management of Telecom reform by European Commission is an example for the implementation of strategic approach. The Commission opened up the competition market for terminal equipment as well as for value added services and data communications. At the same time, the commission allowed for diversities in national network competition.

According to the Hudson (1997: 157), in the need for the European single market, the Commission of European Communities produced a green paper on Development of Common Market for Telecommunications Services and equipment in 1987. This paper can be seen as the first step for the liberalization of the telecommunications sector in Europe. It declared that telecommunications is essential for the realization of EC's single market program. The plan for telecommunication infrastructure was firstly to open terminal equipment markets to competition, secondly, to introduce competition in services in a sequence, and thirdly, to separate regulatory and operational actions, to move towards more

cost-based tariffs. The services were also divided in to two. The new enhanced services; equipment services were allowed competition while the basic voice networks remained public monopoly.

As the first practice of the Green Paper, Terminal equipment was liberalized in 1988. In parallel, EC began to develop Open Network Provisioning to define conditions under which the basic public network could be opened to rival private service providers. An agreement on services and ONP was adopted in 1989. So the green paper included the opening up the terminal equipment market; opening up the value-added services market; Open Network Provisioning; opening up public procurement contracts; mutual recognition of type approval for equipment.

In 1990 in the field of satellite telecommunications a green paper was constructed. It requested major changes in the potential of satellite telecommunications in Europe. It included full liberalization of earth segment, free access to space segment capacity, and full commercial freedom for space segment providers, harmonization measures required to facilitate provision of Europe wide services. An EU directive adopted in 1994 liberalized satellite telecommunications.

In a 1993 White paper, the importance of information revolution to the future of European society was stressed with its affect in promoting steady and sustainable growth and increasing competitiveness and improving quality of life for all Europeans.

European Standards for ONP are designed to ensure transparent, nondiscriminatory access for users and service providers in leased lines, packet- switched data services, and voice telephony. The European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC), European Conference of Posts and Telecommunication Administrations (CEPT) are the main European Standardization organizations. The European Radio communications Committee (ERC) is a reformed body of CEPT. It has working groups like, Frequency Management, Radio Regulatory, and Spectrum Engineering. Also there is an EC standard setting body called the ETSI (European Telecommunications Standards Institute). This institution includes the PTTs, private network operators, manufacturers, users, and research organizations. It has three fields of interest. These fields are telecommunications, the interface between

telecommunications and broadcasting, the interface between telecommunications and information technology. The aims of it are to speed up the standardization process; to provide greater transparency to the process; to boost the level of participation of all involved parties.

Further initiatives included the establishment of the European Information Society Forum and publication by the Social Affairs Directorate (DGV) of a report entitled 'building the information society for Us all'. In a 1993 White paper, the importance of information revolution to the future of European society was stressed with its affect in promoting steady and sustainable growth and increasing competitiveness and improving quality of life for all Europeans.

The European Commission has prepared an action plan including the liberalization program for telecommunications sector toward full-scale voice telephony and public network liberalization by the year 1998. January 1998 was the deadline for lifting all remaining exclusive rights in the sector in particular voice telephony and network infrastructure. The Union also has formulated the competition safeguards in the issues of interconnection, licensing, sharing universal service obligations.

Moreover, the European Union heavily interested in research and development in information and telecommunications technologies. The priorities of the R&D have been developing the skills of workforce, increasing user friendliness of ITT systems, improving ITT standards, developing new ITT applications, promoting the use of R&D in knowledge management. Besides developing new ITT systems, the European countries also gave importance to the quality and extension of telecommunication services to the rural areas.

Accordingly, the value added services in France, Germany, Spain, and Netherlands were liberalized in advance even if the attempts for liberalization in basic services have started later. With this policy the private sector participation increased, the regulatory responsibilities such as; deciding market entrance conditions, qualification standards; tariff structure was taken away from the incumbent operator's hands and given to an autonomous regulator agency's control. Moreover the incumbent operators had private investors in many European Countries with public share offerings.

In conclusion, the European Community saw the telecommunication infrastructure as the main element of information society and the main tool for the integration of Europe economically. Moreover, the European Community wanted to get competitiveness with U.S. and Japan with the liberalization and reforming the telecommunication equipment sector and industry. So the EU designed the gradual liberalization plan with is including strategically balanced aims and goals. This liberalization plan is more oriented through the re-regulation of the sector with new regulatory institutions and laws rather than exclusion of laws and regulations.

2.3. WTO and GATS in Telecommunications

According to the formal instructions of WTO (2004a),¹ it was established to ensure trade without discrimination, establishing predictable and growing access to markets, promoting fair competition and economic reform in January 1995. It is founded to cooperate in order to solve trade problems and negotiate binding, trade-liberalizing agreements with the claim of being international, legal and institutional foundation of the multilateral trading system. According to this web site functions of WTO are:

- Administering WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
- Cooperation with other international organizations

WTO enforced several international agreements related with telecommunications sector such as Fourth Protocol to the General Agreement on Trade in Services (GATS) adopted in January 1996 (WTO: 2004b)², WTO agreement on the liberalization of procurement in 1994, the information technology agreement in 1996 (2004c)³, WTO agreement on trade in basic telephony in 1997

¹ http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm#intro

² http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm

³ http://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm

(2004d)⁴, and the mutual Recognition Agreements on the testing and certification of telecommunications equipment in 1997. WTO's main working way is through international agreement known as GATS and its related annexes which are signed by the WTO member countries (the countries which have higher market share have more votes, all the decisions to change the responsibilities and rights of member countries require the two thirds of all the votes and any member country which wants to change its commitments or obligations have to take the permission of the three fourth of the member countries.). In this way, WTO ensure the liberalization of nearly all trading sectors in the member countries. The reference paper of GATS in April 1996 concentrates on the rules for interconnection, the need to provide safeguards against anti-competitive practices such as cross-subsidization, the legitimacy of universal service obligations, and the need to ensure the independence of regulators from the industry.

According to the article of the authors Freytag A., and Fredebeul-Krein M. (1999: 625-644), WTO is the only international organization dealing with the global rules of trade between countries. In February 1998 WTO agreement on basic telecommunications services, the Fourth Protocol to the GATS was enforced. In varying degrees the 72 members of WTO accepted to open their markets to foreign competition, allowing foreign investment in domestic telecom companies and use common rules on fair competition in telecom markets. The 69 signatories account more than 90% of international telecommunications traffic. The agreement was not to be implied immediately but rather for the WTO countries to select policy options related with their commitments. According to the market access commitments the members are responsible for not adopting measures that limit the total value of services transactions, the total number of service providers, service operations and natural persons to be employed in the telecom sector.

As Tarjanne (1999: 56) explains, in addition to commitments made in individual country schedules, 63 of the signatories made at least a partial commitment to the reference paper. The General Agreement on Trade in Services together with each countries schedule of commitments specifies the regulatory framework each country has to put into place, depending on its level of

⁴ http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm

commitment. States must comply with the WTO recommendations or face trade sanctions. Since the compliance with WTO decisions may require changes in domestic law, firms will be affected.

As declared by WTO (2004e)⁵, GATS agreement have three main elements; the main text including general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. An important principle included in the specific commitments of member countries is the Most-Favored-Nation Treatment which maintains that any member country which allows foreign competition in a sector has to sustain equal opportunities for every service provider from a member country. But a country can continue more favorable treatment to particular countries in particular service activities by listing "MFN exemptions" alongside their first sets of commitments which can only be made for once for a maximum period of ten years.

Member country for GATS is responsible for formulating its own liberalization plan, establishing its regulatory structure and ensuring fair trade (reasonable, objective and impartial regulation) with or without public ownership. Commitments to liberalize any sector did not end the government's right to set levels of quality, safety, or prices, or to introduce regulations to pursue any other policy objective they see fit. Moreover, member countries have right to specify which services they wish to open to foreign suppliers under which conditions. In this respect GATS agreement on telecommunications sector do not necessitate the privatization of the dominant telecommunications operator or the deregulation of telecommunications sector but enforce the opening of basic services and value added services to new foreign and domestic operators. There are some other basic principles of GATS such as; transparency, objective and reasonable regulation.

The regulation reference paper within the fourth protocol in telecommunications agreement in February 1997, lays out key principles for the design of national regulatory institutions. Like other services GATS agreement on telecommunications sector do not necessitate the privatization of the dominant telecommunications operator or the deregulation of telecommunications sector but

⁵ http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm#oblig

enforce the opening of basic services and value added services to new foreign and domestic operators. So the key principles is including the issues of cross-subsidization, interconnection, licensing, universal service, and regulatory structure and the provisions of competitive safeguards, and the use of scarce resources to provide safeguards in domestic and international law for open market access.

According to the paper, all the cross-subsidization has to be prevented to enable fair competition in telecommunication services. Regarding to the interconnection issue, all the members are required to provide interconnection under equitable and non-discriminatory terms and conditions, at cost-oriented rates, sufficiently unbundled, at any technically feasible point in a timely fashion. About licensing issue, GATS requires knowing all the licensing criteria, and the period of time required to reach decision about an application. Moreover, the terms and conditions of individual licenses have to be made publicly available according to the WTO. In case of the failure to get license the applicant have the right to request for the reasons of failure. In the matter of universal service, the government is responsible for ensuring access for all citizens at a technologically acceptable level with an undiscriminatory and impartial manner. Thus any member country has the right to determine what is universal service right and how to finance the costs of universal service obligation. Moreover, the countries are not required to establish clear principles for calculating the costs of universal service provision or to develop concrete procedures by which such costs can actually be measured.

In relation with the regulatory structure, a national independent and impartial telecommunications regulator has to be founded. The regulatory body has to be independent, autonomous and impartial in determining the rules and procedures and in making decisions related with operators in telecommunications sector without the intervention or influence of dominant operator (generally state owned operator) and other telecommunications operators. Moreover, the transparency principle for regulator requires publishing all relevant laws and regulations and setting up inquiry points to obtain information about regulations in any services sector. GATS' this principle is prepared to end or prevent the regulators decisions that would cause unjust and anti-competitive market conditions for the advantage of dominant

operator and for the disadvantage of new coming operators. Melody (1999:12-13) described the regulatory structure as follows:

It is apparent that there are three distinct, but related sets of activities that are fundamental to telecom reform: policy making, operation management and regulation. (...) Regulation must be independent both from the PTO and from day to day government influence. The regulator's task is to implement government policy. It ensures performance accountability by the PTO and other industry players to economic and social policy objectives, resolves disputes between competitors and between consumers and operators, monitors changing industry conditions and advises government on developments bearing on policy. The regulatory agency acts as a buffer between telecom operators and government, helping to ensure the separation of functions. Whereas the PTO and other operators, once separated from direct government influence, may focus too narrowly on financial objectives, the regulatory agency can insure recognition of social and other policy objectives as well.

The responsibilities of the regulatory institutions are not clearly defined by the GATS but there are certain areas that the regulators deal with. Geray (2003, 89-90), mentioned the basic issues that generally the regulators deal with:

- To give licenses and to determine the conditions of entrance to the telecommunications market.
- To guarantee interconnection of the new coming operators to the public network infrastructure in a transparent, undiscriminating manner with cost based prices for interconnecting.
- To solve the disputes between telecommunications operators including the problems of interconnection in an impartial manner.
- To ensure competitive market conditions.
- To determine the conditions to sustain universal service and to decide on the obligations of the operators to extend universal service
- To determine the tariffs
- To determine and to implement standards in technical infrastructure or service quality.

2.4. Multinational Corporations in Telecommunications

As the previous arguments has declared, the telecommunication service sector, equipment sector and other telecommunication sectors has started to be

dominated by multinational giant companies. The dominance of international telecom firms is seemed to be causing the duopoly in telecommunication sector markets. Moreover, the less developed countries have been subject to privatization of their state-owned telecommunications firms to the international companies. The nation states because of the strategic importance of the telecommunications sector are subject to decisions to privatize the firms or not. To achieve the more advantageous telecommunications market the 'state' has to decide on the issues related with privatization to international companies. The multinational companies which bought the privatized firms of less developed countries were generally other national firms from developed countries mainly France, Spain, US (its companies were private), Italy. Thus, the picture of new global international telecommunications is seemed to be more and more dominated by fewer actors.

Foreign investors, especially other telecommunication carriers are seen as having the knowledge and the capital necessary to reform the ailing infrastructure of telecommunications in the developing countries. Networks improvements are difficult and expensive for the existing not privatized carriers. Because it necessities expanding, digitizing, and integrating infrastructure. To decrease the risks involved in the business; the foreign carriers joined their forces with other national investors to form bidding consortia for the privatization bid.

The country's need to create desired infrastructure and the investors need to recover their cost of capital should be balanced in order to achieve a successful privatization. The two important points to achieve this goal are the establishment of objectives and priorities related to the privatization and the creation of an institutional infrastructure.

2.4.1. The Problems Between Strategic Investors and the Government Bodies

The problems mainly came from the conflicting objectives of different government entities in the process of privatization. While some entities seek objectives of high sales price, network expansion and modernization some others seek for low prices and competition. Because the strategic investors also seek to increase their profits, all these objectives are not possible to gain together in one privatization process The large telecommunication companies buy the state-owned

telecommunication companies of developing countries because of four reasons according to Sonneschein and Yokepenic (1996:340-343). Firstly, the markets of most large telecommunication carriers are saturated. Secondly, the growth opportunities of in the world's developing regions are profitable. Thirdly, the recent strategic alliances and joint ventures are successful. Fourthly, the markets and the customers became global. The stock performance of recently privatized firms indicates the success of the strategic partnership model. Large corporations increasingly operate in global markets to remain competitive. With the decline of telecommunications costs and the proliferation of new electronic services the companies started to use telecommunication services for integrating with dispersed worldwide sources. This gave rise to global telecommunication services of carriers; trying to offer integrated global communications solutions and "one-stop shopping".

2.4.2. The Evaluation of Multinational Enterprises Buying Telecommunication Companies

The large telecommunications corporations invest in a foreign company with careful examination. The corporations usually try to determine the future of the business with the revenues and costs of doing the job.

To achieve this goal there are several points for the investors to examine. The first is related with the management control of the business; the opportunity to exercise management control or substantial influence in the operation of the privatized company is regarded as highly desirable by the strategic investor. Secondly, strategic investor will consider the country's conditions related with political institutions, its legal system and tax structure, its fundamental economic and social conditions, the nature of the local and regional marketplace, and the risks of doing business. The political stability of a country is determined to be the main element reducing the risks of doing business. The country's legal system and institutions are also important in reducing the risks.

Thirdly, free market and a legal system supporting the investment will be an advantage for the country in selling the shares. Fourthly, the restructuring of the sector before privatization enables its selling process. The most required reforms are

ones related with the nature of legal and regulatory framework like the separation of regulatory functions from operational functions.

Moreover, the restructuring of the enterprise is important in being attractive for foreign investors. The rate-rebalancing system and the related requirement of capturing billing details are the difficult issues. Old equipment is also inadequate for the expansion, modernization and introduction of new services. Hence, the multinational companies require restructuring of the enterprise to have an acceptable rate-balancing system, acceptable terms and conditions of its future operation and requirements for expansion, modernization and introduction of new services. The method for determining the future rate increases; the rules for incorporating inflation and productivity effects on rates, and the regulatory scheme imposed upon the company will be also effective in the decisions of multinational corporations.

Another related issue affecting the decision of the investor is the capital needed to provide new services and expand the network to fulfill the requirements of government and business customers. The strategic value of the company, which is the geographical location of the country relative to the purchasing company's other subsidiaries, is also an important determinant for the buying behavior of the company.

Lastly, the bidding process has to be fair, transparent and well organized. The review process must be consistent and well defined and have realistic deadlines. In the bidding process the negotiations are held. In the period of negotiations, the documents of charter, a license or concession agreement and the regulatory rules are determined with discussions. These negotiations include the requirements for network development, quality improvement, service objectives, and regulation of prices. The extent to which the business will be subject to competition, the period of exclusivity and the methods for determining future rates and rate increases; are part of the negotiation process.

In conclusion, the demand of multinational companies to have profitable business area, have to be balanced with the strategic telecommunications development plan of the country in negotiations with the prospective multinational companies and in the bidding process to achieve a successful privatization.

2.5. National Policy Making Models for Telecommunications Sector

The main claim of this study is the necessity of long-range planning of information technology policies in attaining a reasonable and compatible information infrastructure. This infrastructure will enable the socio-economic development necessary for competing in the global world nationally. Many developing countries as the data will show in the third chapter lack a coherent, integrated information society view. The privatization, liberation and deregulation of telecommunications infrastructure are the declared solutions for the developing countries.

Generally these policies of developing countries could not achieve the proper information infrastructure because of a number of reasons. Firstly, these solutions are announced in the periods of economic stagnation, inflation and budget deficits in many developing countries. As a result, these policies could only achieve to privatize telecommunication companies but ignore the formulation of institutional structures for efficient regulation and liberalization. Secondly, the privatization is done with multinational companies and without proper competition policies and careful evaluation of the risks and rewards of the peculiar attempts to privatization. The privatized telecom companies are generally favoring the rich customers having demands on high technology and value added service without the rural or poor customers with limited purchasing power, thus, demanding for only universal services with low prices. Thirdly, the sector policies lack coherent and integrated attempts for technological innovations in equipment sector. The developing countries mainly buy technology rather than creating and developing it.

Lopez and Vilaseca's (1999: 73-74) article, we can find points to offer for a strategic model; the authors stated the steps to get the successful information technology policy implementation. The first step is to include information technology as part of its overall economic development program. Second is to identify and analyze its global competition within this context and identify areas where an information technology plan can provide support the country's economic development. Third step is to identify and analyze emerging technologies. Afterwards to conduct a thorough evaluation of alternative technologies and their respective costs and utilizing this information as part of the evaluation whether to adopt the complementary or replacement approach for the country's technology.

Fourth step is to ensure that selected technology platform adheres to a standards alliance. Fifth step is considering if the technology plan must consider social, political and financial as well as technological impacts.

In the process of formulating information policy construction the national policy have to handle a number of problematic areas in telecommunication infrastructure. These are mainly the underinvestment, foreign exchange problem, and distributional equity. The problems related with them should be solved with decisions based on the previous recommendations. Decisions regarding how many investments to be made in the scarcity of resources, at the expense of which sectors, which services or facilities to be made investments on, are some of the difficult questions in underinvestment area. The first two principles of relating the overall economic situation of country with the information policy decisions should be carefully considered in deciding about the above questions.

To connect the above arguments about the national telecommunication policy planning, as we can see there is strong need to coordinate and plan the telecommunication policy extending beyond the privatization and deregulation of market. As experienced in developed country's policy programs, the state's reaction to globalization is rather the careful reinvention of state to market than the retreat of it. This view has been clearly explained in the Faur's article (1998: 665-686). The author offers for a different approach in understanding powerful national policies in telecommunications. According to him, the new role of the state is entrepreneurial in the introduction of competition. The dynamic relationship between states and economy has changed the role of the state. The state is now a market generator rather than the passive regulator in the case of market failure. This new role of state calls for the regulation for competition. Faur (1998) introduced this approach (mercantilism or economic nationalism) as an alternative for liberal and socialist state models in policy making and called the new state neomercantilist state. Faur (1998) argued that much of the change in telecommunications with the globalization is the story of the gradual refinement and reassertion of the neomercantilist character of the state under the old telecommunications regime. The intention of the state is to promote basic national interest thorough the creation and enforcement of competition.

One should expect different forms of interest intermediation in different segments of telecom markets. Similar policy goals, such as the promotion of competition, and similar policy outcomes, such as more competitive markets, may require different political strategies and different governance mechanisms. The restructuring of the telecommunications sector involves a variety of measures that are partly regulatory, partly deregulatory and partly re-regulatory. Liberalization is promoted not by deregulation alone but by all three factors.

The distinguished element of the neomercantilist state is the regulation for competition in the new relations of market and state policy rather than the regulation of competition in the liberal view. The function of “regulation for competition” is explained. In this way of competition creation, competition is seen as a politically, socially and administratively created product. Regulation for competition takes the form of a mixture of highly complex regulatory regimes that are devised to govern micro-segments of the telecoms sector. In regulation for competition; the competition policy promote, enforce, and preserve competition rather than restricting itself to market maintenance alone. Faur (1998) empirically bounded these two types of regulation (regulation of competition and regulation for competition) with the two types of regulatory institutions. The first is the national competition authorities (NCAs) and the second is the national regulatory authorities (NRAs). According to this view, the state with regulation for competition have both the NCA and NRA with “interconnection regimes and unbundling the network”, while the state with regulation of competition have only NCA is regulated and have “prevention of concentration through the regulation of mergers, cross-ownership, etc.” the deregulated markets are without the regulatory authority.

Faur (1998) gave the example for re-regulation and regulation for competition with the national interconnection regimes. The author giving examples of the WTO accord argues that the global telecommunications market, like the national ones, is a fragmented institution. Moreover, the WTO with its attempts to formulate Global Regulatory Authority for telecommunications represent a movement towards the international diffusion of the competition state and regulation for competition policy.

Although Faur (1998) explained the new role of the state as generating market in the telecommunications sector with the neomercantilist or competition

state there are some lacking points in his argument. Firstly, the role of WTO and EU in integrating the global market created the competition state but its affects for developed and developing countries differ from each other in the policy making process. Secondly, the given typology of regulatory institutions perhaps can count for developed nations. However, in developing nations, the institutions lack the “independency” and efficiency in functions of either “regulation for competition” or “the regulation of competition”. Thus, the existence of all regulatory institutions (NCA and NRA) could not guarantee the neomercantalist state or the regulation for competition.

2.5.1. The Strategic Approach in Telecommunications Planning

There are two main approaches shaping the national policy making process in telecommunications. Geray (1999:508-10) related with the idealist and strategic models for network policy formation we could find the missing points of the ideal model which is generally implemented in developing nations. The idealist models exclude socio-economic development, the economy as a whole, local production and technology capabilities, research and development, innovation systems and the potential for using markets as instruments. Moreover, the long-range planing of the government and “independent regulator’s” policies are disconnected. According to Geray (1999), strategic approach is needed towards network and ICT policy formation, which necessitates participation of whole sectors to the policy formation process.

Collings (1996: 574-577), gave a brief explanation of policy models in the introduction of telecommunications sector reform. He classified the approaches in the reforms of restructuring of telecommunications sector as piecemeal, gradualist, goal oriented or strategic. According to the author, to achieve a strategic approach; the comprehensive set of objectives should be identified and prioritized with the measures that will be used to monitor their achievements. This requires situation analysis, definition of aims, identification of goals and constraints and objective setting. The situation analysis covers the factual basis for policy development related with the supply and demand conditions. The market conditions, network capability, financial performance of the firm, non-financial performance of the firm related with

service quality and efficiency, tariff structure should be examined in situation analysis. In definition of aims the policy aims of the government should be decided. According to Collings (1996) the government should decide on whether concentrating social policy goals or concentrating on national competitive advantage goals related with competitive levels of service availability, quality and price to achieve development of domestic electronics and information service industries. As a matter of fact if government wants to have affordable basic service extended all country, high service quality and efficiency with low prices is considered. Or the government prefers to achieve internationally competitive levels of value-added services all over the country with innovations in services to attract foreign multinationals. So it seems a customer choice of government. But the government preferably will want both to be satisfied. How? We can Levi Faur's approach of neo-mercantilist state here, offering a middle-way approach which is neither liberal or socialist thus helping the government to concentrate on social policy goals in some specific cases and concentrating on competition oriented goals in some other goals. The government can use its choice on the social policy or competition policy in the third phase of identification of goals and constraints. According to this view, the availability of modern and efficient network providing services at internationally competitive levels of service availability, quality, and price, satisfaction of growing demand for innovative services, reduction in the size of the public sector and in the extent to which it competes with the private sector are the government goals related with the second aim of improving international competitiveness of national telecom market. The goals to achieve improvement in access to basic telephone services at the lowest prices consistent with economy and efficiency of use, reduction of regional disparities in the availability, quality and prices of telecommunication services are oriented to achieve social policy aims. The fourth stage is the objective setting. Each critical goal decided should be translated into a set of objectives and performance measures. For example; labor productivity, network digitalization, network performance, fault rates and repair times, waiting lists for connections and procurement costs are the measures related with the goal to have efficient and modern network. Network coverage and density, quality of service, and the price of

basic service are the objectives for the goal of basic telephone service at affordable rates or the goal of reduction of regional disparities.

There are other approaches explaining the lack of efficient regulatory mechanisms. One of them is Abdala's views. Abdala (2000: 647) states that regulatory institutions have to be strong to balance the demands of different groups and the same time adapt to the changing circumstances and technology. According to the author, regulatory weakness is the main problem in implementing policy. This weakness could cause imbalances that allow for government opportunism and short-run interests.

Another is the views of Levy and Spiller (1996: 1-10). Their arguments emphasize the way a country's political and social institutions- its executive, legislative, its judicial systems, its informal norms of public behavior- interact with regulatory processes and economic conditions in the success of privatization and regulatory reform. They made a decision tree regarding the impact of a country's institutional endowment on its regulatory design. The first remark describing the future success of a country in reforming telecommunications is the independent judiciary with a reputation for impartiality and whose decisions are enforced. The second is about the political environment. While some countries prefer regulatory commitments through the legislation the others prefer the licenses of private companies with contracts. Third is related with the flexibility of the rules and restraining the political interventions. While some countries in the absence of explicit legal restraints can formulate efficient regulation while others need to have specific, substantive rules to achieve regulatory credibility. The fourth is related with the administrative capabilities. Countries with strong administrative capability can set up regulatory system based on specific, substantive rules attracting investment and promoting efficiency and flexibility. This argument explains the institutional backwardness of some nations for gaining "regulation for competition." Firstly a strong and independent judiciary; secondly separated and efficiently functioning legislative and executive institutions; thirdly the country's administrative capability enabling the implementation of rules constructs the environment of policy making and regulatory arrangements.

The hypothesis is that through a strategic approach maximizing the formulation of competition policy using regulation for competition and also with efficient institutional and political environment can reach a successful restructuring of telecommunications policy.

2.5.2. Main Problems in Telecommunications Sector in Developing Countries

The developing countries face difficulties in having a well-functioning telecommunications infrastructure. The first kind of problems is based on the lack of capital investments. The level of investments has been lower to meet the demand for new connections; having more coverage all over the country; to improve the services quality, to decrease the traffic congestion in lines; to create or apply new services. The second major problem is about the organization and management of the telecommunications system. Because of the reason that the organization is not run to be a commercial, high technology service, it has problems in inadequate organizational structure, financial management, accounting and information systems, procurement and personnel development.

These problems limit the capacity to implement development projects and programs for the company. The third problem area is about the sector policies, which is the most important of all three causing the problems in the first two. Insufficient financial and administrative autonomy, political interference, tariff design problems, lacks of strategic analysis in competition policy are some problematic areas in sector policy. Insufficient management and structure of social and political institutions cause all these.

2.6. Conclusion

This chapter is due to understand the general factors that are effective in the national telecommunications policy formulation process. As the assumption of this thesis shows, globalization has affected the telecommunications world market and led to the restructuring in the national telecommunication sectors. Therefore, firstly, recent situation of telecommunications sector and the history of telecommunications sector policies has been analyzed. The main aim of this first sub-section was to see the world telecommunications market development and recent situation. It can be

said that the technological and financial factors in telecommunications sector such as; high speed Internet access, e-commerce, mobile telecommunications, new-digital economy, IP packet technology and acquisition strategies let the way to the rapid development and change in telecommunications sector.

Telecommunications infrastructure has started having strategic importance for several sectors in the economy and became an important international service sector. since the end of 1980s and the cold war period, telecommunications sector became important for economic means. Since then, Europe and US national economic policies were designed to gain competitive advantages in telecommunications sector with the development of new technologies and telecommunication sector has been transformed to privately owned company-based service sector from being security related, primarily state-owned monopoly.

Secondly, in this chapter, the responsibilities and primary policies and acts of international policy making bodies in telecommunications sector were analyzed. While World Bank and EU are having separate telecommunications sector policy among other policy areas, ITU is the main international policy making body in telecommunications sector which has changed its organization structure and re-oriented its telecommunications policy recently. Thirdly, WTO, which is one of the main international trade organizations and has its own telecommunications sector policy, has been analyzed.

Fourthly, the point view of multinational telecommunications companies and its relation with the national governments were analyzed since the telecommunications service sectors of many countries became dominated by multinational corporations. Fifthly, theoretical views about how the national telecommunications sector policies are designed was discussed. To sum up, this chapter was prepared due to analyze the situation and importance of telecommunications sector, related international actors that are effective in national telecommunication sector policies and the theoretical view points to analyze the national telecommunications sector policies.

These analyses are necessary to understand the context in which telecommunications sector policies has been formulated. In the next chapter, the main elements (regulation, competition policy, privatization and liberalization) of telecommunications sector policy will be discussed.

CHAPTER 3

STRATEGIC REFORM ISSUES: REGULATION, COMPETITION POLICY, PRIVATIZATION, AND LIBERALIZATION

All the elements of competition, regulation, liberalization and privatization reforms are the strategic policy issues. These reform areas should be considered with an integrated point of view connecting all to a national strategic telecommunications policy. All these elements of national reform in telecommunications will be dealt in relation with each other. These reforms elements should be implemented after the related goals are chosen to formulate a neomercantilist stage. Both privatization and competition policy supported by regulation can effectively construct a neomercantilist stage. In the process of choosing goals and implementing reform policies neither the aims of social policy nor the national competitive advantage goals are to be neglected but rather a balanced policy should be implemented according to the specific conditions of each country.

3.1. Regulation, Competition Policy, and Liberalization

If we follow the Collings (1996) procedures in the National strategic telecommunications plan, the reform of telecommunications sector is in the fourth phase after the goals are set. The reforms and how to do them should be decided in fourth phase together with the objectives and performance measures. The reforms include the competition policies in different sectors, regulatory issues. After the goals are decided the competition policy has to be made up with considering the situation of the overall economy and also the telecommunication sector. The most critical

stage in the construction of a strategic approach in Telecommunications is the formulation of regulatory framework in which the competition policy will work through. If a proper regulatory institution and structure is evident the competition policy will be implemented successfully.

As Geray (1999: 509) pointed out the idealist deregulation policies disconnects the stage of competition policy making from the regulatory practices of the regulator. According to the strategic approach, the competition policy and overall long-range planning of information infrastructure development should be continued with the necessary controlling and implementing mechanisms of the regulator. The claim of idealist approach in formulating an independent regulatory body could hardly be achieved in developing countries since the government (with the ministry) forces its decisions on the regulatory body. Moreover, in the phase of identification of goals and constraints, the related government agencies, institutions or the political and social institutions are not functioning well. Executive, legislative and even the judiciary lack the necessary knowledge and experience in the field of telecommunications. One of the most striking problems in the institutional endowment of the developing countries is the lack of independent judiciary and the difficulties in formulating and applying the regulations. Another more important problem is in the decision making process. Because of this insufficient organization of goals and policies, the regulatory body or the judiciary can change their decisions on specific problems very often.

3.1.1. Competition Policy

Competition policy is oriented towards the certain decisions to be made on the questions which Nulty expressed; (1997: 14) “what entities should be in the sector? What services should each one provide as a monopoly or in competition with other providers? What other providers exist now what others should be permitted in the future? What are the rules for entry, exit, interconnection and pricing?”

As expressed in the telecommunications regulation handbook by Intven and Te’trault (2000: 10-14); in order to make decisions on the questions above, the policy-making agency should have clarified knowledge about market definition, product market, geographic market, and barriers to entry, market power and essential

facilities. Knowing these includes the information of substitutes of the product, market price of the product, the geographic scope of the market. There are barriers to the entry like; government restrictions, economics of scale, high fixed/capital costs, and intellectual property rights such as patent and copyright. Essential facilities are defined with the characteristics like; if it is supplied on a monopoly basis, if it is subject to some degree of monopoly control, if it is required by competitors in order to compete or if it cannot be practically duplicated by competitors for technical or economic reasons.

Governments have to decide on a balanced regime consisting of some combination of monopoly and/or competition on the different facilities and services. According to the goals of national telecommunications policy, governments should decide on which services should remain monopolistic and/or should be opened to competition. Liberalization policy in telecommunications services has to be implied considering country-specific factors. Factors such as the extension of public telephone lines (telephone density), the demand for value added services, the level of technological improvements especially in Internet can be effective for formulating a national telecommunications policy and its main goals and targets. For instance; if the country has guaranteed extension of basic telecommunications services all over the country, the government may easily open its basic telephone services to competition. Moreover the rules connecting the competitive sphere and monopoly should be prepared. The interconnection standards and the conditions for entry should be prepared prior to regulation with clarified rules. Moreover, the institutional arrangements to monitor the regulation, to resolve the disputes, to review and change the conditions of regulation above should be designed.

3.1.2. Regulation: How to Regulate?

Preparing a regulatory institutional framework should include careful planning. As it is mentioned the regulatory framework is critical in the success of the competition policy, infact it is a complementary act after the design of competition policy. Thus, there are some widely accepted information policy objectives, which are to be implemented with regulatory institutions. These objectives have to be examined and sequenced in priority with a strategic point of view in order to

maintain the "neomercantalist state". Some of these objectives can be contradictory with each other in the implementation process. In a strategic approach these objectives should be chosen according to the decided goals in third phase as Collings (1996) described. Therefore, the regulatory function can be designed as the fourth phase of strategic planning as the implementation of goals. These goals are explained by the regulation handbook. These goals are to promote universal access to basic telecommunications services; to foster competitive markets to promote efficient supply of telecommunications services, good quality of service, advanced services and efficient prices; to prevent abuses of market such as excessive pricing and anti-competitive behavior by dominant firms; to create a favorable climate to promote investment; to expand telecommunications networks; to promote public confidence in telecommunications markets through transparent regulatory and licensing processes; to protect consumer rights, including privacy rights; to promote increased telecommunications connectivity for all users through efficient interconnection arrangements; to optimize use of scarce resources, such as the radio spectrum, numbers and rights of way.

To introduce above objectives those were specified above, the regulators use or implement some measures or policies. The main related policy measures are in the areas of interconnection of networks and services, prevention of anti competitive behavior of incumbent operator, universal service, cross-subsidization of services. Some of the policies of regulation are explained with its associative objectives in the telecommunications handbook of Intven and Te'trault (2000: 4). The policy of "licensing of competitive operators" is done to expand range of services, serve unreserved markets, increase sector efficiency through competition, to decrease prices, improve range and supply of services, to stimulate innovation and introduce advanced services, to generate government licensing revenues. The policy of the "Introduction of transparent regulatory processes" is done to increase success of licensing processes & government credibility, to increase government revenues from licensing new services, to increase market confidence, attract more investment. The policy of the "Mandatory interconnection and unbundling of PTSN" is done to remove barriers to competition, to promote competition in advanced services like broadband Internet. The policy of "price cap regulation" is done for better incentives

for efficient service supply by dominant firms, for simpler method that ROR regulation to prevent excessive pricing, for to reduce regulatory lag; ensure timely price adjustments. The policy of accumulating “Targeted universal access funds” is done to increase efficiency and effectiveness of universality policies, and to replace less transparent and potentially anti-competitive cross-subsidies. The policy of “Removing barriers to international Trade in telecommunications” is done to increase investment in telecommunications sector, to improve competition in telecommunications markets, to improve global communications. Although the related objectives and the regulatory policies are interrelated and give an opportunity to reveal how and why to regulate the telecommunications market, the conditions in which (especially the developing) countries live limit the ability to reach the desired objectives with the above policies. The strategic approach is offered to choose between the most appropriate goals and afterwards the related objectives to be more realistic and planned. To achieve these goals with the reform policies, there are four regulatory activities. These are rate and tariff regulation, enforcement of quality standards, and division of revenues between operating telecommunication entities, and giving or rejecting licenses in specific territories.

The telecommunications regulation handbook offers the government Ministry or executive branch for policy development and the separate regulatory Authority for the regulation. But as it is explained this separation is not functioning properly in most developing countries. Because in practice, the policy development and the regulatory body could have been neither separated nor connected as it is needed for proper functioning. It should have been separated because of the independence it should get from the everyday government politics and it could not be connected because of the lack of proper strategic planning and expert designing.

Good decision-making, as mentioned by the handbook (2000:19), contains the basic principles of transparency, objectivity, professionalism, efficiency and independence. The implementation of these principles will allow for other related principles. Decisions must be within legal authority of regulator. The regulator must consider all relevant matters and disregard irrelevant ones. According to the Regulation Handbook (2000: 20); decisions must be made in good faith and for proper purposes. Moreover, factual underpinnings of decisions must be based on

evidence. Decisions must be reasonable. Those affected by a decision must be accorded procedural fairness (including the right to respond to prejudicial arguments and evidence that may be taken into account.). Government policy must properly be applied. Independent regulator must not act on the direction of other persons.

Organizational structure and staffing of the regulatory agency should be prepared to handle complex regulatory issues. Nulty and Schneidewind (1997: 37) described the possible regulatory team members as follows:

The regulatory team should include engineers who will deal with the matters of quality of service, franchise violations and some aspects of the process by which the revenues are divided; accountants or auditors who will verify revenues and expenses for the rate-setting process; tariff analysts who will develop or check telephone rates to ensure that a required gross revenue will be collected by certain set of tariffs or vice versa; attorneys who may be necessary for the legal advice or to interpret the draft contracts where public or private operating entities must interconnect; agency head who must supervise the employees of regulatory agency and make final decisions regarding the applications of regulatory policy to public or private operators.

Miller's listing about the steps to reach successful regulation in the telecommunications sector can be explanatory in understanding the process of preparing regulatory mechanism in telecommunications sector. Miller (1996: 490-492) gave a listing for the necessary projects in telecommunications regulation program as consecutive steps. First project is preparing the sector rules with respect to pricing of services, quality and conditions of services, network interconnection, provision of leased lines for resale, approval of network facilities, approval of resellers, application of technical standards, sale of terminal equipment. Second project is identifying the procedures, activities, functions and information necessary to undertake the above regulatory tasks. Third project is building a minimum core of expertise in the areas of regulatory policy; price, cost and financial analysis; quality of service, investment, technical equipment; administrative, legal and information systems. Final project is implementing these areas of expertise in the necessary conditions.

As more pragmatic approach, Almeida (1998: 408) has identified five parameters in relation to regulation and structures of a nation's telecommunications system. These are; structure of the market for public telecommunications services, degree of cross-subsidy, ownership of the public telecommunications network,

mechanisms for regulation and degree of internationalization of companies operating in the telecommunications sector.

3.2. Privatization in Telecommunications

The telecommunication entities used be public monopolies since the end of the 1980's. After the restructuring in telecommunications has started different ownership patterns in telecommunications have emerged. Duch (1991: 41-43) explores the operationalization of the ownership structure of telecommunications entities in a scale. This scale has been designed to indicate the extent to which management in publicly owned enterprises enjoys decision-making autonomy and financial independence from the government. At the least autonomous end of the continuum, the government agencies are presented. In this type of telecommunication entities, all the management decisions are subject to governmental approval, and firms are dependent upon government appropriation for financing. The next is the government corporations, which are somewhat more autonomous since their budget is independent from government budget, have their own board of directors; their management decisions are not subject to direct government control. But the financing of capital and operational expenditures receives close political scrutiny. The third group is the government enterprises, which are publicly owned entities that are financially self-sufficient. The government only interferes minimally in their activities. The fourth is the semi-private enterprise and the fifth is the private enterprise. As the Duch (1991) explains the last two are very difficult to differentiate. But the private enterprises are the ones without any government share, entirely owned by private shareholders.

In the World Bank Report (1999: 67), three principles were suggested about the privatization of telecommunications network. Firstly, a regulatory structure was found necessary to ensure competition after privatization. Secondly, according to this view, privatization has to be succeeded with extending licenses to new private companies or breaking up the telecommunications monopoly to introduce greater competition. Thirdly, it is claimed that partial privatization can make introducing competition easier.

3.2.1. The Considerations of Privatization of the Telecommunications Entity Before Selling

The government considers some important points before completing the privatization process. First of all, the government to develop a competitive information infrastructure the privatization process should be integrated to the overall strategic national information technology policy. In their article Lopez and Vilaseca (1999: 71-72) mention some important points in network planning and privatization. Firstly, the projected capital investment (domestic and foreign) has to be planned for telecommunications infrastructure. Secondly, the state of present information technology platform has to be evaluated and interpreted. Thirdly, desired information technology platform have to be decided. Fourthly, desired level of government regulation in pricing of services, including consumer protection; competition allowed and fairness; evolution of technology and allowed enhancements have to be decided. Fifthly, desired utilization of national labor force and training, the required operational management needs including training and utilization of internal professional workforce, Projected real revenues, Projected demand for services, including future enhancements and offerings, Targeted geographic areas, both high density and rural have to be planned. Finally, the decisions about future investor's activities should be decided on. The allowed percentage of foreign investment stake and incentives and allowed re-investment of investor profits, including expatriation percentages have to be clarified.

3.2.2. The Reasons of Privatization of the Telecommunications Infrastructure

There are several goals to achieve with privatization especially in developing countries. Three most important reasons which are valid for most of the developing countries is summarized as follows:

1- The economic and administrative efficiency goals: The first, probably the most announced, reason of privatization by governments is the government's dissatisfaction with the state enterprise's performance. The problems were long waiting times, outdated technology, poor service, artificially low prices, and the backwardness in technology especially in satisfying the demands of cheap, reliable, high-speed networks for transmitting data, voice, text and images. Long distance

services especially became more important to be competitive since it is facing competition from outside of country. Moreover, the efficiency of public sector is associated with its bureaucratic failures and its being overstaffed. 2- Debt reduction and foreign exchange goals: The second important not so much declared reason of privatization is the debt crisis of developing countries. The selling of public assets to the private sector has been considered as a means of handling an acute capital shortage and acquiring funds for debt servicing or capital investments. Divestiture can be a means of raising revenue and reducing fiscal and credit pressures. Moreover, international agencies such as Monetary Fund and the World Bank can sometimes urge the privatization process by structural adjustment loans which are pre-requesting the privatization of telecommunication companies. These programs generally include introduction of extensive competition in domestic markets, the increase of foreign investments, an extensive privatization program to overcome fiscal deficit. 3- Attracting foreign investments: Another important privatization goal is to show to the foreign investors that the country is implementing new economic regimes based on private investments. The telecommunication companies are large, easily divested companies which offer for high revenues for the investors. The prospects for raising prices and future expansion were promising in many privatized telecom companies. Sometimes the government had to change the legal or constitutional obstacles for foreign ownership for the telecom service companies.

Ros and Banerjee (2000: 235) mentioned the goal of developing capital markets; to increase the demand of stocks and bonds. But in contrast the privatization in the less developed stocks and bonds markets, the privatization can be very hard to achieve. The lack of trust to the stocks and bond markets decreases the ability to sell the shares of the telecommunications company to the public. Another mentioned goal is to increase the income distribution all over the country. Especially the sell of shares of the telecommunications company to the employees and other low-income groups was hoping to decrease the income discrepancy between social groups.

Ramamurti (1996a: 12) sum ups the goals for privatization. Maximizing the proceeds from the sale to help end the country's fiscal and balance of payments crises, sending a positive signal to private investors through a "successful" sale, improving the performance of the enterprise or sector by encouraging competition

and improving regulation and management are the reasons for privatizing telecommunications entity. Moreover the author explained that the goals are contradicting each other so the countries balance these goals differently.

3.2.3. Methods of Privatization

According to the Wellenius and Stern (1996: 36-37); there are five options to sell a telecommunications company. The first option is to sell the company to a single buyer. This option have an advantage of obtaining higher sale price for the company. However it is not easy to find a single domestic buyer to purchase the company at once. Therefore, if there is a foreign ownership restriction for the sale of the company, it is nearly impossible to sell the company to a single buyer. The second is to sell the partial stake to a single buyer. This option's main advantage is making it easier to find a domestic buyer to purchase the company and annihilate the compulsion for foreign ownership. Secondly, the state still can have a share in the company. As a disadvantage, the price of the company can be limited if the shares of the company is purchased without a bidding process.

The third option is privatization is through public share offerings in domestic or international markets. As Beşiroğlu (1998: 8) mentions, to apply this option, the capital stock of the company has to be divided into shares and the company has to be transformed to the capital-stock companies that are subject to the law of Commerce. The advantage of this option is that company can attract wide range of investors. However, there are several disadvantages. Firstly, transactions costs in the public share offerings are high. Secondly, government benefits can be low if the price of the shares is low. Finally, few companies from development countries can meet the standards required by major foreign markets.

The fourth option is to sell a controlling stake to a single strategic buyer combined with one or a sequence of public offerings. This option is the mostly practiced option especially in the privatization of telecommunications companies in Latin American countries. This strategic buyer is generally another national telecommunications company in a developed country. In this method, bidding process is used to choose among the telecommunications companies of developed countries. There are three main advantages of this approach. Firstly, it is believed

that the bidding process for strategic ownership of the company will encourage competition and increase the price of the company. Secondly, it is believed that a foreign strategic partner will modernize the company and increase services quality with technological and managerial expertise. Thirdly, the strategic partnership increase the confidence and stability of telecommunications company and increase the value of the shares of the company in bond and stocks market. Therefore, the public share offerings after privatization with a strategic partner is believed to be more advantageous than the other options including public share offerings. Moreover, in some cases like Mexico, a consortium both including foreign and domestic investor can be the strategic partner. This allowed for foreign strategic investor without making amendments in the law including foreign ownership restrictions. As a disadvantage for this option is that a strategic partner can create a private monopoly in telecommunications services sector.

The fifth option is to break up the components of the country. This option is time-consuming and can result in lower overall benefit to the government as a disadvantage. The advantage of this option is that if the company is divided according to the service types in telecommunications, privatization can result in more competition in basic services. Despite the previous points mentioned, Yavuz (1999: 15) claimed that the bidding process in the privatization is necessary to gain higher revenues for the government.

3.2.4. Process of Privatization

In nearly all experiences of privatization of telecommunication services, some preparations for privatization has been done. The first and most important phase in the preparation for privatization is the decision-making process: In a well-defined process, the government should consider the related aims and goals, and then plan all the process. The second is the political and social preparation of the related members of civil society to the privatization. Government negotiates deals with workers and their union leaders. The third is the legal and technical preparations of the companies for the sell. Governments restructure firms and redefine the regulatory framework. The fourth is the presentation of the company to the prospective investors. The government markets the firms to potential buyers and then closes the deals. In these

tasks foreign management consultants, accounting firms, lawyers, and investment bankers help the governments.

3.3. Conclusion

The main aim of this chapter is to analyze the strategic policy issues of regulation, liberalization and privatization. As explained throughout the section national telecommunications policy is implemented through regulatory mechanisms to achieve a competition policy in the sector. The competition policy is implemented after the decisions were made about which services will be opened to competition, and about how to implement regulatory measures in accordance with the competition policy. The most important element of a competition policy is the regulatory structure and regulatory measures which are used to implement competition policy. Licensing of competitive operators, introduction of transparent regulatory processes, unbundling of PTSN services, controlling interconnection and roaming agreements between service operators, universal service access funds, removing barriers for sustaining competition in sector are some of the regulatory policies that the regulators usually implement in accordance with competition policy. Competition policy and regulation in telecommunications sector was explained in this chapter.

Moreover, the decisions related with the privatization of public telecommunications company is also an element of competition policy. Therefore, the considerations of privatization before the selling, reasons of privatization and methods of privatization and process of privatization were examined in the section.

In the next two chapters, firstly Mexico and then Turkey will be analyzed in respect to their national telecommunications policy and the previously mentioned elements (competition policy, regulation, privatization) of it. Both the privatization of telecommunication services and the regulation and liberation of them are assumed as the integrated implemented parts of a national telecommunications policy. Therefore, first of all, the privatization policies of country cases will be analyzed in comparison with special attention on the reasons and methods of privatization in the next chapters. Since the national policy is more evident on the regulatory institutions and their policies, the analysis will also be focused on competition policy, regulatory structure, and its functions.

Related to the privatization and its effects on telecommunications development, several questions can be asked. Firstly, why and how the economic program and the privatization of state-owned telecommunication companies come about? Have the countries reconstruct their telecommunications companies before privatization? Did the newly privatized company (Mexico) respond by investing and improving services? Which companies, on what conditions bought the state-owned companies? The privatization reasons, methods, and the effects of privatization on performance will try to be discussed comparatively. Moreover, there are other questions related with the regulatory environment and competition policy. Have these countries avoided regulatory failure in the privatization process and in the subsequent definition implementation of its regulatory regime? What are the related regulatory institutions and their responsibilities? What are the tools to achieve competitive services? How the competition policy is designed? Which services were open to competition in what sequence?

CHAPTER 4

MEXICAN TELECOMMUNICATIONS SECTOR

4.1. Telecommunications Sector Policies in Mexico

Like Turkey, Mexico has gone through economic crises and inflation problems. According to the World Factbook (2004)⁶, GDP real growth rate of Mexico is 1,2 % (estimated in 2003), its GDP per capita is \$9,000, and inflation rate is 4 % (estimated in 2003). Moreover, the population of Mexico is 104 959 594 (estimated in July 2004) and population growth rate is 1,18% (estimated in 2004). Since it has restructured its telecommunications policy starting with privatization in 1991 and it is a developing country with economic problems, it is analyzed as a previous example of reform in telecommunications service sector.

4.1.1. The Historical Developments in Telecommunications Sector in Mexico

In 1980s, Mexican economy was open to crises mainly because of external factors such as collapse in oil prices, default on massive external debt. But since early 1990s, it has undergone an economic transition based on liberation politics. Most state owned enterprises were sold and new opportunities were opened for national and foreign investments in infrastructure. Structural reforms in economy were strengthened with administrative reforms, new regulatory mechanisms and independent regulators. Transparency and accountability of the regulatory authorities and the administrative bodies has started to be established.

The OECD book of Regulatory Reform in Mexico (1999: 18-23) was used as a source to explain macro economic context of sectoral reforms in Mexico in the

following paragraph. Mexican economy was under import-substitution of model of growth led by domestic demand since the mid-1950s. The state was having a key role with direct ownership in public infrastructure sectors and private industry was not open to foreign investment. In 1976, there was a crisis of balance of payment. Lower growth rates led to increases in government spending which resulted in growing fiscal deficits, high inflation and an overvalued exchange rate. These developments forced the government to devalue peso in 1976. Even after this crisis, the government did not make resolution of the underlying problems that led to the crisis because of discovering oil in the Mexican territory. From 1977 to the 1985, Mexican economy was under economic stagnation and macroeconomic imbalance. The Mexican debt crisis in 1982 was a result of deep-seated structural problems in the economy, excessive borrowing and negative external shocks. Economic policy after 1982 was driven by the need to earn foreign exchange to meet the heavy debt and to stabilize the economy. The stabilization measures contrasted the inward looking and interventionist state policies. The elements of new economic strategy; namely trade liberalization and devaluation were implied in the period from 1983 to 1987. According to the OECD (1999: 20) book, the trade liberalization program called “Maquiladora” was proved to be successful with increasing the exports. From 1989 to 1995 the regulatory frameworks of harbors, transportation, electricity, tourism, water management, health and sanitary administration, telecommunications, petrochemicals, natural gas, etc... were reformed with a major emphasis to create and increase competition. In this period, trade liberalization program was accompanied by privatization of state owned companies. Privatization of state enterprises all over the economy was completed to send a strong signal to domestic and international investors about Mexico’s commitment to new administrative structural reform, to aid in stabilizing inflation and to help achieving fiscal consolidation through increased revenues, to shift investment spending on to the private sector and to permit cuts in transfers and subsidies to loss making firms.

In order to transform Mexican economy to open dynamic economy, Mexico joined the GATT (General Agreement on Trade and Tariffs in WTO) and

⁶<http://www.cia.gov/cia/publications/factbook/geos/mx.html>

signed NAFTA (North American Trade Agreement), and other trade agreements with Chile, Costa Rica, Colombia and Venezuela and Nicaragua (FTAs) and APEC.

The telecommunication sector in Mexico initiated by local entrepreneurs but soon dominated by large foreign companies. The telecommunications sector underwent a change process in ownership till it was nationalized in 1972. As Petrazzini (1995: 106-107) explains, the first telephone connection in Mexico was launched in 1878 by local private initiatives. The investor sold the company to an American Continental Company (CTC) in 1879 because of fiscal problems. In 1882 company was transformed to the Mextelco. In 1903 government granted a new license to a local entrepreneur to operate in Mexico City. However, in 1907 sold its license to Ericsson under the name of Mexeric. While Mexeric remained private and foreign, in 1915 the Mextelco company nationalized and in 1925 re-privatized, by selling it to ITT (American International Telephone and Telegraph Corporation). Therefore, the two not interconnected companies were apparent in Mexican telecommunications market. In 1920, the new regulatory body forced for the interconnection of the two separate (ITT and Ericson) networks.

According to Casarus (1996: 177-180) the telecommunication policy in Mexico can be differentiated by four periods since the 1910's. The first period is post-revolution (1925-1948): The first communication law was published in 1932. After the military control of country in which the telecommunications played a major role, a regulatory framework was established giving the president and government powers to control and intervene the telecommunications. Law of general means of communication is first constructed in 1938. By that time there were two competitive telephone services without interconnection. In 1947 the based on Mexeric's existing infrastructure, Ericsson with Swedish and Mexican investors created the Telefonos de Mexico (TELMEX).

The second period is Desarollo estabilizador (1948-1970): In January 1948 Telmex began operating. The management of the company was under Mexican entrepreneurs. With Ericsson's intentions and government intervention the two companies are interconnected. After network interconnection the sector became dominated by Telmex and Mextelco became increasingly dependent on Telmex's decisions and strategies. In 1950 the two competing companies were merged, to have

adequate tariffs and accelerated network development with the government support. In 1954 the government implemented a financial scheme to solve the problems of Telmex's shortage of funds. From 1955 to 1976 Telmex, grew at an average rate of 10 percent per year which is above the rates of most developed countries. By 1957 Telmex controlled 96 percent of all telephones in service. From 1958 to 1972 Telmex ownership remained private and Mexican. The company grew with speed, the number of lines tripled by mid-1960 and the number of telephones increased. During 1960's the state gradually expand its participation in Telmex.

The third period is populism (1970-1982) the macro-economic strategies were based on populism because of the unrest that happened prior to the Olympic Games in Mexico in 1968. By the early 1970's, with the rapid modernization in Mexican economy, the new president argued for the nationalization of the Telmex for the reasons of national development and security. At that time state was already controlling the 48 percent of the company. In 1972 the government took the control of the company with 51 percent. In 1976 the country had of balance of payments problem. The country in this period had a crisis of foreign debt and inflation. The Mexican government became the majority owner of the Telmex Company in august 1976. Since the government became the owner, competitor and regulator of the Telmex, nationalization created more problems for the sector.

After nationalization formally Telmex became an autonomous commercial corporation in which the state participated as a shareholder. But this limited intervention enlarges in practice since the company was under the tight control of SCT (Secretaria de Comunicaciones y Transportes; Ministry of Transportation and Communications). It had been performing as a regulatory agency through implementing technical norms and standards, controlling procurement, deciding on investment plans and setting tariffs for all services. The problems of the company increased demand in the quantity, quality, diversity of new services, which legitimated the arguments and views about privatization of Telmex.

During the 1970s, the government decided to utilize the profits of the Telmex to subsidize other sectors of the economy. So investments for the extension of network decreased and the tariffs kept low. The tariffs were low and thus not enabling the sufficient conditions for revenues and profitability. The cross-subsidies

from long distance to local service increased. An unproductive work force was created through insufficient populist labor policies. The system was unable to meet the demand for services, the plant capacity was insufficient, the quality of service was poor. Under state control Telmex kept extending its area. The government created long-term plans for non-urban areas. But still in 1980, the distribution of the telecommunication services were uneven; populated areas like Mexico City, Guadalajara were having most of the telephone lines.

The fourth period is the Recovery (1982-1990): The economic crisis in 1982 formed a burden of external debt, a decline in international prices for petroleum, rising inflation. These enforced the major structural changes to be implemented. According to Casarus (1996); restructuring of economy was based on state reform (mainly privatization of state owned enterprises), opening of economy and liberalization, relaxation of regulations on foreign and local private investments.

Macro-economic policy focused on reestablishing public finance control. The government opened the economy to the trade and joined the GATT (general agreement on trade and tariffs). The taxes on telecommunications services are increased. Due to the lack of fiscal resources, the investments decreased. The company's capacity for financing growth decreased more heavily. Moreover the earthquake in Mexico in 1985 destroyed the telephone infrastructure; average waiting time for telephone services was nearly 3 years. The innovations and new services like cellular telephone or data transmission services, were lack in telecommunications sector. The earthquake in 1985 caused the telecommunications system to modernize the network. The demands of large multinational companies forced the Telmex to installation of digital private networks together with the creation of subsidiaries in business areas like, publishing, real estate, radio telephony, satellites and construction. Although the services and infrastructure expanded during 1980's, the telecommunications suffered from high taxes, limited financial resources, low investment profile, a distorted price structure and low labor productivity. With the existing tariff structure, the cross-subsidy of local telephone over international services was evident. The government based on general political and economic criteria could only give a limited financial support.

This made the firm to rely on foreign loans for investments. During 1980 the labor force of Telmex increased while its expansion slowed down.

4.1.2. Political System and Administrative Background of Structural Reforms

The related chapter of Petrazzini (1995: 103-127) was used in explaining the background of Mexico's telecommunications reform. Formally Mexico has presidential system with three independent powers (executive, legislative, judicial) and a federalist structure with autonomous local governments. However, in practice, till to the year 2000, only one party ruled the country for 70 years so the central government was very powerful. Mexico is divided into 31 states and a federal district for Mexico city. The federal structure was operating like a formal, institutional arrangement between the state and local governments. Centralism is a feature which sustained the survival of political figures at local governments. Each of the states have elected governor who can be dismissed and replaced by the president. This centralized pattern could be seen both in the vertical division of power between federal, state and local governments and in the horizontal division of power between the legislative, executive and judicial branches.

During the President Vicente Fox's administration (2000-2006), an attempt was made to enhance the true notion of federalism seems to be underway to bring a less asymmetrical relationship between the federal government and the states.

Vargas⁷ explains that this dynamic of influence of president is also effective in judiciary. All important and sensitive political decisions tend to require first a presidential approval. The president's control over the juries has only been questioned after the change of presidency in 2000. Pursuant to the federal constitution, the exercise of the judicial power of the Federation is vested in four entities: 1- a Supreme court of justice, 2- an electoral Tribunal 3- Collegiate and Unitarian Circuit Courts and 4- the District Courts. The administration, monitoring and disciplining of judicial power is conducted by the Council of the Federal Judiciary as regulated by the Council of the Organic Act of the Judicial Power. The Supreme Court is composed of eleven justices an functions of plenary or in chambers which is composed of five justices. The Supreme Court generally adopted and

⁷www.mexlaw.com/best_websites/2_legislative.html#exec%20power

confirmed the decisions taken by the President and the Ministers. The head of the PRI (Partido Revolucionario Institucional; the dominant political party for seventy years) exerted a strong influence through administrative, legal and constitutional reforms of the judicial branch. Every four years, the justices elect a Chief Justice among themselves, who cannot be reelected for the immediately succeeding period. Justices are nominated by the President of the Republic in a list submitted to the Senate that contains the names of three candidates; the Senate after hearing the candidates makes a final selection. Justices are appointed for fifteen years and only may be removed for serious cause. The supreme court of Mexico and the Circuit Collegiate Courts, are responsible for rendering especially crafted decisions known as *Jurisprudencias* which constitute the sole instance under Mexican law whereby judicial decisions became legally binding to lower courts and authorities, in something akin to state decision principle. The legislative power is vested upon a General congress, divided into two chambers, one of Deputies and the other of Senators (*Senadores*).

Under Mexico's civil law system, regulations are hierarchically organized, each one based on a superior rule and another rule until it is bound to a specific article in the concession. Laws are made effective by promulgation by the president and publication in the Federal Official Gazette. Legal framework contributes to a rigid administration in which any law is tend to be as much detailed as possible. In this situation the administrators in the regulatory bodies have to decide which rules to enforce or to obey because of the confusing requirements and accumulation of procedures. Judicial power's weakness to enforce the implementation of laws in the policy making structures enabled the Congress (main executive power) to apply constant legal reform. A small technocratic elite who are directed by executive powers of presidency accomplished a "silent revolution" of the Mexican legal system to support the economic program based on trade liberalization and deregulation. According to the OECD data (1999: 134), between December 1982 to December 1994, 107 new laws were enacted and 57 were reformed out of a total number more than 200 laws in force at that time.

In Mexico the executive power is in the hands of the President of the Republic. The President is elected for a six year with no re-election period, by the

direct vote of Mexican citizens who have attained 18 years of age and have an honest way of living. Since the year 2000 the major party was PRI and there was one significant opposition party: the PAN (Partido Accion Nacional). The PRI's main function was to channel and organize the complex clientelistic relations within domestic politics. The main political decisions were taken by a small group of high-level government officials, and professional bureaucratic elite. The meritocracy with the personalized relations was dominating the policy making structure of Mexico. Hence, while the president could control politics through clientelistic relations, legitimacy and efficiency of the politics were gained through the meritocracy. While the party was organizing the social demands, the federal bureaucracy was implementing policy. Mexico in this way enjoyed political stability and institutional continuity. In 1997, PRI lost control of the Congress for the first time, federal, state and municipal governments started to operate in a more pluralistic setting. And in 2000, the PRI lost the general elections and PAN became the governing party.

This centralized political structure was also evident in the policy making structure and administrative procedures. After the change of government, although new attempts were made to reform the clientelistic relations and strict "top down" centralized decision making procedure in the administrative structure and in policy making procedures, still the old administrative policy making structure is evident in Mexico. All members of the Cabinet and the chief executives of regulatory agencies are directly appointed by the President. Each minister or chief executive builds a team with personally loyal members. The public administration is staffed a mixture of unionized and non-unionized bureaucrats. While the unionized staff have a job guarantee with very limited promotion opportunity, the non-unionized staff "technocrats" with higher incomes but without clear professional development path.

After the long period of seventy-one years during which the candidates of the Revolutionary Institutional Party (PRI) exercised an absolute monopoly over presidential elections, this under-democratic situation changed when Vicente Fox Quesada, the candidate of the opposition party (PAN) defeated the PRI candidate and became the president of Mexico. This change has consequences for policy making

structure in the areas of politics, legal structure and socio-economic concerns. The role of executive power in Mexico and so called “Meta-Constitutional Powers” enjoyed by the President of the Republic during the PRI era, have started to be seriously questioned. So the political and legal powers and structure of Presidency in Mexico are in the process of being transformed and re-defined. But the privatization of the state owned telecommunications company was done in the period of strong PRI government in 1990. Thus, the political powers (Executive, legal and almost judicial) were highly centralized in the hands of President at the time of privatization of Telmex. As an advantage this enabled to policy coherence between government, congress and other regulatory mechanisms, to do privatization in a relatively short time period. On the negative side, such centralization reduced or minimized the government efficiency, transparency and accountability. Therefore, government neglected some of the long term institutional goals in favor of short term policy goals in the privatization process. Moreover, the hierarchical informal procedures based on the loyalty to superiors harmed the independence of regulatory agencies from the ministries.

A major driver to end the strong government of PRI and to reform administrative and political structure of Mexico was the economic crisis in 1980s and the liberalization of the overall economy as a response to crisis. The new liberalization process necessitated and/or established the basis for legal, administrative and later political changes in Mexico. The shift to market oriented development policies required new regulatory policies and instruments. The first major effect on regulatory reform was the creation of an economic deregulation unit (UDE, Unidad de Desregulacion Economica) at the Ministry of Trade and Industry (SECOFI, Secretaria de Comercio y Fomento Industrial) in 1989. The main aim was to concentrate on reforming the national economy with deregulation and/or re-regulation in specific sectors. By the early 1990s, economic deregulation program focused on adopting a regulatory framework to an open economy and to formulate a privatization program. The UDE originated three crucial laws, on standards and measures, on consumer protection and on competition policy.

In 1994, a Federal Administrative Procedure Law came into effect. In 1995, the president Zedillo aimed to establish a government-wide regulatory management

system based on review, transparency and consultation. After consultation between government and business community, at the end of 1995, a new deregulation policy program (ADAE; Acuerdo para la Desregulacion de la Actividad Empresarial) was established by a president degree. This program established a regulatory management system based on the central oversight by the coordination unit of UDE under the responsibility of the ministry of trade and industry. ADAE established a high level Economic Deregulation Council (CDE) where business and non-governmental representatives oversee progress. This council's main role is to provide a forum for discussing and resolving important regulatory problems with specialists inside its team. They have developed routine assistance processes to help ministries to be transparent and accountable. In 1996, Administrative Procedure Law was changed to require Regulatory Impact Analysis (RIA; Manifiestacion de Impacto Regulatorio) for all new draft laws and subordinate regulations with possible impacts on business. While the ministries are held responsible for the RIA, UDE and Economic deregulation Council is responsible for ensuring quality. In late 1996, also the Technical Standards law was changed for the implementation of RIA. In 1990, nearly all of the existing Federal Laws have been reviewed, eliminated or modified to support a market economy and improve transparency and consumer protection.

Steps in ADAE's policies:

- ADAE started to establish a mechanism to review the existing federal business formalities
- ADAE reviews and improves proposals for new laws and regulations; eliminating or correcting costly ; eliminating or correcting costly or inappropriate proposals assuring that new rules don not block the reforms
- The reform was continued by improving legislation and regulations (chancing or reforming the existing laws, regulations and other rules) with economy-wide applications.
- ADAE program through UDE, supported regulatory reform programs at state and local levels.

Together with other actions of ADAE, the government started to establish sectoral regulatory agencies for network industries one of which is the regulator of telecommunications sector (COFETEL). The Economic Deregulation Council and

SECOFI currently published a list of current proposals under review on the Internet which notes whether an RIA has been prepared. Copies of draft texts and RIAs may be requested by all interested parties. Transparency of agencies not only SECOFI, ADAE but also CFC, SCT and COFETEL has started to be promoted by Internet announcements on web sites. But the Council or the SECOFI does not have a regulatory responsibility to publish the lists of proposals under RIA.

4.2. Reasons for Privatization of Telmex

Telmex was not chosen for privatization because of the pressure exercised by multinational agencies like IMF or World Bank. The monopolistic firms like Telmex were not seen as candidates for privatization at that time. Moreover since the deal on Mexico's debt was concluded before the announcement of Telmex's privatization decision, there were no external pressures concerning the debt. The Mexico's privatization was one of the first in developing countries. Also the company was not privatized because of unprofitability although the investments were low.

The company never was fully government-owned (Only the 51 percent). It was owned by also from Mexican citizens and institutions. After gaining control of the company, the government realized that the low-prices, political inference, entrenched unions that are linked to the ruling party and the low investments caused the company to suffer from poor management. Telmex found itself unable to invest rapidly enough to meet demand, leading to the capacity gap. In the 1970's and 1980's the Telmex tried to invest to modernize and expand the system. It was slow in the use of fiber-optic transmission. The announced privatization reason is to improve the sector's performance. The government argued that privatization would enable Telmex to expand faster while modernizing its network and services to include high-speed data transmission, fiber-optic links, mobile telephones and digital-overlay networks.

According to the Ramamurti (1996b: 77), one of the reasons behind privatization was the Salinas's conviction that Mexico has to transform itself to outward-looking, privatized, open economy. The effects of the stagnation and economic crises during 1980's tried to be handled by liberalization politics. The other actions of government like; the sweeping changes in trade, foreign investments

and industrial policies show this new agenda and view. The privatization of the Telmex was designed to be a sign of this liberalization politics and to attract foreign and Mexican investments. The privatization is hoped to attract attention in international news, being quick to be effective, be a “plum” (letting high returns for the investments of the investors) for the private investors. President Salinas announced the privatization on 18th of September 18 in 1989. The company was an attractive choice because of profitability and growth potential and high-unmet demand. Also it was chosen because it did not necessity any change in the constitution since the privatization is allowed with national private capital.

Moreover Ramamurti (1996b: 77) mentioned another factor for the privatization of Telmex. It is to reduce the government desire to reduce the government’s budget deficit. The privatization of a profitable firm is more advantageous in gaining this goal. The sale was projected to bring large amounts of needed cash to lessen the fiscal constraints.

4.3. Restructuring Prior to Privatization

The striking character of the privatization program is the high centralization in the management and control of the process. The sale of Telmex was managed from the government office called the UDEP (department for the disincorporation of parastatal entities.). The office was connected to the Secretary of Finance and the Ministry of trade and finance. The directors of the office were trained specialists mostly coming from outside of the national bureaucracy.

4.3.1. Financial Restructuring

As Petrazzini explains (1995: 116-117) the main problem in financial matters is to keep Telmex in Mexican hands while gaining a high sale price. To maintain it, firstly the classes of stock were rearranged. There were AA shares (could only be owned by government) and A shares (private ownership). The AA shares of government (55.9 percent) were divided and reassigned voting rights. Some percent of AA shares were converted to A shares, while new L shares with no voting rights issued. The government declared that AA shares of 51 to be in Mexican hands and all have to vote together.

The second financial issue is about the low tariffs that were decreased in recent two years prior to privatization. The tariffs were adjusted according to the type of service (local, long-distance and international) and the nature of service consumption (business or residential). Especially the tariffs of the residential users increased at a great amount. The long distance rates were also increased. International rates were lowered to attract the business world. As a result, the revenue of Telmex annually increased by 47 percent. Tariffs were increased, direct and indirect taxes on telephone service were also restructured. The government, except from the taxes included in the price of service as a part of telephone tariff, created a new tax on Telmex's revenues from rental charges, local and national long distance calls.

Third issue is about the debts of Telmex. The government took over its debts from foreign banks in a 1990 debt-renegotiations agreement. Telmex canceled the debt with government prior to the sale, and transferred to private investors with a short-term debt about 5 percent of its total operating assets.

4.3.2. Institutional Restructuring

Prior to the Telmex privatization, government carried out a variety of reforms that were found necessary for the development of the sector. The ministry of communications besides policy and regulation functions was operating certain networks and services in competition with the company. The government sold to Telmex the federal microwave network that the ministry operated directly. The government also privatized, or restructured under a separate state enterprise other services that it earlier provided.

Petrazzini (1995: 118-20) described how the institutional restructuring of Telmex company was achieved before privatization explaining the changes in Concession Title. The 1976 Concession was renewed to regulate the company in 1990 before the privatization. The periods of exclusivity, the establishment of quantity and quality goals to be met by Telmex, a new pricing regime, interconnection rules and norms to avoid cross-subsidies and predatory behavior were decided. According to the Title, the monopoly in long-distance services would continue till 1996. Basic local services were opened to competition, but Telmex was

not obliged to interconnect the new entrants to the market, making competitors to survive in the market impossible. The government also declared that if the Telmex could not satisfy the required goals it could lose its guarantee to be the monopoly in long-distance services.

Ramamurti (1996b: 78) explained SCT's targets that the new owners have to reach that were made clear in the Concession Title. First is to expand number of lines with a minimum rate, to increase telephone density. Second is to have telephone service in all towns with a population of 500 or more. Third is to increase public telephones. Fourth is to decrease waiting time for new connection in towns with automatic exchanges. Fifth is to improve quality of service. All these requirements were the demands of government from the private firm to reach. Afterwards, the company structure was changed to allow greater decentralization. The new organization structure was based on profit centers responsible for financial results by specific geographic area or by service. This decreased the time for decision making, to focus on service strategies on the needs of customer's needs.

Petrazzini (1995: 119) explained how the pricing policy also was redesigned under the new concession. The pricing was based on the RPI-X formula. Telmex was permitted to raise the tariffs automatically on a basket of services by an amount equal to the increase in consumer prices. This system fixes the level of basket prices. So the focus of basket prices allows the company to use private information that it accumulates to adjust individual prices reflecting underlying costs and demand elasticity. This price cap arrangement can increase the Telmex's incentive to price below costs in competitive markets because it can increase price in anti-competitive markets. With this system Telmex also re-balanced its prices; by increasing local rates and decreasing long distance rates. Telmex has been required to adopt open network architecture (ONA). Telmex also asked to divide the services and not to cross-subsidize the existing services. The firm is permitted to benefit from the provision of competitive services. Cellular, data services, private networks, telecom equipment services with the only exception of television service were opened to competition. In addition the government eliminated the risk of hostile take over of Telmex for the years after privatization by restricting the rights of the controlling consortium to sell their shares.

The SCT as the regulatory agency have the responsibility and the right to get the reports of Telmex about the quantity and quality improvements and to use penalties if necessary. By then SCT had the responsibility to balance the evolution of the telecom sector both in liberated and regulated segments. The agency had not gained financial and operational autonomy but rather operated as state apparatus. The state aiming to guarantee the effectiveness of privatization, did not consider creating a liberal, competitive sector.

4.4. The Privatization Process of Telmex

Ramamurti (1996b: 86-87) claimed that there were main three obstacles to privatize the Telmex. Firstly, the Mexican government did not give the foreign operator the right to take advantage of taking control, only giving the ownership with the junior partner; the foreign firms have to be partners with local investors. Secondly, the foreign firms in telecommunication industry at that time had very limited experience in foreign direct investment. Finally, Mexican government disqualified foreign manufacturers of telephone equipment in order to prevent the conflict of interests that would appear in the sector. Thus the Mexican government tried to make the investment more attractive by exempting foreign investors from taxes on capital gains and dividends. The government also invited the foreign investors to visit the Telmex and to key financial centers.

Petrazzini (1995: 124) stated that the attractiveness of the Mexican market came mainly from the general situation of its economy. The foreign firms look for stability and low risk in the new investment opportunities. The “Brady Plan” in Mexico, which was the rescheduling debt under those conditions, was a sign of credibility for foreign investments. In May 1989 the 1973 law to promote Mexican Investment and Regulate Foreign Investment was modified to increase the volume and accelerate the flow of investment capital by providing legal certainty and by simplifying and clarifying the administrative rules and procedures that apply to such transactions. Moreover the North American Trade Agreement (NAFTA) increased the importance of the Mexican market (cheap labor, lower taxes, and loose regulations) enabling getting access to the American market.

Moreover Petrazzini (1995:125) stated that liberating the general economy is another major advantage of the Mexico being attractive to the foreign investors.

Mexican government (reform program on privatizing state owned enterprises and liberating the general economy) showed reliance to competition policies, which gave rise to the expected demand for the long-distance telecom services. The opening of markets will increase the international trade and commerce.

The bidding process of Telmex attracted more than 16 of the most qualified international companies like, Nippon Telegraph and Telephone Cable and Wireless, Southwestern Bell, Nynex international, GTE Telephone, Bell Canada, Singapore Telecom, US Sprint, Telefonica de Espana, France Cable et Radio, STET, and the United Telecommunications. Most of the firms dropped before the process ended. The Mexican government desired to have local group teams with a foreign firm having experience on the technical expertise in telecommunications services. The bidders were required to have direct knowledge or access to knowledge of telecommunications industry. In the end three bids were taken. On December 13 1990, the Telmex was sold to the consortium Grupo Carso and two foreign carriers, Southwestern Bell (US) and France Cable ET Radio (France). Due to foreign investment law of Mexico, Grupo Carso had the control of the company. Southwestern Bell and the France Cable ET Radio have owned lesser percentages.

Table 1: *Composition of Telmex Share Ownership as a Percentage of Total Shares

OWNER	SHARE TYPE	PERCENTAG.	US MILLIONS
Grupo Carso	AA	10.4	US ** 860
Southwestern Bell	AA	5.0	US ** 425
France Cable et R.	AA	5.0	US ** 425
C- TELMEX GROUP	L	5.1	US ** 701
TELMEX EMPLOY	A	4.4	US ** 325
D- FOREIGN INV.	L	16.5	US ** 2.270
MEXICAN GOV.	L	9.5	US ** 1.307
TOTAL	AA, A, L	55.9	US ** 6.313

*Source: Petrazini (1995:121) showing the percentage of total shares of Telmex in September 1991.

At the end of the selling process in May 1992, government participation was decreased. While the domestic private shareholders took 55.7 percent employees have owned 4.4 percent.

4.4.1. IMF, World Bank, WTO, NAFTA and Mexican Telecommunications Policy

Mexican telecommunications sector policies have gone over a reform process since the privatization process has started in 1989. The telecommunications sector reform was a component of general reform of the Mexican economy towards trade liberalization, open market economy and establishing a new competition policy within administrative structure of state and regulatory policies.

A major element of this liberation in the whole economy is international trade agreements and commitments of Mexico in these agreements. Mexico's joining to the GATT (General Agreement in Trade and Tariffs in WTO) in 1986 and negotiation of NAFTA since the early 1990s, its memberance in free trade agreements with six Latin American countries (FTAA) and APEC (Asia Pacific Economic Co-operation) has accelerated the reforms in Mexican economy. Mexico gave key commitments like ensuring transparency, nondiscrimination and trade liberalization in the sectors to be deregulated in GATS. Moreover, under NAFTA, a comprehensive set of domestic policies with trade related dimensions was subject to specific disciplines on a reciprocal basis. NAFTA requires reforms in the areas such as; domestic regulations, technical standards, certification procedures, investment, government procurement, intellectual property rights, customs procedures and dispute settlement. These commitments prevented the Mexican governments to stop reform process in the economy and accelerated the deregulation of the sectors. Despite the fact that Mexican economy was faced with economic crisis (the peso crisis of 1994 which has been caused by unstable macroeconomic performance) Mexican government did not give up liberation and deregulation policies but continued them with the positive influence of WTO and GATS commitments of the government.

Market openness and deregulation helped to recover the economy by creating a vibrant effect in exports. The recovery of the crisis showed that a new flexibility in the economy was established due to market led growth. According to the OECD data (1999: 68), the foreign trade sector leaded the recovery of the economy. From 1994 to 1997, total exports doubled and trade balance moved from deficit to surplus. In 1996,

NAFTA accounted for over 80% of imports and exports, about two third of the incremental trade in 1997 was outside NAFTA.

SECOFI (the ministry of trade and industry) and its Economic Deregulation Unit is responsible for providing opinion on all issues concerning trade policy and reviews all trade related laws and regulations, coordinating implementations of international obligations relating to WTO (GATS), NAFTA and other trade agreements and rationalizing certain economy-wide regulatory requirements including technical standards and general administrative procedures and planning and implementing deregulation policies in sectors including tourism, telecommunications, satellites. Several domestic laws have been eliminated, modified or created to be fully compatible with the standards in agreement with the planning of SECOFI. A list of all regulatory proposals under review of UDE and Economic Deregulation Council is published and updated weekly on Internet. The principal tool for measuring the effects of new federal regulations is the “regulatory impact assessment” (RIA). Ministries and regulatory agencies are now required to prepare and send to SECOFI the “regulatory impact assessments” for new regulations having potential impact on business activity. With this tool, SECOFI tries to differentiate between new laws, regulations and prevent unnecessary laws to be established and more easily reform the legal system.

Moreover Competition Commission of Mexico (CFC) is responsible for assuring competitive market environment with fair regulations. CFC is subject to complaints from any private company or institution (including NAFTA) about the misconduct of private companies or anti-competitive market conditions. Although CFC is responsible for detecting anti-competitive practices, its opinions are not always legally binding but rather informative for sectoral regulators or other government bodies.

In the GATS negotiations, Mexico has agreed to liberalize basic telecommunications infrastructure with trade and investment friendly regulatory regime. Mexico has extended it on a non-discriminatory basis to all WTO members the benefits of free trade agreements in the areas such as investments, customer procedures and intellectual property. Moreover, in NAFTA, Mexico has started to recognize the equivalence of other countries regulatory measures and conformity

assessment results with enabling Mutual Recognition Agreement. Mutual recognition of test results for tires and telecommunications equipment with US and Canada has been agreed on. SECOFI is responsible for concluding agreements with international or foreign institutions about mutual recognition of conformity assessment in Mexico and approving private negotiations by Mexican accredited bodies of mutual recognition agreements with foreign institutions.

A problematic area for conformity assessment procedures and standards system for Mexico in relation with NAFTA is the telecommunications equipment sector. Sector-specific NAFTA provisions on standard related measures have not been fulfilled in Mexican telecommunications equipment sector. Since development of the incumbent's technical interconnection standards and establishment of equipment attachment policies allowing customers and service providers to attach pieces of terminal equipment to the incumbent's network is the Cofetel's responsibility, the incompatibility of standards between equipment regulatory measures with NAFTA countries' standards can be solved with the efforts of Cofetel.

4.4.2. Dealing with the Oppositions to Privatization

Petrazzini (1995: 114-116) explained how the privatization process was politicized and opposed by many existing beneficiaries of the telecom system. The political structure of Mexico, based on long tight clientalism, hierarchical relations and power concentration at the government gave the State a political power to manage the process. The government (the president Salinas's administration) sought the support of groups, which are benefiting from the existing system. First was the PRI, the dominating party, which is a proponent of interventionist, welfare state, and a centrally managed economy, subsidization of universal public services. The problem was handled through solid support of most PRI constituents. In the telecommunications privatization process the oppositions of the other parties were bypassed in the legislature process. The congress was powerless to barrier the privatization.

The second major opposition threat was from the labor of the telecommunications, the labor union (STRM) strongly opposed the idea of privatization. The president offered an arrangement to the workers. He promised that

no worker would lose job as a result of privatization and workers would receive a share in the firm. Moreover, Salinas warned the workers that if the privatization happens without the support of the union STRM, there will be no guarantees or rights for the workers. By July 1989, the Union leaders left the decision of Telmex privatization in the president's hands. In September, the union leaders announced that the modernization of Telmex requires the privatization of it. As a result of agreement with employees three concessions were yielded. Firstly, the union agreed to support the privatization with the safeguards the government promised. Secondly, it agreed to replace a number of labor contracts with a single labor contract for all unionized workers. Job classifications were also dropped to just 50 from 500.

The third major opposition was from the firm's managers. To prevent the sabotage by Telmex officials, Telmex was transformed from SCT to the Secretariat of finance and public credit. In October 1989 the minister of finance replaced the minister of SCT as the Telmex chairman. So the technical resources of the firm were placed at the command of the privateers.

With respect to the consumers, Salinas assumed that there would be no opposition since the service quality will be increased with shortened waiting time for new connections. In the decision for the changing ownership of the state enterprise, the main target consumers were the international offices of business. The local distance services consumers would handle the increasing prices for the return of less waiting time and high quality of service.

4.5. Regulatory Structure of Telecommunications: Regulatory Institutions and Laws

After the crisis in the late 1980s, the Mexican government has decided to liberalize nearly all of its economically active sectors including telecommunications. After the Mexican government had decided to reform the telecommunications sector in accordance with the international standards for regulation to construct a modernized, efficient and open telecommunications services market, it introduced new laws, regulation institutions to reform and to regulate the market. The most important and only body to regulate the sector was the Ministry of Communications and Transportation (SCT; "Secretaria de Comunicaciones y Transportes"). Moreover

in 1993, Federal law of Competition and the Federal Competition Commission were established. And afterwards, a sector specific Federal Telecommunications Law (June 1995) and sector specific regulator F. Telecommunications Agency (Cofetel, “Comission Federal de Telecomunicaciones”) was founded in August 1996.

4.5.1. The Ministry of Transport and Communications (SCT)

Prior to the reform, the only authority to regulate telecommunications was the Ministry of Communications and Transportation (SCT; “Secretaria de Comunicaciones y Transportes”) which is also authority over the regulation of highways, railways, aviation, ports, postal service and the national merchant marine. Within SCT the “Subsecretaria de Comunicaciones” was responsible for regulation in telecommunications sector. According to the Federal Telecommunications law which Cofetel explains in its website⁸ the responsibilities of the SCT are;

to plan, prepare and conduct the policies and programs, as well as to regulate telecommunications development, based on the National development plan and the pertaining sectoral programs; to promote and oversee the efficient interconnection of different equipment and telecommunications networks; to issue the Mexican official standards on telecommunications matters and other administrative provisions; to authorize experts on telecommunications matters; to prepare and keep updated the National Table of Frequency Assignment; to apply for the obtention of geostationary orbital positions with its pertaining frequency bands, as well as satellite orbits for Mexican satellites, and coordinate their use and operation with international agencies and bodies as well as with other countries; to participate in negotiation of international treaties and agreements on telecommunications matters, considering among other factors, the differences existing in this sector with respect to counterpart countries, and oversee their observance; to acquire, establish and operate, if applicable, by itself or through third parties, telecommunications networks; to interpret this law for administrative purposes...

As it can be seen from the law; SCT (Secretaria de Comunicaciones y Transportes) was the main responsible policy making body in telecommunications sector. As Stafilidas (1996:95) describes, an official that can be appointed and removed directly by the President of Mexico heads it. It is a dependent unit, which is under the control of presidency. The author also mentions that term of the appointment varies according to the needs of the sector. Likewise, the undersecretary

⁸ http://www.cofetel.gob.mx/html/9_publica/nwlaw/lawch1.html

of Communications and technological development and the director of Telecommunications of Mexico are appointed directly by the President of Mexico. In the decision making process, each of the telecommunication services is subject to different regulatory process considering its circumstances. In the process of regulatory decision-making, the SCT identifies the services to be regulated and service that are pursuant to technological advances and the requirements of the country. And also it takes into account the options and suggestions of the private sector and other organizations interested in the regulation of certain activities. The decisions of the regulatory authority can be appealed with in the ministry and also with in judicial.

To achieve transparency in the regulation process, the norms, agreements, decrees, rulings are published in the official Gazette of the Federation and in the official web sites of the institution. SCT is funded from federal appropriations.

SCT controls the concession of licenses for the operation of cellular, radiotelephony, and paging system. The licenses are granted with concessions and bidding process. In some cases direct adjudication can be followed. All telecommunication services are included in Telecommunication Regulators jurisdiction. The administrative procedure followed by SCT to grant concessions to install, operate or exploit a public telecommunications network is set out in the Federal Telecommunications law. While granting licenses, permits and concessions SCT has to take Cofetel's opinion and then make the final decision. Supervision of dominant PTO and the minimum regulation necessary to maintain competition within the context of no discrimination and equal terms and conditions for all participants is the aim of the Cofetel. Licensing of carriers, setting technical and operational standards, type approval of equipment, radio spectrum regulation, monitoring the quality of services provided, inspection and surveillance of installations of the telecommunications operators, has been the responsibilities of the SCT. In all these responsibilities of SCT, Cofetel's regulatory decisions are taken into consideration. Mainly while SCT gives concessions, licenses and permits to the operators in telecommunications services market, Cofetel is responsible for making the daily regulatory decisions (tariffs, interconnection rates, frequency allocation and establishment of license fees, implementing technical and operational standards) and

implementing the general competition policy in telecommunications services. SCT and Cofetel consult with interested parties when they are drafting regulations for the sector.

The interconnection is based on freely negotiated commercial agreements between the related service operators. The ministry only issues the basic guidelines under which interconnection are to be made. The detailed interconnection problems are handled by the Cofetel. As Landa (1997: 724) explains, the primary interconnection negotiations are between the long-distance operators (Avantel (Banamex-MCI), Alestra (Alfa-AT&T-GTE), Lusatel (Bell-Atlantic) and Marcatel) and the main telephone network (Telmex) and arbitrated by the Cofetel if it is appropriate.

Since as described in the Federal Telecommunications law, SCT is the main responsible authority to sustain social coverage of public telephone network infrastructure (universal service); together with the governments of the States, it has established a Rural Telephone program to provide telephone service for towns with low population density. In 1995 this program was enhanced by including new technologies such as cellular telephones to participate in the program. To expand the public network, measures like enhancing local services competition, rebalancing of local and long-distance tariffs, auctioning of spectrum suitable for PCS and wireless local loop applications and the establishment of interconnection rules for local access is planned by SCT. Despite the fact that these policies have been applied, still penetration of telecommunication network is low.

4.5.2. Federal Law of Economic Competition (FLCE) and Federal Competition Commission (CFC)

The CFC is a separate entity attached to the Ministry of Trade and Industry (SECOFI). As previously mentioned, the LFCE and CFC symbolize the reform of Mexican economy with liberalization and deregulation policies. The competition law's actual framework is conceptualizing and legally determining the conditions in which a company abuse its market power or have monopolistic power in the market.

CFC has the main responsibility to apply the LFCE. Decisional independence of CFC is protected by the terms of Commissioners' tenure and with law. They are

appointed for ten year terms by the President, and only can be removed only for grave cause and insulated from usual practice of virtually complete personal turnover after presidential elections every six years. The UDE (Economic Deregulation Unit) participating in formulating LFCE and continuing to participating in the review of regulations and regulatory proposals, including those of the CFC.

Officially, CFC with the Economic Deregulation Unit in SECOFI controls and tries to sustain competition nearly in all sectors of economy. CFC has power to issue prohibitory orders on its own initiative and can impose financial penalties directly. CFC has now begun to publish summaries of its actions regularly, without waiting to collect them in an annual report. If it becomes necessary, agency must defend its actions in court. It usually detects and informs the related bodies (UDE and SECOFI and sectoral regulators) in cases of unfair monopolistic or other anti-competitive behaviors of the companies which are classified or determined by the law. According to the law, monopolistic power is classified as either absolute or monopolistic. Absolute monopolistic practices are prohibited per se. Violators are subject to sanctions under the LFCE. The absolute monopolistic practices that are subject to per se prohibition include price fixing, output restriction, and market division and bid rigging. Relative practices are the ones that the agents have substantial power in a defined relevant market and the practices have anti-competitive effect. The sanctions for relative practices are limited to civil remedies under the LFCE, and parties may offer efficiency defenses. Monopolistic power of a company is not defined concerning the high pricing of the firm, but its practices excluding the other companies from competition. Thus mostly, sector-specific regulator agencies apply regulations to control abusive pricing of dominant firms.

All kinds of vertical agreements are treated as relative monopolistic practices. Mergers whose objective or effect is to reduce, distort or hinder competition are prohibited. Therefore, CFC considers if the mergers in different sectors have these kinds of effects on the market. CFC also reviews privatization proposals and applications for concessions and licenses to detect anti-competitive behaviors or acts of companies. For example, after the examination Telmex was allowed to buy a major cable firm.

The CFC'S main responsibility is assessing and identifying market power in railroads, airlines, natural gas, telecommunications and some other sectors to establish the basis for price controls imposed by the sectoral regulator. Regulated sectors are still subject to the competition law and CFC's authority even if there is a separate sectoral regulatory agency or ministry department. CFC participates in several inter-ministerial groups that are concerned with issues that affect competition policy, privatization, public spending and financing, local telephony services, norms and standards, and foreign trade and has been invited to the Economic Deregulation Unit (UDE) since March 1999. Hence, it may comment on the existing laws, regulations, agreements and administrative acts, on the effects of changes in policy programs and the like. The CFC typically has to function according to the sector-specific programs. Firstly, it can determine which economic agents may participate in auctions for public enterprises, concessions, licenses and permits. Secondly, it may determine whether effective competition exists or whether one of the companies has substantial market power, as a condition for a sectoral regulator to impose regulation such as price caps.

In the process of designing telecommunications regulatory framework (mainly done by the SCT), CFC urged that the number of competitors and long distance and local not be limited (all qualified applicants should obtain a license) and new competitors in local wireless service and long distance services should obtain unrestricted and non-discriminatory access to local network which is still controlled by Telmex. CFC also has power in determining the competition policy regarding with the privatization of satellite systems, design of the spectrum auctions, public network concessions, and access to value-added services, open-architecture networks, interconnection agreements and exclusive contracts. The Federal Telecommunications law gave the CFC the responsibility to determine whether a firm has significant market power and thus authorize Cofetel to regulate its prices. Radio spectrum frequency licenses are issued through an auction process. Interested parties must get CFC authorization in order to participate in the auction process. In the auction process, CFC tries to include measures to rationalize frequency allocation, to facilitate the entry of interested parties, and prevent anti-competitive practices.

Moreover, some conditions were imposed to ensure competition in mobile services; few limits were imposed on an auction of frequencies for pay TV and radio in 46 regional markets, to ensure continued competition from alternatives. Few issues arose in the auctions for mobile aeronautical radio communications and point to point microwave links. The auction rules excluded parties who already held concession or permit to provide these services, in order to ensure a minimum number of competitors.

In telecommunications sector, the CFC had three main acts. Firstly, it has declared that the incumbent Telmex have substantial market power in five relevant market power; local telephony, interconnection services, national long distance, international long distance, and the resale of long distance. Although there has been entry in long distance services, Telmex virtually owns all the local public networks and provides local and interconnection services. Telmex's vertical integration and its ability to set prices without other competitors being able to offset such power, as well as the existence of important entry barriers, were taken into account in determining its dominant position. This decision was reaffirmed in 1998 and submitted to Cofetel. The next step is Cofetel's formulation and implementation of the appropriate regulations.

The second act is related with the satellite system. All satellite assets were privatized (1997) in one package with the advice of CFC. Although there was suspicion that it can harm competition and create market power for the eventual winning bidder, satellite system was sold in one package. CFC concluded that the winning bidder would face competition of foreign satellite systems (US and Canada) and optic fibre and microwave technologies and low-orbit satellites. Selling in one package yielded a system that could take advantage of economies of scale and scope with higher price.

Third act is about an auction aimed at building a capacity supply market for microwave point to point and point to multi-point systems. Restrictions ensured the presence of at least five operators in every geographical market, with each acquiring no more than 20% of the spectrum auctioned. CFC did not oppose any of the bidder's participation, because the structural conditions seemed sufficient to guarantee competition. By contrast, CFC and COFETEL agreed to limit the

accumulation of frequencies and licenses in an auction for frequencies used by fixed and mobile wireless and PCS services in order to ensure competition in local telephone market. In addition Telmex's participation decided to be controlled with an audit and waiting period of 24 months before its starting to commercially operate.

4.5.3. Foreign Investment Law

In 1993, the foreign investment law enhanced foreign investment participation in the telecommunications sector. Foreign investment up to 49% ownership was permitted in fixed network while in cellular carriers higher levels were permitted with a favorable resolution from the National Commission of Foreign Investment. No foreign investment restrictions apply in respect of value added services. Gonzalez, Gupta and Deshpande (1998:345-346) mentioned the changes made in the foreign investment law. Main differences were made on the issues of; the use of concessions, requirements for private networks, activities requiring a permit and tariffs. *The use of concessions:* the circumstances in which concessions should be made are redefined. To use, to develop or to exploit frequency bands in Mexican territory; to install, to operate or to exploit public telecommunication networks; to occupy geostationary orbital positions and satellite slots assigned to Mexico; to exploit the respective frequency bands; to exploit the right to send or to receive signals through frequency bands associated with foreign satellites systems are the circumstances in which concessions are required. *Requirements for private networks:* Under the law, a private telecommunications network is used to provide telecommunication services to a defined group of users without a commercial purpose. *Activities requiring a permit:* a permit is required to operate as a reseller of telecommunications services without being a public telecommunications network, and to install, operate or exploit land transmission stations. *Tariffs:* The tariff rates may be freely adjusted under concessions and permits to encourage quality of service and competition. The SCT will have the authority to impose tariff restrictions only if a public telecommunications network achieves a substantial market share of the relevant market as defined in Federal Competition Law.

The "Ley de Vias Generales de Comunicacion" stipulates that foreign governments and foreign state enterprises or their investments may not invest,

directly or indirectly in Mexican enterprises engaged in communications, transportation or other general means of communication activities. This law states that concessions for the construction, establishment or exploitation of “general means of communication may only be granted to Mexican nationals or enterprises and foreign partners of the Mexican enterprises must show that the foreign partners would accept to be treated as Mexican nationals with respect to the concession, can not have any right of protection from their home governments.

4.5.4. Federal Telecommunications Law

After the privatization of the incumbent operator (Telmex), the government has decided to formulate a deregulation and liberalization plan for the telecommunications sector. Since the privatized Telmex was given exclusivity rights of long distance services and there were no interconnection requirement for the company till to the 1996, the government did not attempt to apply any particular competition policy before the end of exclusivity period. But just before the exclusivity period ends, the government has started to formulate and implement a competition policy in telecommunications services market.

The first step was to legalize the process with a new Federal Telecommunications Law promulgated in June 1995. The objectives of this law are stated in the web site of Cofetel as:

...to promote efficient development of telecommunications; to exercise state control over such matters in order to guarantee national sovereignty; to foster open competition among different telecommunications service providers in order to render services at better prices, diversity and quality for the benefit of the users; and to promote an appropriate social coverage.

With this law, the use of radio-electrical spectrum was classified into five. There are spectrums for official use, free use of general public without the need of concession, license or record, spectrum for making experiments scientifically, reserved spectrum that are not assigned nor granted for usage and spectrums which are granted through public bid and concessions for specific purposes authorized by the Secretariat. The secretariat is responsible for establishing and periodically publishing a program on the frequency bands of the spectrum for specific use, with their corresponding use modes and geographic coverage that shall be public bid

matter. The Secretariat is also responsible for carrying out the bidding process and publishing the bidding conditions in the Official Daily of the Federation and in a newspaper of the Federal Entity or entities whose geographic region is covered by the frequency bands subject-matter of the concession. The public bid conditions have to include the requirements to be fulfilled by interested parties, frequency bands subject-matter of the concession, use modes and geographic regions where they can be used, the terms of the concession and the criteria to choose the winner. The prospecting parties for the bidding may request the bidding of frequency bands, use modes and geographic coverage different than those mentioned in the program of Secretariat. In these cases, the secretariat has to announce the decision within a term not exceeding 60 calendar days. If the proposals presented in the bid are not found satisfactory or suitable, the Secretariat can cancel the bidding process. Once the concession is granted an abstract of the corresponding title has to be published in the Official Daily of the Federation at the expense of the interested party. Frequency band concessions are to be granted for a 20 year period and may be extended up to an equal term to the original with the decision of the Secretariat. A concessionaire who is the sole provider of service in a region cannot withdraw from serving that region.

A “permit” is required for carriers engaged in other on-facilities-based commercial telecommunications operations and only registration is required for value added service providers.

In this law, the conditions for obtaining a concession were declared. A Concession is required for service providers using frequency or installing, operating or exploiting a public telecommunications network, occupying geostationary orbital positions and satellite orbits assigned to the country and exploiting its corresponding bands, and exploiting signal transmission and reception rights of frequency bands associated to foreign satellite systems that may cover or render services in national territory. Concessionaires must be majority Mexican owned, except in the case of cellular providers. The parties which are interested in obtaining a concession to install, to operate or to exploit public telecommunications networks have to include their business plan, investment and coverage programs and commitments, and quality of the services to be rendered, technical specifications of the project

documents evidencing their financial, technical, legal and administrative capacity in their application. The concessions that were granted have to declare the purpose of the concession, different services to be rendered by the concessionaire, rights and obligations of concessionaires, terms and commitments of geographical coverage of the public network and characteristics and amount of guaranty which has to be granted if applicable. Concessions over public telecommunication networks have to be granted for a term of up to 30 years and may be extended for an equal term.

License from the Secretariat is required to establish and operate or exploit a telecommunications service marketing company without public network nature and install, operate or exploit land transmitting stations. Those interested in obtaining a license must present the documents required in obtaining a concession agreement within the application procedure. The SCT is responsible for analyzing and evaluating the documents about the application within a term not excluding 90 calendar days within which it may request other documents or information from interested parties.

The law gave special importance for the interconnection agreements because it is an important component part of the network open architecture design which has to assure the interconnection and inter-operability of the networks. In this sense SCT is responsible for preparation and management of the fundamental plans of numbering, switching, signaling, and transmission, and rate setting and synchronization to which the public telecommunications networks concessionaires and other concessionaires are subject to. The aim of the plans is to enable a far reaching development of new concessions and telecommunication services, to sustain a non discriminatory treatment for concessionaires and to promote a healthy competition among them.

All concessionaires are required to interconnect their networks. Private parties have 60 days to negotiate terms and conditions of interconnection. If these terms expire the SCT has a further 60 days to establish the relevant terms and conditions that were not agreed by the parties. There are principles in which the carries should have to implement in interconnection agreements. Interconnection has to be cost-oriented, non-discriminatory, and in line with international benchmarks. Local and long distance operators are required to be charged at the same prices for

interconnection and all the interconnection charges are required to be publicly disclosed. In the interconnection of foreign networks, SCT has power to establish conditions which the agreements are subject to with the purpose of incorporating proportionality (proportional return) conditions. The tariffs and conditions for interconnection should respect reciprocity for concessionaires providing each other similar services, capacity or functions and must not include volume discounts on tariffs.

According to the law, the prices are to be set freely by the concessionaires (except Telmex) in terms that will allow the rendering of such services within satisfying conditions of conditions of quality, competitiveness, safety and permanence. Before becoming effective, all the prices have to be registered within the Secretariat. The operators are required to use anti-discriminatory prices and not to cross subsidize. The Secretariat is also authorized to assign specific obligations related with to the rates, quality of service and information to the licensee of telecommunication public networks.

According to the law, all concessionaires are required to maintain separate service accounting and to allow the portability of any number whenever it is found technically and economically feasible by the Secretariat. All communication ways that may be available to one public network concessionaire must be available to all others on a non-discriminatory basis. No concessionaire can have such an exclusive use of property.

The goal of promoting network expansion and universal service was also codified in the law under the headline of “on the social coverage of public networks”. The Secretariat is made responsible for achieving adequate supply of telecommunications services all over the country and planning pertaining programs of social and rural coverage to be performed by any concessionaire.

This law specifies that no later than August 10, 1996, a new telecommunications regulator agency decentralized from Secretariat of Communications and Transportation with operational and technical autonomy would be established and would have the responsibility of regulating and promoting the efficient development of telecommunications in the country according to the provisions in the decree issued for its creation.

It is important to notice that after the law, the decree published in the Official Gazette (on 9 August 1996) about the establishment of Cofetel, has given powers to Cofetel through delegation of the powers of the SCT, as set out in the presidential decree. Cofetel's budget is determined separately from the budget of the SCT. So some of the decisions and responsibilities of the SCT (for example; deciding on tariffs, interconnection rates, frequency allocation and establishment of license fees) described in the law was overtaken by Cofetel.

4.5.5. Federal Telecommunications Agency (Cofetel)

8th of August in 1996, government issued a decree establishing a regulatory body called the COFETEL, or the Federal Commission for Telecommunications (FTC), to determine if all the terms and conditions included within each license, permit, and concession are respected and obeyed by all participants in the market for a transition period to fair competition policies in Mexico. The creation of Cofetel was required in the Federal Telecommunications Law in 1995. Cofetel has four commissioners, including its president who is appointed by the President of the Republic from a list provided by SCT. Commissioners do not have a fixed term of appointment. They remain in the office until they resign or are replaced. They can be appointed and dismissed by the President of Republic with the advice of SCT. Three members are specialized in the legal matters, economic planning and analysis and engineering and technology. The matters are decided through majority vote, with president having a tie-breaking vote.

Despite the fact that Cofetel is given powers to issue opinions on the issuing, modifying and revoking of concessions and permits; can establish policies and resolve certain disputes, SCT is still responsible for granting the concessions, licenses. But SCT can not issue, enforce or revoke concessions without an opinion from Cofetel. In the matters relating to the issuing, enforcement and revocation of concessions, Cofetel can not act on its own either. Cofetel mainly issue its opinion on concession within 120 days from the date of application and the SCT issues concessions and permits after taking Cofetel's opinion and advises. Cofetel can use its ability to impose conditions on concessionaires as a mechanism for regulating industry. In practice, if the process of negotiation over the business plans of

individual companies with Cofetel/SCT is not in line with Cofetel/SCT's intentions, the concession can be delayed or withheld. Before accepting applications for concessions, Cofetel generally specifies the minimal coverage commitments and obligations that the new concessionaires have to undertake in order to extend new infrastructure. In the areas of resolving disputes between operators, the authorization of prices and the issuing of rules and regulations, Cofetel acts independently of SCT.

Cofetel develops and disseminates its policies primarily through administrative rules and official resolutions or disputes. Unlike formal regulations (reglamentos) administrative rules are not subject to the requirement to be reviewed by the president's legal counsel and are not signed by the president. Since 1995, the government has established a horizontal program called ADAE (Agreement to Deregulate Business activities; or a new deregulation program including the new regulations). In 1997, a reform of the administrative procedure law reinforced this regulatory oversight capacity and established the requirement for a regulatory impact analysis regarding all new rules and regulations. Rule making procedures in the telecommunications sector is subject to Federal Administrative Procedure Law and guidelines on government interaction with the public. So Cofetel is also required to submit all draft regulations with potential impact on business activity along with a regulatory impact assessment (RIA) to SECOFI's economic deregulation unit (UDE). Cofetel has declared that it would combine all the rulings and case by case decisions into a single uniform body of regulation (Reglamento de Telecomunicaciones).

Cofetel's responsibilities are; firstly to submit the spectrum usage plan to SCT for its approval. It publishes the annual auction program with assessing the demand for spectrum by potential investors given the available technology and equipment. Cofetel policies are to be designed to promote spectrum efficiency. Cofetel has conducted public auctions of spectrum for various services including paging, point to point links, MMDS, Personal Communication Services (PCS), and wireless local service (WLL). Cofetel allocated four frequency bands for each region and four concessions to operate PCS.

Secondly, Cofetel coordinates geostationary satellites and frequencies used by them. All wireless services concession and permit holders must be completely

independent of other organizations and must have their own accounting, administrative, operational, maintenance, development and supervisory staff in order to prevent cross-subsidization of competitive services and receiving subsidies or preferential treatment from other telecommunications concessions. Moreover all wireless concessionaires are prohibited from using equipment or installations belonging to other telephone concessions (unless renting). Cofetel granted concessions for PCS and wireless local loop services in the nine concession areas in which cellular service concessions were granted. The bidding process for spectrum is a “simultaneous ascending auction” in which participants submit by computers.

Thirdly, to promote efficient interconnection of public networks and encourage use of common technical standards. In the case of interconnection of local networks Mexico distinguishes between networks which have substantial coverage of the local area and those which do not. Networks which have substantial coverage of the local area receive a higher payment for terminating calls. Both the Federal Telecommunications Law and the 1990 Telmex concession include procedures and rules under which an interconnection to the public switched telephone network can be made. According to the law, the parties of interconnection negotiate between each other. If the parties fail to reach an agreement through negotiation, either party can appeal to Cofetel to rule on to determine the interconnection charges. Cofetel is required to make a decision within 60 days. According to the OECD regulatory review in Mexico (1999:266), absolute level of interconnection charges in Mexico is high by international standards. In 1998 December, Cofetel issued a resolution on the interconnection of Telmex with other fixed local and mobile networks. By that resolution Cofetel held that interconnection rate should be the same for the termination of calls in Telmex’s network for calls originating in fixed local and mobile networks as the service provided by Telmex is the same in each case. According to the resolution, if Telmex is providing interconnection with other local networks that cover residential areas, the reciprocal application of an interconnection rate well above cost represents a threat to the financial viability of the new entrant since it is likely that, at the beginning of its operations, traffic will be unbalanced against the new network. Therefore, Cofetel formulated the application of “bill and keep” agreements for a reasonable range of unbalance. For example; on these

grounds Telmex and Axtel agreed that they would pay each other only the minutes exceeding a ratio of outgoing minutes to total interconnection minutes of 70%, during the first two years. Cofetel states that its intention is to establish WTO commitments about to apply “cost oriented” interconnection charges.

Fourthly, Cofetel registers tariffs for telecommunication services and establishes obligations for service quality. After the Telmex’s concession, price cap method which operates over a basket of basic controlled services including local and long distance is adopted to control prices of services. According to the Federal Telecommunications law, Cofetel registers and publicizes the prices of all the firms including non-dominant firms. Such a system may facilitate collusion among competing firms. Under the current system, firms can not discount without publicly announce. Till to 1997, when CFC found out and declared that Telmex has been dominant in some telecommunication services areas and applying anti-competitive prices, the prices of Telmex had been regulated through the procedures defined in the Telmex’s concession. Depending on the CFC’s decision, Cofetel has authority to impose additional price regulation on Telmex. Because Cofetel can re-regulate pricing of carriers that the CFC determines to have significant market power. Moreover, according to the Federal Telecommunications law, all concessionaires can freely determine the rates of telecommunications services that will allow for rendering of these services within satisfying conditions of quality, competitiveness, safety, and permanence with registering new prices to Cofetel. Moreover, all the prices have to be available for inspection on a public register. Cofetel make inspection by posting all registered prices on the Internet. According to the procedures, Cofetel registers new prices within 10 days to one month and 15 days before the new prices come into effect. The price registration provisions, accounting separation and other provisions of FTL do not distinguish between dominant and non-dominant firms; applied for all telecommunication firms.

Fifthly, intervene in international forums on issues affecting competition. Sixthly, propose sanctions for those violating new policies. The Federal Telecommunications law sets out the maximum sanctions that may be applied in the case of violation of the provisions of this law. Cofetel through SCT has the power to revoke a concession in the case of certain serious violations. Finally, it receives

regulatory fees from industry. Cofetel is only responsible to intervene in the relations of companies within the sector if players are not able to reach a conclusion by themselves.

According to the international standards, regulatory agencies in telecommunications service sector should ensure transparency in their decision making procedures. Cofetel has also started to publish reasoning behind its decisions after the second semester of 1998. Cofetel declared that it would adopt a formal public process of consultation before taking important decisions. This process would involve formal timelines, distinct steps, the keeping of detailed records and the publication of the reasons for all decisions. Cofetel is also required to scrutinize the business plan and the legal, administrative, financial and technical capacity of new entrants. Cofetel can recommend that certain conditions to be fulfilled by concessionaires such as the condition of building network infrastructure. The certainty and transparency of entry requirements in the telecommunications services market is enhanced by limiting the discretion of Cofetel to place conditions on concessions.

Cofetel's December 1998 decision about local competition rules introduced measures like the "calling party pays" principle for mobile services. According to this principle, mobile service subscribers can control their phone bills and thus eliminates an artificial incentive to turn off the phone or to choose wireline instead. Moreover Cofetel reduced the number of local calling areas, to simplify investment requirements and promote scale economies, and expanded the stock of numbers available.

Cofetel, had been involved in the decision to change the dialing plan for Mexico. The limited dialing plan that was used in Mexico was inconsistent with international standards. It decided to use the International Telecommunications Union recommended a dialing plan. Another decision was to create an Incentive Fund to promote the growth of the local infrastructure. The fund's source would be the fixed per-minute charge to all competitors of US\$0.2292 for international bound minute. This charge per minute would gradually decrease over time.

4.6. Effects of Privatization

4.6.1 The Impact of Privatization on the Performance of Telmex

The impact of ownership changed the Telmex's performance in three ways. Firstly, the ownership affected how the management process was done. The new owners did only changed seven executives in the firm. The new owners maintained cost reduction in inventory management, labor productivity and purchasing. The labor productivity increased with stopping growing workforce together with expanding the network. Purchase agreements with the main supplier companies like, Ericsson de Mexico and Alcatel de Mexico were reopened and renegotiated to get better terms for the company. In the same way the AT&T was brought in as a new supplier of equipment and awarded a large fiber-optic contract. Internal incentive systems also changed, new scheme was introduced to the senior managers. The volume of the local, domestic long-distance and international calls grew rapidly. Telmex's stock market capitalization placed second in the world, next to the British Telecom.

One of the important questions is if the expansion of Mexican telecommunications would be possible, if no privatization had happened. The private sector enables the supply of equipment, its installation because of the higher rates for the tariffs rather than finding new resources. So the problem is if the tariffs could have been raised without the change of ownership, in the hands of the state.

According to Rammurti (1996b: 91-92) an area in which the privatization did not have an impressive affect was improving quality of service. The Telmex failed to get the targets in the concession arrangement for the individual performance levels. Ramamurti (1996b: 92) using the sources of Telmex, prepared a table including eight performance levels; percentage of failing lines, same-day line repair, 3-day line repair, dial tone in 4 sec, local calls at first call, long distance calls at first try, and special operators answering in 10 seconds and public telephones in service. As the table shows, Telmex failed to meet the targets in the performance indicators such as percentage of failing lines and improving special operator service.

Regarding the performance of the company after the privatization: the network grew at 12% per year in the first four years after privatization, versus 5% in the five years prior to privatization, although new lines have been added, the

telephone-lines per person is below the ratio observed in developed nations; telephone density increased from 9,4 to 14 in 1994. By 1994, system digitalization had increased from 29% to 83%. Since 1994 rate of investment in local network by Telmex decreased. Average capital spending of US per year after privatization was three of four times capital spending in the early 1980s. Partly because of workforce reduction, labor productivity increased 19 percent per year for the first three years after privatization. 4, 4% of the stock was sold to a trust controlled by the workers at the same price paid by core investors, financed under concessional terms through a state-owned bank.

In order to comply with the terms of the concession, which lasts until the year 2026, Telmex invested heavily to prepare for full competition in 1997. Density in telephone lines, network extension was increased. More than 33 000km. of fiber-optic cable was installed. Thus, the threat of competition in long-distance services made the SCT's work less difficult. As the threat of competition was greater in the business services (mainly value-added services), Telmex focused on their needs more. The new fiber-optic network was designed to attract them. Although the privatization could not improve the services at the best, and the regulatory tasks were not established perfect, some measures were tried to be taken. In accordance the quality standards started to be questioned and the system of monitoring and enforcing quality standards tried to be established.

The union relations, which were not changed immediately after the privatization, could be forced to change after the market became competitive. Decisions to give workers the option to participate in the purchase of the company's equity increased the internal efficiency of the company. The privatization and deregulation process have resulted in a steady increase in the number and type of telephone facilities. The quality of telephone services increased significantly.

4.6.2. The Impact of Privatization in Competition

The first major act of the government to arrange the telecommunications reform was the new concession in August 1990 made with Telmex. With this concession the government wanted to assure profitable agreement for the buyers; so gave the new owners the exclusivity rights for the domestic and international long

distance markets for six years, which could have been opened for competition instead. In the short run, privatization forced to government to build a more complete concession agreement. The power was in the hands of the company. Before making the concession agreement, the government used experts to draft a concession agreement that was clear and comprehensive. It clearly identified the privatized firms' obligations and the standards of service that the company had to achieve and include financial penalties for not doing so. The threat to competition in long distance services forced the Telmex Company to upgrade its long-distance system so its prices will not be fallen. Moreover, the concession diversified the rules under which the company had to provide access to its competitors in local services. With this new concession, entry into wireless services, paging, trunking, VSAT networks, customer premises equipment and value added services were permitted. Entry into domestic local services was also permitted, but concessions were granted afterwards. The government has also constructed Telmex as the only national license for cellular telephone. But also other companies were permitted to compete at regional basis after the first cellular service supplier. The regulation arrangements would not be achieved without the privatization of the company.

Secondly, to be prepared for the new regulatory regime, the government adopted a new regulatory framework called Reglamento De Telecomunicaciones in October 1990 which spelled out SCT's responsibilities and made it to responsible for granting new concessions in all areas except those reserved for government.

Third act is the modification of Foreign Investment law in 1993. Foreign investment of up to 49% ownership of capital stock of operators of a fixed network was permitted. Higher levels of foreign investment were permitted in cellular carriers. The fourth act is also related with other sectors which wanted to be deregulated and/or liberalized. In 1993, the basic legal framework for reform was completed with the Federal Law of Economic Competition (LFCE) and the Federal Competition Commission (CFC) was founded to implement it. By 1994, private participation had expanded in several segments of the telecom industry. So the new regulatory regime did not end the power of the Telmex but produced other firms, which can compete in the future. In May 1994, the government showed that only a limited number of free-entry to the market in long-distance and local services that a

limited number of concessions would be issued, and the new entrants would be required to expand the basic network. In the long-term the problem would become more complex, since there would be need to regulate the competitive and non-competitive markets in different services with new different firms. Hence, there would be need to have strong-nondependent regulatory agency. The SCT was not powerful to cover such a heavy business. Moreover, creating an autonomous agency could have created demand for the other ministries to have agency when the government wanted to reduce the officials. Thirdly, the strong agency could make the Telmex less attractive for the prospective buyers. For these reasons the SCT suffered from a shortage of policy-level staff even in 1994. The customer dissatisfaction with Telmex's services, on issues like, frequent lime failures, delays in repairing lines, errors in billing were the problems SCT had to handle with. SCT was generally founded weak in these problems and enforcing the quality targets and sanctions evident in the concession agreement.

So fifthly, after the privatization of the Telmex which means the reduction of government and bureaucratic influence of the company over the regulatory issues and with the influence of the prospected competitors in telecommunication service business (especially long distance and local basic telephone service and GSM operators), on June 7 1995, the Federal Telecommunications law was enacted, substituting mainly the law regarding communication which was applied since 1940.

As declared in this law the sector specific regulator, the Federal Telecommunication Agency ("Cofetel") was set up by presidential decree on 9 August 1996.

Lastly, the interconnection policy is another issue which is more important to sustain fair competition. In this matter, SCT was more like the intermediary in the long-distance market; especially between Telmex and its competitors. In 1st of July 1994, SCT published a resolution about how interconnection agreements between long distance carriers and the incumbent have to be published. The resolution specifies a calendar to enforce equal access competition (fair interconnection) in long distance services beginning with 60 cities in 1997, spreading to the whole country by 2000. The resolution also declared that interconnection would be cost oriented and in line with international norms and benchmarks. In

December 1998, Cofetel published another resolution setting out interconnection charges to apply for 1999 and for 2000. Interconnection charges were lowered and a system of calling-party pays introduced for mobile. But many conflicts occurred between operators and Telmex in the issue of interconnection. The problems are tried to be solved by Cofetel's consulting and SCT's final decisions. In addition to interconnection issue, Cofetel published rules for accounting separation, reductions to the number of local service areas and a program to expand national numbers from 8 to 10 digits.

4.7. Liberalization Process after Privatization

Mexico liberated the most parts of telecommunications sector. The Mexican government introduced competition in nearly all telecommunications services, and Telmex had to comply with new regulations for fair competition. When Telmex was privatized in 1990, Telmex was granted a new concession containing many important provisions that established the foundation of a new regulatory regime for telecommunications in Mexico. The concession was granted from the date of first concession in 1976 to the 2026. The concession includes provisions relating to universal service, quality of service, competition safe guards and rules regarding accounting separation. The concession maintained a monopoly for Telmex in long distance and international telephony until August 1996 to allow Telmex to achieve network expansion targets for universal service obligation and to rebalance its rate structure by ending cross subsidization between services. Entry into wireless services, paging, trunking, VSAT networks, customer premises equipment and value added services were permitted. Entry into domestic local services was also permitted, but concessions were granted afterwards. By the end of 1999, there are 48 concessionaires in trunking, 12 of them were providing local services and 26 of them were giving regional services covering 215 cities. In paging there were 107 concessionaires, 62 were providing local services and 30 regional services and 15 national services providing service for 86 cities.

4.7.1. Satellites Network

There were three satellites in service, Morelos1, Morelos2 and Solidaridad1. The satellite network was critical in initiating the substitution of the old microwave network for TV transmission. Moreover it was the only way to have voice and data connectivity for companies and government agencies until the new digital network from Telmex was put into practice. The national microwave network, operation of Telegraph and Satellite system was transformed to the TELECOMM (Telecomunicaciones de Mexico) to compete with the Telmex in the services of telegraphy, packet switching, microwave and satellite services. It is also a signatory to Intelsat and Immarsat services.

In March 1995, the Constitution was modified to allow for private investment in satellite communications. In November 1996, the Communications and Transport Secretariat began the process of opening the nation's satellite system. It called all interested companies to submit applications for the privatization process. Later during 1996 and 1997, Telecomm was divested from its satellite services, to create the company Satmex (Satellites Mexicanos) which was privatized on August 1997 through public tender. This company has three geostationary satellites using Ku and C bands to provide services in Latin America and in some cities of U.S. State owned satellites and geostationary locations were privatized in 1998. A 1997 auction was aimed at building a capacity supply market for microwave point to point and point to multi-point systems.

4.7.2. Wireless Communication

To achieve universal service obligations to use fixed wireless services is an option. The costs and installation times of fixed wireless services decreased at substantial rate. The only problem is that it requires radio spectrum space and the government has to settle the allocation of frequencies through a bidding or similar process. This situation requires the effective regulation policy for allocation of radio spectrum frequency bands. Wireless communication (wireless telephone services began in 1993 and concessions for fixed wireless services were announced in early 1997), and radiotelephony has been liberalized. The installation of overlay of digital private networks is also permitted. Telmex, private investors and large users were

permitted to own and operate earth stations for data transmission, rural telephony and other services. During 1997, Cofetel auctioned spectrum for the purposes of provided microwave point to point and point to multi-point links for fixed or mobile wireless access, local wireless telephony and pay TV and Audio services (MMDS). During 1998, Cofetel auctioned spectrum for the purposes of providing land mobile radiocommunications systems, point to point links and narrow-band personal communication services.

The OECD (1999:258) book of Regulatory Reform in Mexico described recent developments in wireless technology. Two firms, Axtel and Maxcom began commercial operations in April 1999 using wireless technology in local telephony. In December 1997, a concession was granted to GE Capital Spacenet Communications Services de Mexico. This concession allows the company to install, operate and exploit a public telecommunications network to offer services of transmission and reception of signal, writing, image, voice, sound or any other form of information for private networks. Furthermore, the firms, like Iridium, Globalstar and Orbcomm, can be granted concession to exploit the rights of emission and reception of signals from frequency bands associated with their respective satellite systems with the suggestions of Cofetel.

4.7.3. GSM (Cellular Services) Liberalization

Gonzalez et. al (1998:355) have explained the liberalization in cellular telephony services. Cellular telephony services, as the first wireless telephone service, have been liberalized in 1990 when duopoly cellular concessions were granted for nine regional markets throughout the country. Each of the nine regions, two concessions were issued, one reserved to the wireline incumbent while the other was issued for the competitor. Southwestern Bell, France Telecom and Bell Atlantic (through Lusacell) is also giving cellular services. As the first sector to be deregulated, the cellular market increased the number of the users to a half million in four years. The strong growth of the sector mainly depends on the convenience of technology. The service is provided in Bands A and B. Telmex's subsidiary Telcel utilized B Band. The other nine competitors use the other band. The strongest competitor of the Telcel is the Lusacell. Lusacell has cellular operations in four of

the nine regions in Mexico covering about %70 of the population, also holding long-distance concession and facilities. The number of cellular subscribers in Mexico have reached about 2,3 million by May 1998 and projected to reach 3,3 million by the end of 1998.

4.7.4. Long Distance Basic Services

On 26 October 1995, SCT published a resolution under which concessions would be granted to long-distance (interstate) operators. During late 1995 and 1996 concessions were granted to new entrants into fixed domestic and international long distance services. On 21 June 1996, the long-distance rules were published together with the new numbering and signaling plans. On 11 December 1996, Cofotel published rules governing the provision of international long distance services, setting out the proportional return system. Full competition in long-distance services started on January 1997 with the participation of eight companies. Related with the regulation of prices and cross-subsidization, some differences were evident. Prices of long distance decreased while those of local services have increased. Long distance rates have come down since 1997, as several long-distance carriers enter the market. But since Telmex charge rates for long distance calls that are barely covering short run marginal costs. All competitors are joint ventures involving large Mexican corporations and foreign telecommunications companies. TELMEX (Grupo carso, Southwestern Bell, France Telecom and Stock holders), ALESTA (AT&T, Grupo Alfa and Bancomer-VISA), AVANTEL (Banamax, MCI), MARCATEL (Radio Beep, IXC Communications, Westel) LUSATEL (Lusacel, Bell Atlantic), INVESTCOM (Compania San Luis, Nextel, LCC, Cartyle) MIDITEL (Antonio Canavati), CAVLEADOS Y SISTEMAS (Grupo Varo) are the long-distance competitors. Telmex is the largest in terms of coverage and capacity in Mexico. Telmex is advantageous in being the first since it will receive payments from network tariffs of competitors even if it loses its customers. As of March 1999, 17 firms held concessions to operate in long-distance domestic and international markets. Of the 15 long distance concessionaires (not counting Telmex with its subsidiary Telnor) eight have commenced operation (Avantel, Alestra, Lusatel, Marcatel, Miditel, Protel, Bestel, RSL ComNet.) and the other seven companies

(Maxcom, Intelcom, Ladimex, Presto Telecomunicaciones, Axtel, Telereunion, Union Telefonica Nacional) were building infrastructure.

4.7.5. Local Services

It was scheduled for different times in different cities. Deregulation in local services was announced in 1990, but the first concessions were granted only in April 1997. On January 1996, SCT published the rules under which concessions would be granted to local networks. The local service rules were published by Cofetel in 23th of October 1997. The local distance market was opened to private entrepreneurs in 1990, but only after the government announced that it was ready to grant concessions for local wireless operators in 1997, that several companies showed interest in the sector. But the levels of committed investments fall short of the required amount. Large players like Telmex, Avantel, and Alestra had announced their intentions to participate in the local services, but they did not level of investments by 1997. Others like Ameritel, Extensa, and Telinor announced their intentions to participate in the local services market with their intended levels of investment by the year 1997. In late 1997 and 1998, Cofetel auctioned substantial amount of spectrum suitable for the provision of PCS and wireless local applications. The winning bidders at these auctions received concessions to provide fixed or mobile local services. In February 1997, the Mexican government picked four companies to receive the nation's first licenses (concessions) to operate fixed wire local service. Concessions have been granted to six companies (Maxcom, Resetel, Unitel, Axtel and Avantel) that will start competition in local markets. In 1998, a further eight firms have acquired spectrum through the PCS and WLL auctions and six have received local service concessions. Three firms (Axtel, Extensa and Maxcom) were granted concessions and have five year plans relying on combination of wireline and wireless technologies. Overall, the new local players have committed to building 9,5 million new lines over the next five years. Moreover, the public pay phones, which represent the access to telephone for many people, were increased. Telmex increased the number of pay phones. After a Reglamento governing payphones was issued on December 1996 twenty nine permits have been granted to commercialize the service. Cofetel is also processing 18 additional applications.

4.8. Problems in the Liberalization Policies

Main problem is the insufficient extension of universal service. Mexico is the lowest in the extension of universal service (telecommunication channels per 100 inhabitants were 14,0) between OECD countries in 2001 data (2003: 103). The revenues from international traffic account much higher percentage of total sales, which is extending the (%15) average percentage in developed countries. This made the long-distance market more profitable. It restricted the opportunities of rural areas with low density to get telecommunication services. Despite the fact that SCT is responsible for pertaining public telecommunications network through enforcing the investments in public networks concessionaires in the telecommunications law, the investments in public telephone infrastructure is still low. Telmex increased the coverage of many networks by modernizing them. Even if the large companies invest in new local networks they will target individuals who already have telephones. But with lower profits in local networks due to competition, Telmex reduced the new investments in local services since 1995. The participants except Telmex were not efficiently forced to invest in rural areas. By increasing the local wireless network, SCT wanted to increase the universal service. SCT after granting concessions for a combination of wireline and wireless technologies in local service in 1998 has guaranteed 9,5 million new lines in the network. But still the problem for low penetration in public network infrastructure seemed to be continuing.

Another main problem is about the tariff rebalancing after the privatization of Telmex in order to end cross-subsidization. Including all the operators in telecommunication services long distance and international services prices have fallen since 1997 offset by large increases in local service price and a decrease in the subsidies of local service prices. Despite the fact that cross subsidization is seen as factor undermining competition, the increases in the prices for local service can prevent to reach universal service all over the country.

In addition, the inclusion of competitive prices in the “basket” of price-cap regulation system enhances the incentives on the incumbent to act anti-competitively. Requirements to register and disclose prices facilitate collusion among competitors and restrict innovation. International proportional return arrangements raise prices on international routes.

Moreover SCT, CFC and COFETEL have overlapping jurisdictions and duplication of rules and regulations governing competitive operations, confusion about how concessions for phone service are to be awarded, and how interconnection is supposed to be negotiated between carriers. The lack of transparency in the regulations process has led to disputes between carriers, which are currently solved in the Mexican courts rather than being solved by regulatory agencies. The concession system gives significant powers to Cofetel but the sanctions for violations of concessions are weak.

The implementation of Foreign T. Law of 1995 was supposed to encourage competition in long- distance services by permitting callers in Mexico to choose their own long distance carrier, but it did not work properly. Because Telmex is still permitted to preclude the full participation of foreign companies in the resale of its capacity in order to reach new locations within Mexico or the U.S. market. The long distance services carriers such as Avantel (MCI), Alestra (AT&T) refused the interconnection arrangement with Telmex and requested the U.S trade relations to initiate WTO dispute proceedings on telecommunications policies. Therefore, the private telecommunications carriers are not satisfied with the interconnection rate structures and conditions, international settlement rates, foreign ownership restrictions and satellite infrastructure.

4.9. Conclusion

In this chapter, Mexican telecommunications sector policy and its implementation was examined. The first variable that is effective about the policy was historical developments in the sector together with the political system and administrative structure in Mexico. As seen in the first section of this chapter, Mexican telecommunications sector has faced upheavals and downturns. Telecommunications network was first founded by domestic private investment in 1882 and has been privatized and nationalized for several times until it was lastly nationalized in 1972.

As also seen in the first section of this chapter, the last privatization of telecommunications company (Telmex) was an important element of Mexican liberal economic program that plans the deregulation of several economic sectors that has

previously operated by the state. Ministry of Industry and Trade (SECOFI) has coordinated this program through its related bodies and regulatory mechanisms.

To summarize the program of Mexican government a table is prepared.

Table 2. Deregulation Program Units of Mexican Government

Program Units	Foundation Date	Main Responsibility
SECOFI (Secretaria de Comercio y Fomento Industrial / Ministry of Trade and Industry)		SECOFI supervises and coordinates all the Deregulatory/ regulatory mechanisms through RIA.
UDE (Unidad de Desregulacion Economica /Economic Deregulation Unit)	1989	This unit is responsible for coordinating and ensuring the quality of deregulation program. The main aim in its foundation was to have a deregulation and/or re-regulation programs in specific sectors. This unit also participated in the formulation of LFCE and continues to participate in the review of regulations and regulatory proposals of CFC.
ADAE (Acuerdo para la Desregulacion de la Actividad Empresarial/ Deregulation Policy Program	1995	This program established a regulatory management system based on the central oversight of UDE and under the responsibility of the SECOFI. It reviews and improves proposals for new laws and regulations.
CDE (Economic Deregulation Council)	1995	It provides a forum for discussing and resolving important regulatory problems with specialist inside the team. The Council developed routine assistance process to gain transparent and accountable regulatory system
RIA (Manifiestacion de Impacto Regulatorio/ Regulatory Impact Assessment)	1996	It is a program to analyze all new draft laws and subordinate regulations about its possible impacts on business. All RIAs are send to the SECOFI for examination.

As seen in the table 2, the main director of the deregulation program is the SECOFI, however the UDE is planning the deregulatory programs in several sectors, ADAE is responsible for preparing and reviewing new laws and regulations of the deregulation program and CDE provides the forum for discussing regulatory problems with specialists. The program also aims to reform and analyze all the regulations and laws to through the Regulatory Impact Assesment which are opened to the examination of the ministry. The second, third and fourth items of the chapter is about the reasons of privatization, restructuring prior to privatization and privatization process respectively.

The fifth item of this chapter is about the regulatory structure of telecommunications sector. There is a table that summarizes the regulatory structure of telecommunications in Mexico.

Table 3. Chronological View of Regulatory Structure in Telecommunications Sector in Mexico

Name of Institution/ Law	Foundation Date	Main Responsibility in relation with Telecommunications Policy
SCT (Secretaria de Comunicaciones y Transportes /Ministry of Communications and Transportation)		It is the ministry that is responsible for telecommunications sector policies and coordinates and supervises all the regulatory activities in telecommunications sector.
Concession Agreement of Telmex	1990	The agreement with the privatized Telmex; to specify the conditions that the Telmex operates and provides Telmex monopoly in domestic and international long distance until 1996.
New Regulatory Framework (Reglamento de Telecomunicaciones)	October 1990	This regulation explains the conditions to grant new concessions and SCT's responsibilities in sector.
Foreign Investment Law	1993	This law enhanced the foreign investment participation in telecommunication sector. foreign investment up to 49 % ownership of capital stock of operators of a fixed network was permitted. Higher investment was permitted in cellular operators.
CFC (Commission Federal de Competencia/ Federal Competition Commission)	1993	Its main responsibility is to asses and identify market power in the sectors; railroads, natural gas, telecommunications and etc...and to apply the FLCE. It may comment on the existing laws, regulations, agreements and administrative acts, on the effects of policy programs.
FLCE (Federal law of Competition)	1993	The main function of this law is to conceptualize and legally determine the conditions in which a company behave anti-competitive or abuse its market power.
Federal Telecommunications law	1995	This law conceptualize and legally determine the conditions of operating telecommunications services in respect to regulatory policies, tasks, and regulator (Cofetel)
FTL (Federal Telecommunications Law)	1995	This is the main law that explains the regulatory framework of telecommunications sector in respect to regulators and regulatory activities.

Table 3. C'ed

Name of Institution/ Law	Foundation Date	Main Responsibility in relation with Telecommunications Policy
COFETEL (Commission Federal de Telecomunicaciones/)	August 1996	It is the main regulatory body that advises on regulatory issues such as; license agreements, tariffs, interconnection, spectrum allocation. Regulator also implements sanctions to the operators if it is found necessary based on the FTL.

As the table 3 shows, telecommunications sector policy is under the leadership of the SCT and regulated by the CFC and Cofetel. While CFC is only responsible for determining market power of operators and detecting and declaring anti-competitive acts of operators, Cofetel takes all the daily regulatory decisions with the supervise and approve of SCT.

To summarize the seventh item of chapter which is the liberalization process, a chronological table about sector reform in Mexico is prepared as follows:

Table 4. Chronological Summary of Deregulation in Telecommunications Services Sector in Mexico

1990	Privatization of Telmex
1990	Competition in cellular mobile services has started with privatization.
January 1997	Competition in long distance services has started
April 1997	Basic local services were opened to competition
1997	Fixed wireless services were opened to competition
1998	Mexican Satellite system was privatized

As the table 4 shows, after the privatization of Telmex, the telecommunication services sector was opened to competition. To sum up, as it is seen throughout the chapter, Mexican telecommunications sector policy was oriented towards a full liberalization program together with the national liberalization and deregulation policies.

CHAPTER 5

TURKISH TELECOMMUNICATIONS SECTOR

5.1. The Telecommunication Sector Policies in Turkey After 1980s

5.1.1. Historical Developments in Telecommunications Sector in Turkey

After the 1980s Turkey started to modernize the telecommunication service sector according to the new technological developments. ISDN started to be used at the same time period with European Countries like; Germany, France and England. The digital network is now evident in a large extent in Turkey. After 1985, fiber optic cable, digital radiowave and satellite systems started to be active. Moreover, PTT (Posta, Telgraf ve Telefon/ Post, Telegraph and Telephone) to be internationally competitive, jointed to the international cable networks like; SEA-ME-WE2, KAFOS, EMOS, TAT-8, MAT-2.

Some new services that became presented after 1980s are the Telex, Fax, Video Conference, Videotext, Audiotext, e-mail, Internet, Frame Delay, mobile telephone, Global Card, Data communication, Cable TV, Satellite Communications.

5.1.1.1. Development Plans and Telecommunication Policies

Keskin (2001:157) states that the fourth Development Plan (1979-1983) published by DPT concerning telecommunications sector aims; to use automatic dialing in the system in basic service; to extend the telecommunication network to the rural areas; to start operating the satellite ground station; to extend the international phone and telex communication with the existing radiolinks and cable connections under water.

According to the Keskin (2001:145) after 1980 development strategy was the liberal economic growth model based on market dynamics rather than previous import-substitute model. With this strategic difference in the economic plan, the attitude in the national planning of telecommunications services has started to change. As Keskin explains (2001: 145), after 1983, the telecommunications infrastructure became an important investment project of national plan. The ratio of telecommunications investment/GDP increased between the years of 1983-1993. But the telecommunication investment started to decrease in 1993 and continued to decrease with the economic crisis in 1994. To develop and extend the telecommunications network the self-revenues of the company was used rather than the tax revenues or public loans. With the monopoly pricing increased the just-revenue and used them to make investments and decrease the production cost. The modernization and extension of network was managed both by the support of public investment policies and administrative and financial autonomy of the PTT.

In the fifth economic plan for the period from 1985 to 1989 ⁹(DPT 1984: 117) there are five goals that are specified to communications.

1. To ensure safe and uninterrupted communication at national and international wide and to increase international connections.
2. To start operating the second satellite communication ground station which will increase the means of international and intercontinental communications.
3. To repair and develop the old networks of the urban areas with considering the demands of the residents in the near future. At the end of the planning period, the telephone central capacity, which is 1,9 million lines in 1983, is targeted to increase to 3,7 million and as a result, the possible waiting telephone subscriber would decrease to 950 000.
4. To construct post-processing centrals in largely populated areas to be prepared for the mechanization of post services that will sustain fast and safe post services both nationally and internationally.
5. To develop the telephone communication means of rural areas. The related aim is to develop fast, uninterrupted and safe communication facilities in order to meet the needs of Turkish economy. Also in the fifth development plan there are

⁹ <http://ekutup.dpt.gov.tr/plan/plan5.pdf>

specific goals for the “information processing”. These goals are mainly related with developing the computer hardware and software infrastructure and human resources to use the new technologies in computing.

Keskin (2001: 147) claimed that the budget support for public investments in telecommunications network was cut in 1985 according to the TTAŞ’s statistics. Moreover, the author explained that the financial support from Investment Bank had been gradually decreased by 1989 and cut in 1991. From this time, PTT started to use foreign debts. PTT, financed itself through foreign debts with high interest rates based on foreign currency, to make investments and continue its services. The interest rates and the currency levels increased the debt to huge amounts.

In the sixth development plan which was prepared for the period from 1990 to 1994 ¹⁰(DPT 1989: 277) there are five related telecommunication sector goals in the section of Communication.

1. To continue extending and developing telecommunications network in the period of the plan.
2. To increase telephone central capacity to 9,8 million lines with an annual average ratio of 8,9 from 6,4 million lines at the end of the 1989.
3. To give telephone service to 10 thousand more rural area, extending the rural areas that are having telephone service to 48 thousand.
4. To increase the number of places with automatic central to 3,575 and therefore the number of telex capacity will be 41 200.
5. To transform the Post services to mechanic and automated services from being services based on human power and transportation.

The principles and policies were also declared in the communication section of the development plan (DPT 1989: 277). There are five items in principles and policies.

1. Considering the national defense and security, the investments in telecommunications sector will be firstly made in the important centers of tourism, industry, trade and international economic relations.

¹⁰ <http://ekutup.dpt.gov.tr/plan/plan6.pdf>

2. To complete the infrastructure of telecommunications in order to decrease the discrepancy in the network availability nation wide, and to meet the demand in time.
3. To give importance to up-keep and repairing services in order to sustain continuity, safety, quality and speed in telecommunications services and to increase the profit of telecommunications business to the level of developed countries.
4. To extend the modern telecommunications services which are based on innovative technologies.
5. To follow the developments in satellite communications and to search for possibilities to implement satellite technology in every aspect of communication services.

In the plan of 1991, the liberalization of some services like; cable TV, digital mobile phone, paging services were mentioned.

But these attempts were postponed with the political conjecture. In the sixth development plan there are also principles and policies specified under the title of “information technology”. The most striking policy was to use all the possibilities of information technology in order to transform Turkish society into an information society which knows the ways to reach the information that is needed. The other associated principles and/or policies are related with developing the technological capacity and knowledge in computing sector, especially in software.

The telecommunication services were operated together with post services until to 1994. But with the increasing pressures of IMF and the World Bank to privatize the state-owned telecommunications company and the idea of decreasing budget deficits with the money sustained from privatization the government divided PTT into two companies. PTT firstly, transferred the value-added services to the private sector with revenue sharing agreements. The huge capital needed for the telecommunication investments and the emphasis on them caused the investment problems for the post and telegraph system. To substitute the loss in telegraph and post services, the prices of telecommunication services were kept higher and used for cross subsidizing the post and telegraph services. The separation of telecommunication services from post and telegraph was designed to end the cross

subsidization and to increase the efficiency of both sectors. Although the first legal regulation was attempted first in 1993, the new law could only be established in 1994. Thus in 1.5.1995, Pİ (Posta İşletmeleri /Post Company) and the Turkish Telecommunication A.Ş. (TTAŞ) were founded. The main goals and facilities of the TTAŞ were, to establish and manage telecommunication systems that are connected to each other with electromagnetic waves, to operate telecommunication services. But the separation of TTAŞ and Pİ was not well designed because of the inconsistent methods, insufficiently documented procedures for the separation. Even after the separation the possessions of TTAŞ and Pİ were mixed.

In the seventh development plan (1996-2000) the telecommunication sector and policies were oriented towards new liberal economic views. (DPT 1995: 153)¹¹ In the section of “sector situation” of the development plan, it was declared that the public telecommunications ownership is continuing. It was also mentioned that the law that enables the partial privatization and deregulation of sector was reconstructed with the decisions of Constitutional Court but the problems based on lack of clarified regulations in telecommunications sector prevents the formation of deregulated competition environment. In the section of “aims, principles and policies” in the telecommunications sector the aims of the national telecommunications planning were mainly changed from social policy goals towards the competitive advantage goals. Main goal was to construct telecommunications, radio, television and information networks that present cheap, efficient, productive, fast, high quality services. The emphasis was now over the business world demanding towards fast and value-added services. The promise was to end of the monopolistic power of PTT first in value-added services and then in basic services, and to regulate the market to construct competitive market conditions. The plan also promised to sustain the broadcasting of private channels together with the public broadcasting without the confusions regarding with frequency allocations. Thus, the plan expects the increasing of the TV and Radio channels with high quality programs and broadcasting. The plan promised the construction of information infrastructure that enables the extensive usage of information and knowledge in order to be transformed into an information society. According to the plan, all of the value added services

¹¹ <http://ekutup.dpt.gov.tr/plan>

would be deregulated and clearly defined criteria which will build and sustain competitive market conditions in telecommunications service sector would be implemented. To increase the average revenue for lines, the investments in business areas and cities would be given more priority and prices of services for business places would be re-fixed. The privatization of public telephone network would be managed in a designed strategy and the government would continue its responsibility with sustaining competitive environment conditions. The opportunities of local broadcasting based on time repartition will be developed to make use of the limited frequency at the most efficient level. The automation in post services that will increase the productivity, efficiency, speed and safety in post services will be extended and the arrangements to end the public monopoly in post services will be made. In the period of seventh development plan, the telephone subscriber intensity was expected to reach 33% level, the cable TV network to 3 million subscribers and the fiber optic cable length to 110 thousand km.

At the section “Legal and institutional regulations”, the foundation of independent regulatory agency that would end monopolistic structure in telecommunications, monitor deregulation and privatization, support the consumer rights and construct a real competitive telecommunications market was promised.

Moreover, the possible confusions between the regulatory institutions based on the convergence of the telecommunication, broadcasting, electronic publishing, computing sectors was promised to be prevented with new regulations and coordination of institutions. The privatization of Türk Telekom was first pronounced in the 1997 program but it could not be achieved because of the confusions and lack of planning in the laws and regulations relating with telecom privatization.

In respect to information society view of the government, it made additional comments related with supplying and using information. It was admitted that the information infrastructure is not sufficient. The lack of necessary legal regulations together with the lack of methods that can be used in making operations with national data base standards, national information system and its statistical infrastructure, national data base and data communication declared as the main problem in sustaining information society. The main solution to become an information society that can have efficiently supply, process and use information is

declared as building information infrastructure systems that is composed of services and technologies also including information gateways. To become an information society was seen as important element of the development plan because becoming and information society was seen as an element of integration to the world. Another mentioned goal was to improve the coordination and organization of government agencies with the effective usage of data bases of the agencies and with information infrastructure system.

The eight plan (2001-2005) was the first development plan that mentioned the telecommunications reform plans under the title of information and communication technologies rather than mentioning it under the communications title¹² (DPT 2000: 128-131). Probably this is due to the fact that the government now sees the telecommunications sector development as the basic element of information communication technology infrastructure with the convergence of the sectors computing, information technologies, broadcasting and communication. In this sense information and communication technologies were emphasized.

In the section “current situation”, (DPT 2000: 1236) it was declared that the regulation facilities have started with the new telecommunications law and the foundation of the related regulatory institution. In this new structure, the ministry of transportation and communications would determine the general policies and give licenses while the telecommunications institutions will control and supervise the telecommunication operators and/or licensees in their services regarding the technical, managerial and financial issues. The TTAŞ was legally given an autonomous status as a telecommunications firm operating in a competitive environment but with public share holder. In the item of 1237 (DPT 2000: 128), it was also declared that two licenses were given in the year of 2000 to the two new mobile operators to increase the competition and to decrease prices in the market. It was claimed that using revenue sharing agreements in value added telecommunication services instead of license system did not bring the expected advantages. There are also some other aimed issues like; transforming broadcasting into digital, developing electronic trade (item 1241) and data communication

¹² <http://ekutup.dpt.gov.tr/plan>

infrastructure (item 1239) and ending the public monopoly in postal services (item 1240).

Some goals related with national telecommunications liberation plan in the (DPT 2000: 129-130) section “Goals, Principles and Policies” are:

- 1- The main telecommunications policy aim is to increase the telecommunications service quality at the globally competitive levels that will make a contribution to the economic and social welfare of the country. Role of state as the regulator of competition in the sector will be realized and be more emphasized in the future.
- 2- The users’ demands to reach the value added services that were created by the convergence of sub-sectors and the technological developments would be considered and the access to these services would be enabled fastly with legal, managerial and financial re-regulations.
- 3- The access to telecommunication infrastructure and services at affordable prices would be enabled. All the consumer rights would be protected with regulations that are transparent and nondiscriminatory.
- 4- Necessary regulations would be completed to decrease public shares in TTAŞ in order to increase the competitive power of TTAŞ knowing that the telecommunications market would be fully opened to competition at the end of 2003.
- 5- In the new public structure for telecommunications, the public organization was planned to be minimized to be functional. The new organization structure will be based on coordination, effective administration and consultation with NGOs and private sector. Moreover, it will be oriented towards knowledge expert.
- 6- The value added services were planned to be regulated by licenses and general permissions to let for technological innovations and competitive market.
- 7- Internet services were planned to develop according to the needs of private sector and the demands of consumers. To have high quality and efficient information safety in services, the private sector’s alternative infrastructure would be constructed by new legal and technical regulations.
- 8- Because of the demands for highly qualified mobile communication services and the innovations in mobile communications services, in the procedures of license giving competitive market conditions and consumer interests would be sought.

9- Constructing the public information infrastructure in order to give public transparent and clear information about public issues.

10- To transform the broadcasting to digital era in order to follow technological innovations world wide. To extend this new technology, new transparent and nondiscriminatory regulations between the broadcasting institutions would be developed.

Moreover, in the section (DPT 2000: 131) “Legal and Institutional Regulations”, the most important element is to make the necessary legal regulations in order to integrate to the EU. The item 1268 (2000: 131) declared that the necessary legal regulations would be completed in accordance with the adaptation process to European Union. Other legal regulations are related with the set up of the safe information infrastructure, the deregulation of postal services, electronic trade, digital broadcasting, and the restructuring of TRT.

Moreover, in the section “information and communication technologies” (2000: 227) of the 8th development plan, it was declared that the telecommunication services quality will be developed to the global level. Moreover it was declared that all the subscribers would be enabled to use telecommunications services with reasonable prices; the principles of transparency and equality will be implemented for consumer rights; and efficient competitive environment will be sustained taking the commitments in agreements of WTO and European Union into consideration. The plan also declared that the public share offerings would be used in the privatization process.

Moreover in the (AEP) Immediate Action Plan declared in 3rd of January 2003, the telecommunications reform plan was reformulated in two steps under the headline of economic transformation reforms (EDP) (DPT 2003: 61)¹³. The government firstly committed that a new telecommunications law would be made in twelve months which will integrate all the different laws and end the confusions in legislation existing in telecommunications sector. This law will be made also to ensure liberalization in sector with speed, integration to the EU regulations related with the issues license giving, interconnection agreements, universal service and numbering. The second commitment is the establishment of secondary measures and

¹³ <http://ekutup.dpt.gov.tr/plan/aep.pdf>

regulations (decrees, official communiqué and other managerial regulations) under the heading of the Telecommunications Institution and with the support of DPT and Ministry of Communications and Transportation. How the regulatory issues of authorizing, interconnection, access to basic infrastructure, sharing of infrastructure, common residence, passing right, opening the local network and Cable TV network to competition, conciliation and mediation and numbering have to be formulated will be decided on in the period of public monopoly and the necessary authorizations will be made afterwards.

5.1.2. Some Investment and Revenue-Sharing Agreements in the set-up of network of Telecommunications Sector

5.1.2.1. The Set Up agreement of the Cable Network of the Telephone and Cable TV

Başaran and Özdemir (1998: 98-101) described how the agreements were completed. As they mentioned after the law changes in 1984, PTT started to let the Head offices of PTT to coordinate and make the bidding for the telephone network setup with the PTT responsible for the materials and the cables. The second step was the dividing the network to the sub-regions for the set up in 1986, Istanbul. The Istanbul region was divided into three sub-regions as; Anadolu, Beyoğlu and Istanbul. The network was set up for three years with the network materials and tables provided by the private sector. This step was extended to the 58 cities until 1991. In 1997 only the cities of Diyarbakır, Mardin, Batman, Siirt, Şırnak were the exceptions. After the bidding process, the winner of the bidding makes an agreement with the Türk Telekomünikasyon A.Ş. Investigation, Project and Investment Bidding Engineering Head Office. This agreement includes the procedures of the set up process of the telephone network and the related materials for it. The agreements were designed for three years but it can be extended for two years with the PTT's control. In 2000, bidding was made for the development and spread of SDH transmission network in interurban and metropolitan areas. After the bidding, Alcatel Teletaş, Ericsson and Netaş made contracts about setting up the SDH transmission network. The project would last for two years and the companies will be paid 220

million dollars for the fiber optic cable transmission materials and the services of training and mounting.

Since 1991, the cable TV services network set up has started to be liberalized. The cable TV network set up was given to the six consortiums in nine cities. The project management and the connection of subscribers were the responsibilities of the winning consortiums of NKF Kabel, Philips Kommunikations Industrie A.G. and STFA in Ankara and Adana. Simko A.Ş., Kathrein consortium would work in Istanbul Beyoğlu, Ankara, and Konya. Teletaş and Ere A.Ş. consortium would work in the regions of Ankara, Antalya, and İstanbul.

In 1997, Eskişehir, Mersin, Samsun, Denizli, İzmit, Adapazarı, Balıkesir, Zonguldak, Yalova, Erzurum and Tekirdağ cable TV services were given to the Siemens in seven regions, in two regions Ereğli and in Denizli Tekfen. In these biddings, not only the cable set up but also the management of services was given to the winning consortiums. The Cable TV investments are done by the private sector with the name of Türk Telekom. These firms are giving infrastructure, subscription, defect and up-keep services.

5.1.2.2. The Revenue Sharing Agreements in TÜRPAK (Packet Switched Data Network)

This new technology was first started in 1989 in four big cities. At the end of 1992, it started giving services throughout Turkey except Bartın, Hatay. TÜRPAK was the step to transform to the ISDN. According to the income sharing agreements with the Northern Telecom, NETAŞ would prepare software and equipment and do the mounting to get the income share. It was for seven years and then all the equipment was transferred to the PTT. But the repair and support was sustained by NETAŞ after the network was transferred to PTT.

5.1.2.3. The Revenue Sharing Agreements Regarding Satellite Ground Stations and TÜRKSAT Satellites

PTT and COMSAT Digital Services A.Ş. made a Satellite Ground Station Income Sharing agreement in 1991. PTT has mounted digital Satellite Ground

Station in the services building in Istanbul. The same agreements were made with the SATKO in 1995, with ERE Engineering in 1997.

After the set up of the TÜRKSAT 1-B, two agreements were made with two consortiums according to the revenue-sharing principle in September 1994. These Consortiums would give the new technology of VSAT service by this date. The first consortium is the HUGHES, Çukurova Grubu and NETAŞ, and the second was the SUMİTOMO, Koç Unysis and COMSAT.

In 11th of August 1994, the TÜRKSAT 1-B Satellite was set up in its orbit and it has started giving services by 10th of October 1994, and TÜRKSAT 1-C has started working July 1996. The French firm Aerospatiale and the Turkish Telecom would establish a joint venture; and the Turkish Telecom would become 51 percent share holder. Moreover, the joint venture would be responsible for the manufacturing, managing and repairing the TÜRKSAT satellites in 1996. Because the firm committed that the Aerospatiale would establish the Satellites, 95 percent of income revenues of the firm would be transferred to the Turkish Telecom.

In 2000, a satellite, which was established by HUGHES and marketed by Kalitel Company, was rented. According to the agreements, one of the Kuband transponders was given to the control of the Turkish Telecom without fee. Kalitel would do the international marketing of the Satellite while Türk Telecom would do the national marketing. By October 2001, Eurasiasat SAM has started to operate another satellite known as Türksat 2-A.

5.1.2.4. The License Agreements Made for GSM Services

In 1991, GSM (Global System for Mobile Telecommunications) was presented in the market. In 1993, GSM systems in Turkey were established and the mobile phone services were started to be given by the agreement between two consortiums in 1994.

Turkcell Consortium (Telecom Finland, Ericsson Tel. A.Ş., Penta A.Ş., Çukurova Group and Kavala Group) and the Telsim Consortium (Detecon, Alcatel Sel, Siemens, Teletaş and Simko) make agreements with PTT. Both of the firms will be operating in 1994 and establish and service mobile phone network service in the standard of GSM 900.

These agreements were designed according to the income-sharing principle and were transformed to the licenses afterwards with legal regulations. These income sharing agreements were designed to be valid for 15 years. The income revenue was coming from establishment fee, monthly fixed fees and the income coming from talking fees. Moreover, the PTSN (The calls from fixed network to the mobiles) fees were both to the GSM operator and to the PTT. In the agreement the conditions of license agreements were set. In income-sharing agreements the Ministry of Transportation and Communications was presented as the regulator and responsible for making license agreements with Telsim and Turkcell.

In March 1998 the agreement, which turned the income sharing agreements to the license agreement was signed. With the agreement, the service of GSM was transferred to the private sector for 25 years. The profits from GSM would be given to the %74 to Telsim and Turkcell and %15 to Treasury and %11 to Turk Telekom A.Ş.

The consumers of GSM increased from 1,5 million to the 8 million from 1997 to 1999. Thus, in April 2000 two licenses were decided to be given with bidding process. İş Bank-Telecom Italia, Doğan-Doğuş-Sabancı-Telefonica, Genpa-Atlas-Telenor- Demirbank, Koçtel-SBC and Fiba-Süzer-Finansbank- Nurol- France Telecom- Kentbank consortiums participated to the bidding. The winners of the bidding process were İş bank and Telecom Italia. This group made a contract with the Siemens and Ericsson to set up the network and prepare the infrastructure for the network. The consortium established the firm "Aria" to operate the license.

The other two licenses were given to the TTAŞ, which took the GSM 1800 license in 2001. Türk Telekom established the firm Ay-Cell to use the license. The development of the infrastructure of the network was again given to the group of Ericsson and Siemens. Ericsson was to set up base stations and Siemens was responsible for power stations.

In order to compete with other networks, Aria Mobile services (İŞ-TİM) declared that it had removed the standard fixed price. In response to this practice other GSM operators made other discounts.

In 2003, after the GSM operator Aria and Aycell had roaming agreement problems with Telsim and Turkcell. Thus, with the political pressures of Italian

government, the two operators were united in May 2003. Because of this unification some amendments made in the law of 406 with the law 4971.

5.1.2.5. Internet Services Agreement

With the cooperative efforts of METU and TUBITAK, the international computer network; the Internet was established. The costs of project were afforded by the State. In September 1995, to increase the capacity of Türk Telekom A.Ş. in Internet services; a national Internet network project called TURNET was opened to bidding. Sprint-Satko-METU consortium won the bidding among competitors of IBM, MCI-Nurol Likom consortium, Laserex in November 1995 and the agreement was made in March 1996.

According to the agreement, the share of the Türk Telekom was to increase in every year, at the end of seventh year the ownership would be transferred to the Türk Telekom. The consumer of internet services could have directly demand the services from directly Türk Telekom or other service suppliers which made license agreements with Türk Telekom to supply internet service with their own knotty points.

5.2. Reasons for Privatization of TTAŞ

The first reason is the huge amount of budget deficits caused by foreign debts. The privatization of the Telecommunication Company was seen as the source of income for the government to decrease the deficit.

The second reason is based on the commitments made to IMF and the World Bank (till the end of 2003, in the restructuring schedule) about privatizing the telecommunications company (TTAŞ). IMF, being the main international loan-providing organization, only gives restructuring loans and with committing to privatize the state-owned enterprises. With the intention letters of Turkey to IMF which will be examined in the section 5.4.B., Turkish government has promised to privatize TTAŞ.

As the “T.C. Hazine Müsteşarlığı” (2003a)¹⁴ declares in its text, that the telecommunication services started to be seen as an infrastructure-attracting foreign

¹⁴ http://www.hazine.gov.tr/telekom_web.pdf

investments. Because as new technologies emerge in telecommunications, the multinational companies working in developing countries need more and more capabilities investments. Moreover in this text it was claimed that, the technological innovations and competition in world new economy forces the government to restructure the sector to prepare the infrastructure of telecommunications to welcome these new technologies.

5.3. Restructuring Prior to the Privatization

5.3.1. Financial Restructuring

When the Turkish telecommunications sector has faced the technological developments in the World markets together with the pressures of liberalization and deregulation with its commitments to IMF, the governments have decided to privatize the Turkish Telecommunications A.Ş.

Keskin (2001:193- 195) describes the financial restructuring process of the TTAŞ. According to Keskin (2001), tariff structure has been changed. The unit costs were increased and stabilized to the dollar exchanges. Moreover it was decided to make additions to the prices in every three months. In 1998, the subscribers started to pay fixed costs in their bills. To restructure the Turk Telekom another activity was to make differences in the status of the labor. The project was to decrease the employees with civil servant status to the ordinary workers. The personnel was also planned to be re-distributed to let for more personnel in the needed job categories and less personnel in the crowded job categories. The managerial structure of the Türk Telekom has changed. The rural offices were to be connected to General head office as the 82 head offices. Afterwards when the General head office found inefficient in following technological innovations and coordinating, implementing the investment politics, the head offices were transformed to the city head offices. The head offices were connected to the regional offices. And the regional offices were directly connected to the general head office and responsible for investment policies, repairing facilities, invoicing and management.

According to TTAŞ (2003a)¹⁵, it has telecommunication infrastructure in the areas of Internet Network, Cable TV, submarine lines, satellites, and conventional lines; and manage these infrastructure systems, and have services of Telephone, special service numbers, 0,522 NMT Mobile Telephone, Paging Services, Telex-Teletex services, Cable TV services, private leased circuit services, ISDN, ATM, GMPCS, TURPAK, Satellites, Internet, Frame Delay, Global Card, Telecard, Equipment approves, public telephones, Marine Communication. Moreover, it has license-giving systems for others to operate these infrastructure systems.

According to TTAŞ (2003b)¹⁶ has income-generating tariffs includes the tariffs for all the services and tariffs for Centrex, VSAT, renting the Fixed Ground Station, Türksat, Up-link, renting the Mobile Satellite ground station, NMARSAT. Internet network is under the control of TTAŞ. Both the TTAŞ and other Internet service suppliers are giving services on the same network. The TTAŞ owns and operates the two satellites and the submarine lines.

5.3.2. Institutional Restructuring

A Commission was founded to stabilize the necessary changes in the management and the structure of the Türk Telekom to be competitive in market. The commission also took advice from the consultant firms.

Keskin (2001:193-194) described the institutional restructuring of TTAŞ. According to Keskin (2001), there were administrative preparations prior to the privatization of Turkish Telecom. To coordinate and effectively prepare for privatization, “The Privatization Relations Coordination Unit” was established. The responsibility of the unit was; to coordinate and inform the related institutions, the Consultant firm, the employees of the TTAŞ and the Media. The other related institutions were the Transportation and Communications Ministry, Privatization Head Office (“ÖİB”). While ÖİB is responsible for deciding the privatization strategy with the Ministry and Undersecretary of Treasury in the tender committee and the Undersecretary of Treasury is the owner of TTAŞ. Moreover, to increase the competitive capabilities of Türk Telekom a unit called “Mobile Communications Head Office” was established. The responsibilities of the unit were to investigate,

¹⁵ <http://www.telekom.gov.tr/hizmetler.html>

plan, prepare the mobile communication systems to the market, to coordinate and control the systems and to formulate the policies and principles to achieve well functioning of GSM systems.

In 1994, the PTT General Head Office was divided into two, and telecommunication services started to be operated by Türk Telekomünikasyon A.Ş. The laws of 4107(1995) and 4161(1996) opened the value added services (mobile phone, Cable TV, etc.) to competition with license agreements. In 1997, the Consortium to determine of the value of TTAŞ, finished its work and presented it to the Council of Ministers with the hand of Transportation and Communication Ministry. In 1998 the Council of Ministers decided that the value of the shares of TTAŞ is at least 10 billion US dollars. The 20% of the shares were decided to be sold to the strategic partner and 14% of the shares were planned to be sold by public share offerings in and outside domestic stock markets.

In 2000, the Telecommunication Institution was founded to regulate the sector with the law of 4502, TTAŞ tried to become autonomous in the issues of personnel and investment issues with the decree of 233, the exclusivity rights of TTAŞ in basic services of voice and in setting up infrastructure decided to end by the end of 2003 and the telecommunication services decided to be handled by the agreements with the Ministry of Transportation and Communication. In the 2001 the law of 4673 was established. This law declares that all of the shares of TTAŞ can be sold except the golden share; the license giving responsibility is transferred to the Telecommunication Institution from the Ministry of Trans. and Communication.

The telecommunication sector in Turkey has the regulator of telecommunications, the policy-making bodies and the operators. Their relations with each other are defined with the laws of 406 and 2813 and with other decrees and regulations that will be explained in detail later. But the new government is now working on constructing a new law that will integrate the previous laws, decrees and regulations. The telecommunication regulatory institution is declared as the Telecommunications Institution. Even if the government only declares the telecommunications Institution as the regulator and the inspector, other institutions,

¹⁶ <http://www.telekom.gov.tr/tarifeler.html>

which will mentioned in other sections also have intersecting regulatory functions, which causes conflicts.

5.4. THE PRIVATIZATION PROCESS OF TTAŞ

5.4.1. The History of privatization Attempts of TTAŞ

The attempts privatization process of telecommunications services in Turkey has been tried to be commenced in the 1983 with the liberal ANAP government. Several governments (DYP (right-wing) /SHP (left-wing) coalition, RP (conservative) /DYP coalition, DSP/ANAP/MHP coalition, AKP government) attempted to privatize the company but could not achieve it because of the legal problems. There are two main laws regarding the services, the law of telephone and telegraph (406) and the law of wireless (2813). Both were rejecting the privatization of the telecommunication services. Several new laws (4000, 4107, 4161, 4502, 4673, and 4971) were founded to change the laws 406 and 2813. Interestingly while some amendments of the laws were cancelled by the Constitution Court, some of the comments of every law are still valid.

The first privatization attempt of PTT started in 1983 when the Turkish government (ANAP was the governing party) stated that the state economic enterprises would be privatized. According to the plans of the advisory bank (Morgan Guarantee), PTT was one of the public companies to be privatized. The first step to privatize PTT was to divide PTT into two different companies of post and telephone service companies. Despite the declaration of privatization, there was no other attempt to start privatization process.

In the sixth development plan from 1990 to 1994 (DPT: 1989), there was no statement regarding the privatization of PTT. But in the 1991 program of the government, the liberation of some services were considered. At the time being the government was again ANAP and again the privatization process has not started. Afterwards the 50th government (DYP and SHP coalition), has attempted to privatize the company. The government has decided to divide PTT Head Office to Post General Head Office and Telephone head Office in order to be prepared for privatization. Moreover, the government has decided to liberalize some of the value-

added services of telecommunications. To achieve these goals, government prepared the decree of 509.

5.4.1.1. The decree of 509

The first legal reform step was in 14th of September 1993 with the decree of 509 that is pressed in “Resmi Gazete” (2004a)¹⁷. In this period, the country was experiencing debt crisis and need financial resources immediately. Thus, the decree was prepared without considering other reform issues of regulation in telecommunications environment and the details of the competition policy. The first thing in the decree was the separation of the telecommunications facilities from the post and telegraph facilities. According to the law, the telecommunication facilities would be serviced by TTAŞ directly or with the companies that would be founded with this aim or with joining to other firms that exists. TTAŞ was let to give license to private companies to manage some services which were previously given by TTAŞ. The prices of the license fees would be determined by the TTAŞ but have to be approved by the Ministry of Transportation and Communication. The functions of regulation and operation were not separated in this decree. Moreover, the transfer of the shares of Türk Telekom to the private ownership was let with the maximum of %49 of shares.

But the Court of Constitution cancelled the decree in October 1993 with the decision to stop the division of post and telecommunication facilities and the foundation of TTAŞ. The reasons for canceling the decree were as follows: the decree is against the constitution’s 10th article (concerning the equality of all citizens in front of law), 47th article (concerning that the private enterprises can be nationalized if the public interest necessitates) and the 167th article (concerning the prevention of monopoly and cartelization in the markets). When the decree was canceled, the government decided to prepare a law to change the existing law 406 regarding the post and telephone services.

¹⁷ <http://rega.basbakanlik.gov.tr/>

5.4.1.2. The Law of 4000

According to the Başbakanlık (2003a)¹⁸, after the constitutional court cancelled the decree of 509, the law 4000 was promulgated in 10 June 1994. The law's first aim was separating the Telecommunication facilities and the Post and Telegraph facilities. While Türk Telekom would manage the telecommunications facilities, General Post Management Head Office would manage the post and telegraph facilities. Secondly, again the selling of the shares of the Türk Telekom to the private bodies with the maximum share of 49 percent was permitted. The institution to control the privatization procedure and to determine the amount of shares to be given to the Post and Telegraph Management was the Ministry of Transportation and Communications. The fees and income generated from the licenses and privatization will be firstly used for the development of post services with the control of the Ministry. The amount of license fees had to be approved by the Ministry. The procedures of giving licenses for the value-added services were to be determined by the Ministry of Transportation and Communications including the tariff structure.

Despite the fact that the PTT was divided into the Türk Telekom Anonim Şirketi and the Posta İşletmesi, the constitution court cancelled the amendment which gave the Ministry the responsibility to determine the selling procedures of the company TTAŞ to the maximum of % 49 of the shares and the amendment which gave the ministry the responsibility to determine the ratio of revenues (from the management and license fees) to be given to the TTAŞ. After the Court's decision another law, 4107 was promulgated in 1995 by the DYP/SHP government.

5.4.1.3. Law of 4107

According to the Başbakanlık (2003a), in May 3 1995, to handle the remaining issues of privatization, license giving or other reforms in telecommunications, the law of 4107 was promulgated. The law was firstly considering the license giving conditions for telecommunication services, secondly how to determine the fees of the licenses and thirdly the privatization procedure of the TTAŞ. However, all the articles related with the privatization process was

cancelled by the constitutional court. There are also important items related with the sharing of the income revenues coming from selling of the shares of the TTAŞ and the personal conditions of the TTAŞ.

According to this law's 2nd and 406's amended article 18, the licensing principles, method, and procedures, would be agreed on with the regulations that would be constructed by Transportation and Communications Ministry. Only the firms which were established for giving telecommunications services with clearly defined service definitions and service places can take permission for investment facilities and servicing. These permissions can be given for a maximum of 49 years. All the permissions, if not demanded to be last, ends at the end of the period.

The responsibility of the Ministry of Transportation and Communications to regulate value-added services with the new regulations were implemented in 23 December 1995. According to the new regulation, the value-added services will be given with licenses and a bidding process. The bidding process and value determination will be handled by the ÖİB.

Regarding the privatization process, the main problem was which institution would be responsible for the privatization procedures. According to the 1st item of 4107, the related controlling institution was decided to be the ÖYK (Özelleştirme Yüksek Kurulu/ Higher Council of Privatization), and the body to decide the value of shares of the TTAŞ and to conclude the selling of shares was the ÖİB. But in February 1996, the Court of Constitution omitted the rules giving the ÖYK the responsibility for determining the conditions, methods and principles of transforming and selling the shares of the Türk Telekom. Also the comment giving the responsibility of determining the value of shares of Türk Telekom and managing the bidding process and determining the value of the licenses and conclude the bidding process of licensing to the ÖİB was cancelled.

With this law's 1st article and the 406's amended article 17, firstly, to transfer the shares of the TTAŞ to the maximum of the %49 of the shares was permitted. Secondly, the %10 of shares would directly be transferred to the P.İ. without any cost. In the public offerings of the shares, %5 of the shares would be sold to the employees of the P.İ and TTAŞ and other small investors while %34 of the shares

¹⁸<http://proje.basbakanlik.gov.tr/mevzuat/mevzuat.asp?MevzuatAdi=&MevzuatNo=406&Nitelik=&M>

would be sold to the real person and corporate bodies. This law has been changed with the law 4673 in 12.05.2001.

With this law's 3rd article and the 406's added article of 19, how to share the revenues gained from selling the shares of the Türk Telekom was declared; 20% of revenue for investments in developing telecommunications services, 20% of revenue for investments in developing post services. The 20% of the revenues coming from the licensing were planned to be used in again for the investments in developing telecommunications services. This item related with the revenues was not cancelled by the constitutional court but has been changed with the law 4673 in 2001.

With the 4th article of 4107 and the temporary 5th article of the law 406, the T.C. P.İ. General Head office and the TTAŞ can employ each others employees with protocol made between them. In the same articles, it was also declared that the private telecommunications establishments which were done by firms having license, can be nationalized if there is a necessity based on the approved projects of the related firms and the licensed firms can not behave against the rights for secrecy of communication, national security and public order. The ministry of Transportation and Communications can or do supervise all the facilities of the licensed firms in all stages. In the 20th added article of the law 406, it was stated that the all the transactions in the process are free from taxes except Value Added Tax. After the related articles of 4107 about the privatization procedures and the related institutions were cancelled by the Constitution Court, the law of 4161 was established by the RP/DYP government.

5.4.1.4. Law of 4161

According to the Yargıtay Bilgi İşlem Merkezi (2004)¹⁹, the law is dated 1August 1996. Since all the previous law items relating with the privatization process were cancelled, the first problematic area was how the shares will be sold, how the values of the shares will be determined and which institution will regulate and control the selling of shares.

According to 4161's 1st article and the 406's added article of 17, the procedures of selling the shares of Türk Telekom is under the control and

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management of ÖİB. The values of shares would be determined using methods of valuation that are accepted in international finance and stock markets by the value-fixation commission based on the contemporary economic conditions. Selling of the shares will be done with public offerings, selling in domestic and international capital stock markets, selling in stock and exchange market, selling as stocks and bonds investments and/or selling as stock and bonds shares. With the value-fixation results, how much of the shares will be sold, with which selling method and in which ratio the share for employees and small investors will be sold will be decided by the Council Ministers with counseling of the ÖİB and with the suggestion of the Ministry of Transportation and Communications. The final transformation of the shares would be approved by the Council of Ministers. This article was not cancelled but only one more amendment was added to it with the law of 4673 in 2001. Despite the fact that the responsibility of managing the procedures in selling the shares was given to the ÖİB, the main decisions regarding the privatization is under the control of the Council of Ministers.

The second problematic area was how to give licenses to value-added services, how to determine the prices of taking license and value of shares. According to the 2nd article of the 4161 and 406's added article of 18, Ministry of Transportation and Communications will declare to the "ÖİB", the related value-added services and the conditions and qualifications of giving license to them with TTAŞ's suggestion. (after the law of 4502 in 2000, the suggestion of TTAŞ is now not necessary for licensing) The value of licenses will be determined by the value determination commission ("Kıymet Takdir Komisyonu") based on the methods used in the international procedures of license giving. This value will be presented to the Council of Ministers with the suggestion of the Ministry of Transportation and Communications. The license will be given according to the related law of 2886 Government Bidding Law ("Devlet İhale Yasası"), at the value that was previously approved. The license agreement will be concluded by the Ministry of Transportation after the investigation of State Council.

¹⁹ http://www.yargitay.gov.tr/bilgi/kanun_liste/PC1406.HM3.frameset.html

5.4.1.5. Goldman Sachs Consortium

After this law has been promulgated the Commission of Value Determination (DTK) was established with the members of ÖİB, the Ministry of Transportation, the Treasury Undersecretary, Capital Stock Market Board (SPK). To support the commission in the work for value determination of the shares the Goldman Sachs Consortium was chosen.

Yavuz (1999:91-94), noted about Goldman Sachs's suggestions which firstly includes the actions that have to be taken in the TTAŞ company, secondly the need to change the regulations and laws by government, thirdly the actions related with the sector policies, and fourthly the actions to be taken in the process of privatization. The first kind of actions are; 1- to reevaluate the real assets of the Company, 2- to evaluate the senior indemnities according to the World Standards, 3- to finish the autonomous control before the privatization, 4- to redefine the finance function in management, 5- to give more importance to the marketing, invoicing and investment planning.

The second type of actions requires more legal reforms in the law of telegraph and Telephone law, changing the basic agreement of the TTAŞ to be more autonomous, changing the status of employees. The third type of actions firstly mention the re-regulation of license and privilege agreements, more clarified privilege agreement between the Ministry of Transportation and Communication and TTAŞ, to establish a regulatory institution, to take monthly fixed tariffs from telephone subscribers, to give the license of GSM 1800 to TTAŞ. Fourth type of actions are related with the presentation and marketing of TTAŞ before privatization, to start discussions with Capital Stock Market Council Head Office (STK) and establishing a tender committee and appointing Consultation Committee for the privatization process if found necessary. As Geray pointed out (2003:201) the Goldman Sachs Consortium in its final report mentioned that the selling of the shares of the TTAŞ to a foreign investor with such a kind of bidding process would make the Turkish Republic to loose its control over the TTAŞ. As a matter of fact, the strategic investors that can buy the shares of the TTAŞ are the operators of telecommunications services in developed countries. Goldman Sachs mentioned that if the privatization is due to attract foreign investors, they would want complete

authority over the decisions and in the board of directors. Therefore, other privatization methods such as public offering and selling to institutional investors were also investigated.

The Consultation process began in March 1997 and continued until 14.11.1997. The privatization process was to be planned by two different activities; first was to make sector reform and value-fixation, the second was to make the bidding for the selling of the shares. According to TBMM (2004)²⁰, interestingly when the Goldman Sachs had started the counseling, RP/DYP coalition (54th government) was the cabinet, but when the process finished the cabinet (55th government) was ANAP. So as the sequence of different government shows the restructuring process of PTT and later the privatization process of TTAŞ is seem to be the decision of all governments. But the bidding process was not started until June 2000 when another government Coalition (DSP/MHP/ANAP) was in charge.

Despite the fact that the value-fixation process for TTAŞ has ended, no bidding process was done quickly. But rather license agreements were made for the GSM services. As Bařaran mentions (2003:189) the income sharing agreements about GSM 900 services were turned to license agreements in 1998 regarding the 2nd article of the law 4000 (the added article 18 of the law 406) that permits license giving in a variety of telecommunication services. These licenses agreements which would be valid for 25 years were made with Turkcell and Telsim operators. Both of the licenses were worth 500 million US dollars. After these agreements, an investigation proposal about the Prime Minister (Mesut Yılmaz) and the Minister of Transportation (Necdet Menzir) was given with the accusation of abusing their status with behaving illegal in the license agreements with Turkcell and Telsim regarding to the items of privatization law. Main claims of the accusation were; lack of realistic and objective valuation of the license price, causing loss for the government with not including Value-Added-Tax claims in the license agreements, including comments against state in the interconnection agreement. Moreover, the interconnection agreement between the TTAŞ and GSM licensed operators were cancelled due to the Court decision in 1996.

²⁰ <http://www.tbmm.gov.tr/hukumetler.htm>

Together with the elections and the new government of DSP/MHP/ANAP/ the privatization of the TTAŞ was reconsidered. The first think the government did was preparing another law for the privatization of the TTAŞ.

5.4.1.6. The law of 4502

According to Başbakanlık (2003b)²¹, this law was promulgated in 27.01.2000. This law amended both the law of telegraph and telephone (406) and the law of wireless (2813). The main aim of the law was to prepare the conditions of privatization that was committed in the letters of intention to IMF in 1999. As the law of 406 shows, the first article of 4502 mentions that the TTAŞ is authorized to operate all kinds of telecommunication services and its related rights and responsibilities of it is to be determined by the responsibility agreement and/or agreements with the Ministry of Transportation and Communications. Moreover, TTAŞ is responsible for presenting the minimum service requirements in the responsibility agreements. This item also mentioned that all the telecommunication systems or equipments of the Turkish Armed Forces which were established for military and security aims are not subject to this law.

Moreover the 1st item of the law 4502 or 406 defines the terms used in the law such as institution, subscriber, minimum service requirements, license agreements, roaming, general permission, GSM responsibility agreement, value added telecommunication services, telecommunication services, telecommunications, telecommunication infrastructure, management of telecommunication infrastructure, interconnection, the obligation of interconnection, and users. The second article of the law 4502 (also the second item of the law 406) states that no body can operate and manage a telecommunication service or establish and manage telecommunications infrastructure without a responsibility agreement, privilege agreement, or telecommunications license or general permission. In the same item the facilities that are not subject to privilege, license or responsibility agreement or general permission were described.

²¹<http://www.proje.basbakanlik.gov.tr/mevzuat/mevzuat.asp?MevzuatAdi=&MevzuatNo=4502&Nitelik=&MevzuatTuru=1&MevzuatTertip=5&Yil1=&Yil2=&Ara=Bul&Arama=fihrist>

The third article of the 4502 stated that all the value added services and the basic services after the date that monopoly ends are subject to the agreements with the Ministry. The authorized body to decide the type of authorization and its related conditions is also the Ministry. The same article also mentioned that the telecommunications infrastructure or services such as frequency, satellite positioning and numbering that require the allocation of scarce resources and determination of specified responsibilities and rights for every operator, can only be serviced through privilege agreements with the Ministry. The same law also mentions that all related principles and conditions related with these agreements are also subject to the regulations that the ministry will make. While the law's 3rd item is regarding to the general principles in operating the telecommunication services and/or management of the telecommunication infrastructure, other items are related with the interconnection agreements, the penal issues about the agreements, establishment of telecommunications infrastructure and pricing of the services and the license or other agreements.

Moreover in the added article 17 of the 406 (11th article of 4502), despite the privatization procedures that were approved in the law 4161, it was declared that in privatization process of TTAŞ, all the agreement related with selling procedures will be signed by the minister of which the Treasury Undersecretary is bound to or by its authorized representative.

The law of 4502 also made certain differences in the wireless law of 2813 which can be seen in the web site of "Yargıtay Bilgi İşlem Merkezi" (1998)²². With the 14th, 15th, 16th, 17th articles of the 4502 (5th, 6th, 7th and 8th items of the 2813) the Communication High Council/Committee and the Telecommunication Institute was founded. The declaration of the foundation of the Telecommunications Institute which is autonomous managerially and financially, responsible for the regulation of telecommunication services, having a public institute statue without being subject to the laws of 2886, 6245, 1050, 832, subject to the supervision and control of the Court of Accounts, having a private budget was made in the 5th article of the law 2813. 5th article of 2813 also declared the foundation of Telecommunications Institution and mentioned the administrative structure of it. While the 6th article of the law 2813

²² http://www.yargitay.gov.tr/bilgi/kanun_liste/PC12813.HM5.frameset.html

states the principles of foundation and functioning and responsibilities of the Communication High Council/Committee, the 7th article states the responsibilities of the Telecommunication Institution and the 8th article states the personal qualifications of the Telecommunications Institution.

As Başaran (2003:191) mentions the first related action of the government after the establishment of the law 4502 was GSM 1800 bidding process. The consortium of Telefonica Italia and İş bank (İŞTIM) won the first bidding by offering a considerably higher price. But since the second bidding process had started over the prices of the first bidding, all the other participants left the bidding process. TTAŞ's GSM operator AYCELL and the ISTIM consortium (ARIA) were firstly two different competitors of the previous operators of TURKCELL and TELSİM. With 4502's roaming procedures, these two operators were enabled to operate in the big cities with their own infrastructure investments but make interconnection over other GSM operators in other areas. But afterwards ISTIM and AYCELL could not manage to make roaming agreements with other operators (TELSİM and TURKCELL). This problem was solved with political pressures Italian government. In May 2003, Turkish and Italian governments have decided to unite the AYCELL and ISTIM (ARİA). Moreover, the Competition Institution gave a huge amount of punishment to the operators TURKCELL and TELSİM. However, amendments were made in the law of 406 in order to let for the unification of the two companies. Thus, in August 2003 the law 4971 was founded.

After this law has been established, the bidding process of privatization (which was decided in 1997) has started in June 2000. In the bidding process, a Consultation firm called Merrill Lynch-ABN Amro-Rotschild-İş Investment A.Ş. was employed. The first privatization attempt was in 13.06.2000 when the 20% shares of TTAŞ was tried to sold to a strategic partnership in which an international fixed network infrastructure-owner telecommunication operator is evident. The 5%of shares were planned to be sold to the employees and the other little investors, 20% of shares were planned to be sold to the strategic investor and the 14% percent were decided to be sold by public share offerings. But there was no submission to the bidding.

Therefore, a second bidding process started. To increase the demand for the shares of TTAŞ; the 33,5% of the shares were decided to be sold to the strategic partnership. The new bidding process started in 14.12.2000 for the 33,5% of the shares but there were also no demand to be a strategic investor. As Keskin (2001: 225) states; after the first bidding processes of privatization of TTAŞ, the strategic investor's managerial and administrative rights were decided to be extended in the second bidding process. The major difference between two bidding processes was the extension of the rights of investor in the management of the company. The new managerial structure would have a strategic services Committee (most of the members would be from the strategic investor) connected to the board of Directors.

Moreover, the investor would have approval right in the decisions of Board of Directors related with the agreements and strategic investor would appoint the General Director. However, the Administrative Court decided to stop the process of privatization and the tender committee cancelled the process in 06.09.2000. This decision was mainly based on the complaints and applications (for canceling the process) of the Chamber of Electrical Engineers, the foundation of KIGEM, the union of public employees Kamu-Sen and Haber-Sen to the Administrative Court.

After this failures in the bidding process, the same government related with its commitment to IMF in the intention letter in 18th of December 2000, and commitments regarding to adaptation to EU, prepared another law to amend the law of telegraph and telephone (406).

5.4.1.7. The law of 4673

According to the "Resmi Gazete" (2004b)²³, the law of 4673 was founded in 12.05.2001. According to the 1st article of 4673 (1st article of 406), TTAŞ was turned to a joint stock company, which is subject this law and the comments of Private Law but not subject to the same procedures for other state economic enterprises and other enterprises whose capital (more than half) is owned by public. Moreover, the comments of the law of 497 which declares how the telecommunications facilities will be serviced in national security and public right necessities and in the periods of martial law and warfare will be considered valid.

²³<http://www.rega.basbakanlik.gov.tr>

The 1st article of 406 also states that in all the changes made in the main agreement are subject to Ministry's standpoint. In the second item of the law 4673, a sentence was added to the 2nd article of the 406 stating that if the public share in the Türk Telekom A.Ş decreases fewer than 50%, the company's exclusivity rights will be abolished before 31.12.2003. In the F item of the 2nd article of the law 406, 4673 made changes regarding the responsibilities of the Telecommunications Institution with its 2nd article. The same item also abolished the Ministry's authority to take precautions based on the necessities of national security, public order and public service and to take over the establishments with indemnity in the conditions for necessity or to abolish privilege agreement, telecommunications license or general permission in the heavy fault of the operators.

The third article of the law 4673 (the added article 17 of 406) declared that the shares of the TTAŞ can be sold at the %99 of the shares but the foreign investor could take till the 45 % percent of the shares. The foreign investors were not let to own directly or indirectly the majority of the shares and to have majority of votes in the management and control of the TTAŞ.

In the same article, the privatization of the TTAŞ was designed to let the government to have a golden share to control, approve and being influential in the activities of the company like; basic agreement differences, establishment of new companies or joining in other companies, joining to international telecommunication unions or being subject to international agreements, the transfer of shares to the others or the approval of the transfer of the shares. The golden share is presented by a member of undersecretary of Treasury, and have a right to join the general meetings of TTAŞ without joining the capital savings and without taking profit rates.

According to this article of the law, also the selling procedure of the shares were redesigned and the previous law 4161's first article was amended. According to the new situation, the employees of TTAŞ and other little investors will have share of 5% in the company with the public share offerings. After the value determination process of the Commission, the issues of which selling method will be used in what percentage of the shares will be decided with the views of General Privatization Office (ÖİB), suggestion of the Ministry of transportation and Communications and approve of Council of Ministers. Stocks and bonds that can be changed to shares can

be produced with the principals and methods that are to be decided by the Council of Ministers or a credit or a loan can be borrowed. In the block selling of the shares, the method of “reserved proposals” will be used. The bidding requirements will be declared at least 45 days before the bidding starts and the results will be declared in 15 days in Official Paper and two national news letters in Turkey and in one international channel at least for once. The transfer of the shares after the bidding process is to be approved by the Council of Ministers. Undersecretary of the Treasury Ministry is responsible for signing the selling agreements of the shares. The third item of the law 4673 (the added article 19 of 406) is also related with the revenues of selling of the shares of TTAŞ. Previously made law 4107’s 3rd item was changed. And with this new law, the revenues from selling the shares of TTAŞ will be given to the Treasury.

According to the 5th article of 4673 (the added 21st article of 406) the value of the shares of the TTAŞ will be valued in the Valuation Commission and the bidding process will be carried out by the Tender committee. The commissions will be established by two members from ÖİB, two members from Ministry of Transportation and Communication and one member from the Treasury Undersecretary of Treasury. One of the members from the ÖİB will head the Commissions. In the process of privatization and bidding process additional domestic and international counselors can be used without joining the Commissions. All the expenditures related with the Commissions will be afforded by the privatization fund. This article of 4673 amended the 3rd article of the law 4161 promulgated in August 1996. Because of the fact that the government coalition could not agree on the privatization program of the TTAŞ according to the IMF’s requirements about the TTAŞ’s privatization; no bidding process was active after the law 4673 was promulgated in May 2001.

The new government (AKP) came into power in 3rd of November 2002, prepared an Immediate Action Plan (AEP/Acil Eylem Planı 2003) in January 2003 in which the privatization program was playing a major role. Together with other state economic enterprises, the privatization of the TTAŞ was also included in the program. In the development plan, the preparation of a telecommunications law that integrates all the telecommunication laws was included in the first year of the plan.

Despite the fact that a law (4971) which was not only related with telecommunications services, was established, a new law draft is being prepared and discussed in the commissions of the National Assembly.

5.4.1.8. The law of 4971

According to the Başbakanlık (2003c)²⁴, this law went into force in August 2003. In the 13th article of the related law (2nd article of the 406), it was stated that the responsibility agreements of Türk Telekom regarding the presentation of telecommunication services and management of telecommunications infrastructure are sent to the State Council and agreed on after the time period that mentioned in Constitutional Court passes. The right of Türk Telekom about the ownership of the telecommunications network is to be continued after the end of the responsibility agreement. According to this article of the law, the responsibility agreement determines which telecommunication services or GSM telecommunications services will be established and in what conditions the services will be provided.

In the 15th article of the same law, it was declared that the revenues coming from selling the bonds and stocks that can be transformed into or changed into the shares and other revenues from the selling of the shares of TTAŞ and the revenues coming from the given permissions (telecommunications license, general permission, privilege agreements) are to be taken by the Treasury.

Moreover in the 16th article of the same law, it was stated that all the expenditures that were afforded by privatization fund will be repaid to the privatization fund after the privatization and the authority to sign the related counseling agreement and the mediation agreement that is necessary in the public offerings is the ÖİB with the suggestions of Tender committee.

The 17th article of the 4971 is the temporary 7th article of the 406 which states that the AYCELL Communication and Marketing A.Ş. which was established to present GSM 1800 mobile telephone service can be united with the an operator which works through another GSM 1800 license agreement through establishment of a new firm based on Turkish Commercial law (Türk Ticaret Kanunu). With this law,

²⁴<http://proje.basbakanlik.gov.tr/mevzuat/mevzuat.asp?Mevzuat=&MevzuatNo=4971&Nitelik=&MevzuatTuru=1&MevzuatTertip=&Yil1=&Yil2=&Ara=Bul&Arama=fihrist>

the Telecommunications Institution is authorized to make all the related process and regulations of the licenses. Only after this law AYCELL and ARIA was united in 2003, as previously mentioned.

Two other laws are to be promulgated by the National Assembly as it was declared in the (AEP) Immediate Action Plan declared in 03 January 2003. The first one is about ownership rights of Treasury over TTAŞ; the second is about adapting to the ITU's new union agreement and principles.

5.4.2. IMF, World Bank, WTO and Turkish Telecommunications Policy

As Geray explains (2003:142) there are four different aims that determine the strategic telecommunications policy till the 1990s. 1. National Security reasons, 2.being a NATO country in the period of cold war, 3.sustaining public order, 4. Liberal/export oriented national economic policy. Especially the fourth aim lets for the development of main telecommunications network all over the country and the first aim supports the domestic production of telecommunications hardware technology. We can see the related tendencies in the DPT's development programs till the year 1994.

Especially in the periods of problems in foreign relations like the problems with US and other NATO countries in the Cyprus crisis (Geray 2003:143), the need to have a well developed telecommunications network, having competence in electronic manufacturing and having domestic production in telecommunications technology brought out. Afterwards the telecommunications network digitalization started after 1979 with the request of NATO.

Another military aim was sustaining public order especially regarding the problems with the Kurdish rebellion movement led by PKK. It was planned to have all the rural areas with telephone network. As Geray (2003) mentions that till the 1990s, the telecommunications policy was strategic with the supervise and control of Military, DPT and the government.

However, as the political conjecture changed with the resolving of the Cold War and the extension of idealist model in the telecommunications conjecture especially with in the World Bank, WTO, and IMF, Turkish emphasis in the strategic model for telecommunications development has turned into the idealist model. This

shift in policy making is mainly based on the foreign debts and budget deficits. Not only PTT but also other state economic enterprises became subject to privatization. Other developing countries such as Latin American countries of Argentine, Jamaica privatized their state-owned telecommunications facilities for the same reason; budget deficit and foreign debt.

IMF gives its credits based on the commitments of developing countries like Turkey to make restructuring reforms. The reason of these reforms suggested by IMF is to decrease the foreign debts and foreign debt accounts. These restructuring reforms mainly include the privatization of state owned companies, economic deregulation, the narrowing of public investments, enforcement of liberal market.

Since the 1980's the World Bank was advising corporatization of state owned telecommunications company and supporting investments and innovations in the network of telecommunications. Nevertheless, the World Bank shifted its policies from supporting infrastructure developments in developing countries to give credits based on restructuring programs including the privatization of the national telecommunications company. The shift in the World Bank's (1993:199-204) policy regarding Turkey can be seen in its report in "Turkey: Informatics and Economic Modernization" ; the suggestions were made to reach information based economy. The related problematic areas in the suggestions were; the determination of tariffs by PTT, the lack of competition, not competitive pricing policy, and high telephone tariffs. The World Bank suggested to separate the Post services from telecommunication services, to end the monopoly in telecommunications, to establish an independent regulator for telecommunications, to increase the diversity of services, to liberalize the value-added services, to develop human capital, informationalizing the public sector management. The credit project agreement of World Bank signed in 1994, Turkey commits to develop legal and regulatory framework and prepare investigation plan for increasing private investments in infrastructure sectors.

Geray (2003:145) mentioned that this report both ignores the importance of developing the domestic hardware manufacturing in information and communication technologies and also the importance of universal service for the development of the country. Increasing the capacity for domestic hardware manufacturing became

important in gaining competence in the world telecommunications market. Geray (2003:146) also mentions that while the universal service principle is included in the GATT's supplementary paper of Telecommunications and regulatory reform reference, the World Bank did not include the universal service right in its proposals for Turkey. World Trade Organization structured the protocol in telecommunications in 15th of February in 1997. According to the protocol, member countries have commitments regarding the liberation of some services in telecommunications. According to the telecommunications agreement of WTO, Turkey committed to end the monopoly of the TTAŞ and liberalize market with permitting other operators in telecommunications services in voice, telex, fax and private leased circuit services till the 31st of October 2005 at first, then decreased time to the end of 2003.

The same agreement also requires the separation of the regulator from the operators. Although it is not necessary according to the GATS commitments Turkish government established a regulatory institution which is not only separated from the operator but also autonomous from the ministry with the suggestions of IMF and the World Bank and with the aim of adopting to the EU regulations for telecommunications.

Geray (2003:146-149) also mentions how the TUENA master plan was established after the report of the World Bank. After, the report of World Bank, some Academics, Turkish Technology Development Foundation (TTGV) and Türk Telekom, the manufacturers of ICT came together and decided to formulate an alternative plan (master plan) for the telecommunications sector development. This plan was presented to the Technology development fund of the World Bank to find financial resource but their proposal was rejected. The main objective of the plan was to research and analyze how a strategic information/communication infrastructure development can be achieved and to formulate a vision for the government, local hardware manufacturers, Türk Telekom and other related research & development institutions. The financial resources of the foundation for a Turkish National Information main plan (TUENA) was fund after the National Security Council General Secretary's suggestions to the government in 1996. The development of the main plan TUENA was started in 1997 and completed in 2001.

TUENA's basic vision can be explained by four principles; to utilize the general socio-economic interest at the highest level for sustainable development, to increase the domestic accretion value of ICT and telecommunications industry to the optimum level in order to make a leap, to claim for being the leader of the region in ICT sector in order to compete globally in ICT sector, to make the necessary changes in the institutional structure for applying these previously mentioned policies. TUENA was suggesting the extension of the universal service all over the country. According to the first principle of TUENA to achieve the sustainable development, the universal service right has to be enforced by laws and supervision of the regulatory institution. Moreover, it was suggested that the Turk Telekom could be the main operator in the establishment of national information infrastructure and for the extension of communication infrastructure in education, in health sector and public management.

Some of the policies that the TUENA suggested were implied in some governmental organizations but the plan as a whole could not be the primary plan for ICT development in Turkey. This was due to the government's emphasis on the idealist model enforced by the World Bank and the IMF. IMF policies required the cutting of any investment in the ICT or telecommunications sector. In this sense, in the latest laws restructuring telecommunications sector, the universal service right was not included after the discussions in the National Assembly in 2001 even developed countries (EU countries and US) and GATS has room for such funds for the development of telecommunications services nation wide. Because of the governments strict loyalty to the IMF's requirements; all other attempts of TUENA including the Information Society Council and National Information Technology Council could not be achieved. As Geray mentions (2003:149-153) There are other studies like TUENA such as the 81st Informatics Special Expert Commission and the 58th Electronics Manufacturing Special Expert Commission in the eight development plan's framework. These commissions' suggestions were harmonious with the suggestions of the TUENA. But the Communications Expert Commission in the plan includes idealist model suggestions rather than these suggestions.

Since the first commitment of Turkey to IMF includes the privatization of the Telecommunications Company, mainly TTAŞ, all the related commitments were

declared in the letters of intention together with the other privatization plans of the state economic enterprises since the IMF's main concern was reducing the existing debt deficits of Turkey. All the letters of intention are available in the web site of the Turkish Treasury Undersecretariat (T.C. Hazine Müsteşarlığı 2001)²⁵. By briefly examining the commitments of Turkey about the TTAŞ, we can easily see that all the related attempts of privatization process (laws, decrees and restructuring activities) were done according to the demands of IMF or agreements/commitments with IMF.

As Geray mentioned (2003:202) in letter of intention in December 9, 1999 which was given to IMF includes the commitments of Turkey for the privatization of TTAŞ. In the letter of intention the government declared that National Assembly made the necessary changes in the constitution that let for international arbitration in privilege agreements, let for the definition the comprehension of the government privilege in the law and specifying the role of the Council of State in reinvestigating the privilege agreements. After declaring this step, the government also committed to make the TTAŞ as private sector enterprise subject to the Turkish Commercial law and ensure the privilege of PTSN till the end of 2002. The second type of commitments is firstly to establish a telecommunications regulatory institution with a law (in 3 to 6 months after the law was established) and to prepare the legal precautions. Moreover the government declared that the income revenues from the privatization of the shares will be transferred to the Treasury and the telecommunications law will be prepared and later pass the Assembly's related commissions. As Geray claims (2003:202) all these conditions were accepted to get additional credit from IMF, to strengthen its treasury and to go out from economic crisis.

The law of 4502 was constructed in January 2000 consistent with the commitments. The new law also ratified to remove of the monopoly rights of TTAŞ after the end of the 2003 as declared in the letter to IMF under the title of development policy together with the previously mentioned commitments enabled after the legal reforms. The government also planned to start selling the shares of TTAŞ by 2001, but it could not. In the bidding process for privatization no company applied for the bidding. Moreover, Administrative Court decided to stop the

²⁵ All information was taken from the web site: http://www.hazine.gov.tr/imf_standby.htm

privatization process due to the complaints to the Court by Chamber of Electrical Engineers, the foundation of KIGEM, the union of public employees of Kamu-Sen and Haber-Sen.

In the letter of intention in 18th of December 2000, government declared that the privatization of the TTAŞ would be done with the selling of the 33,5 of the shares to the strategic partner with transformation of powerful management right. It was also declared that the bidding announcement was publicized in Official Gazette of 14th of December 2000 and the tender committee approved the bidding specifications at the same date. The government declared that till to the 14th of January, conditions for contract including the powerful management right and an information memorandum would be announced to the public which was a condition to end the 5th review. It was also declared that the tender committee would publish all of the related final documents of the tender and would wait for the proposals till to the 30th of March 2001 and would choose the winning proposal till the end of May 2001.

In 3rd of May 2001, with a new letter of intention to IMF, the privatization of the TTAŞ was reconsidered. The government demanded to be excluded from the performance criteria about collecting proposals till to the end of the March because of the inappropriate telecommunications market conditions for privatization of the TTAŞ. The government committed that it would make legal preparation with a new law about the privatization of the TTAŞ. The commitments were declared in the additional document of the intention letter:

1. except the gold share of government (will be held because of protecting National interests and security) all the shares of the TTAŞ will be let to sell,
2. to let the selling of the %5 of the shares to the small investors and employees,
3. to let the selling of the %45 of the shares to the foreign investors without rejecting the possibility that majority of the winning consortium can be foreign investors,
4. changing the tender committee members: one from Treasury Undersecretary, two from the ministry and two from the ÖİB,
5. to let the Treasury as the owner of the TTAŞ to make changes in the TTAŞ's main contract without the seeking the approve of the Ministry and to appoint TTAŞ's board of directors and management of it.

All these steps were declared as the precondition to end the sixth and seventh review of the IMF. In this document, there were also other commitments; firstly the ÖİB would be responsible for preparing a plan to privatize the TTAŞ and present the plan to the Council of Ministries. Secondly, TTAŞ would be commercialized with new administrative capabilities and with professional board of directors and thirdly a comprehensive commercialization plan would be made for TTAŞ. The commercialization plan was designed to sustain objective auditing with international standards, financial control and operational methods, to determine the necessary amount of employees, both extending the access for basic voice services and access to internet services.

As Geray mentions (2003:205), in the intention letter, the golden share right of government is based on the government's responsibility to ensure "national interest and security". Moreover, last item about extending the access to basic infrastructure of voice services to the rural areas and extending the Internet access is due to ensure the public interest in telecommunications services sector. As the author claims the policy makers felt that golden share right of government is not sufficient to ensure the access to basic voice service and Internet services and added the last item. Because government "felt" that the commercial telecommunications company would rather use the existing infrastructure than making new investments in the infrastructure to profit more which is called the 'cream skinning' behavior of the companies. According to this behavior, the commercial company would present telecommunications services (mostly value-added) for the high income populations of the urban areas rather than servicing for the lower income rural areas which require infrastructure investments.

According to the IMF commitments, the law of 4673 was promulgated in May 2001. But as Geray (2003) mentions this changes regarding the legal status of the TTAŞ did not meet the criteria asked by IMF. The problems rose about the members of the TTAŞ's board of directors. Finally, it was firstly appointed that the board of directors would have 7 members; three members would be appointed by the Ministry of Transportation and three members would be decided by the Ministry responsible from the Treasury and one member would be decided by both of the Ministries. But afterwards the members of the board were increased to nine. Despite

the Minister of Communications and Transportation insisted that the General Director would be at the same time the head of Board of Directors, finally it was decided that the two positions to be held by two different people.

In the intention later dated 26th of July 2001, it was declared that to meet the conditions for completing the 8th review, a new professional board and management team would be put in place shortly. The new Telekom Board's responsibility would be to adopt a corporatization plan. Also the government declared that the Privatization Administration was working on a privatization plan in accordance with the new law, which the Ministry of Transportation would present to the Council of Ministers as soon as the plan was finalized. Even if it was stated that the privatization Agency was moving ahead with the privatization of assets in its portfolio, the timing of the privatization remained unclear based on market conditions. In this letter, the government clearly does not differentiate the privatization of TTAŞ from other privatizations and only worry about the selling price of the shares of the TTAŞ.

In the intention later dated 31st of 2001, the government declared that TTAŞ would contract advisors by the end-October 2001, to develop a corporatization plan acceptable to the World Bank by the end of 2001. The also government stated that the Tender Committee for the privatization would be appointed quickly and the Privatization Administration would start the preparation of the privatization plan (structural benchmark) which was expected to be completed by the end of 2001.

In the intention letter of 3rd of April 2002, the government did not mention about the privatization of TTAŞ, probably because there was not any new development in the privatization process. In the intention letter dated 19 July 2002, it was declared that a commercialization plan that was prepared with the assistance of the international advisors was approved by TTAŞ board of directors in 4th of June 2002. This plan suggested the restructuring of TTAŞ as reorganized according to the type of business such as basic infrastructure, fixed infrastructure services and mobile services. In this letter, the steps to privatization which was approved by tender committee in 31st May 2002 was declared. These steps firstly include the revaluation of the shares of the TTAŞ, secondly to employ international advisors till to the end of August to advise in the valuation process, thirdly, to change telecommunications law in order to let for the selling of the shares of different firms and participants of the

TTAŞ company. The restructuring of the TTAŞ Company with its firms and participants till to the end of October 2002 was planned to let for their privatization together or separately.

In the intention letter dated 30th of July 2002, the government declared that preparations for the privatization of Turk Telekom (TT) are proceeding according to the road map approved in May. The tender for an advisor on TT's revaluation was announced on 8th of July, and the advisor will be selected in August.

In the intention letter dated 5th of April 2003, the government declared that the government was unable to adopt a privatization plan (structural benchmark) by the end of November 2002 since the necessary changes in law of telecommunications could not be made because of the elections. The government also claimed that the plan could be approved by the Council of Ministers by the end of April 2003. The declared alternatives for privatization were block sale, combination of block sale and public offering or a public offering or perhaps provisions for convertible bond offerings. According to the In 25th of July 2003 IMF letter of intent that has been declared in the web site of "T.C. Hazine Müsteşarlığı" (2003b)²⁶, Turkish Republic gave promises related with the TTAŞ privatization:

We have given privatization renewed impetus, making all tender announcements for the first half of 2003 as planned, although the actual sales of most of the large companies are still some time away ... While the end-April benchmark relating to privatization plan for Türk Telekom was missed, we have built on the Council of Ministers' principle decision of April 30, 2003 and have agreed with the World Bank on the next steps that need to be taken. We expect that the Council of Ministers will adopt the privatization plan by the end-October 2003 (the structural benchmark will be moved accordingly, from the end-April to end-October)

5.4.3. The Problems in the Privatization Process

The main reason for being unsuccessful in the privatization of the TTAŞ was the complaints and applications to the Court for the cancellation of privatization process and the legal restrictions for the privatization of telecommunications.

Secondly, the political determination was not evident to make the reform. Turkish governments were not strongly attached to the privatization aim and

²⁶ http://www.hazine.gov.tr/Standby/5GGNM/5ggnm_eng.htm#

process. In all the developing countries like Turkey, a strong commitment to the privatization is needed to handle the privatization process.

Thirdly, the timing of the privatization of the TTAŞ was very unsuitable; since there was political uncertainty, the economic crisis and the international companies of telecommunications had extended their investments to other countries before and became more selective in their future investments.

Fourthly, the international companies give a great importance in obtaining information on the financial situation of the target companies, future investment capabilities and demand structure of the services to evaluate the prospective profits and risks of the company. It is uncertain if the value determination Commission could have clearly figure out the situation of TTAŞ to the investors.

Concerning the risks of investing the shares of TTAŞ, one of the most important variables is the regulatory environment of the telecommunications company. Since the legal and judiciary structure of Turkey is confusing and not well functioning for constructing unclear regulatory environment, the investors found the investment highly risky. Moreover, the investors of the TTAŞ will prefer to own a monopoly, which can complicate the problems more.

5.5. The Regulatory Structure of Telecommunications Sector

5.5.1. The Regulatory Institutions

The regulation of telecommunications Sector in Turkey is handled through the institutions; “Radyo ve Televizyon Üst Kurulu”, “Haberleşme Yüksek Kurulu”, “Telsiz Genel Müdürlüğü”, “Haberleşme Genel Müdürlüğü”, “Rekabet Kurumu”, “Internet Üst kurulu”, “Telekommünükasyon Kurumu”.

The highest Telecommunication authority is the Transportation and Transportation and Communications Ministry in Turkey. It is the decision making center for the telecommunication policies. “Haberleşme Genel Müdürlüğü”(General Directorate of Communication) and “Telsiz Genel Müdürlüğü” (General Directorate of Wireless) are responsible for communication planning policies. All this institutions established at different times to handle different kinds of problems,

which led to differing organization styles, responsibilities and duties. This caused confusions in determining the responsibilities of the organizations.

There are other institutions responsible for communication policies. In the following titles, these institutions will be analyzed.

5.5.1.1. “Radyo ve Televizyon Üst Kurulu (RTÜRK)”

It was founded in 13 April 1994 with the law of 3984 to regulate and control the activities of Radio and Television broadcast and to ensure the political objectivity in the broadcasting. The law 3984 includes all the broadcasting facilities with electromagnetic waves and other instruments nation wide and outside the national borders. With the changes in the law by the law 4756 in 21st of May 2002, internet and other network’s broadcastings were decided to be regulated by the institution. This regulatory body is a Commission with nine members who should have a University degree and chosen by the members of National Assembly from different political parties.

Some of the most important responsibilities of the Commission is; to plan the national and regional frequency bands, to give broadcasting permission and licenses to the applying firms that has fulfilled the conditions, to give the related companies the licenses for the set up and managing of the transmitters, to control the transmitter establishments, the control of the broadcasting facilities according to the international arrangements and standards, to give and implement sanctions in case of unacceptable broadcasting facilities.

5.5.1.2. “Haberleşme Yüksek Kurulu (HYK)” (Higher Committee of Communication)

This institution was founded in 5 April 1983 with the 2813 wireless law. The members of the “HYK” are the Commission members; the Interior Minister, Transportation and Communications Minister, National Security Commission General Secretary, National Intelligence Organization Undersecretary, General Staff Communications Electronic Chief. The Commission is the general directive unit in the area of wireless communications. This Commission is the authority to implement the principles that were defined in the general telecommunications law in 27 January

2000. The Commission was also authorized to implement “government authority and responsibility” and other duties that were specified in the law. however the responsibilities of the Commission in the seventh development plan are; to decide on the services to open for competition, to decide on the criteria for licenses, to decide on the quality requirements and to control them, to decide on the standards for telecommunications and type approvals, to sustain balanced investments all over the country and to follow and to carry out the relations with international telecommunication developments.

5.5.1.3. “Haberleşme Genel Müdürlüğü (HGM)” (General Directorate of Communication)

It is founded in 3 May 1995. Some important responsibilities of the organization is; to control and implement the principles of the establishment, development and coordination of the Post and Telecommunication facilities and services according to the social, economic, technical needs and national security aims, to investigate and define the needs for Communication and accordingly plan and coordinate the needs, to investigate the tariffs of Telecommunications and Post services nationally and internationally, to join in the international standardization of telecommunication services and coordinate the implementation of them, to examine and investigate the manufacturing of communication equipment and the related industry.

5.5.1.4. “Rekabet Kurumu” (Competition Institution)

With the aim of preventing anti-competitive behaviors of the companies, the regulatory institution of Competition institution was established in 27 February 1997. The competition institution is responsible for sustaining a competitive environment for the free flow of goods and services. This organization has financial and administrative autonomy from the state. It is connected to the Ministry of Industry and Trade. The institution can carry out investigations upon the complaints or independent of such applications

It has to consider the views and regulations of Telecommunications Institutions in the investigations and the decisions about the telecommunications

sector. In the agreements relating with roaming, reference standard telecommunications tariffs, and interconnection; in the management of telecommunication services and the infrastructure; the telecommunications institution can apply competition policy in necessary conditions.

The privatization or the transfer of the public shares to private hands is validated through applying Competition Institution and gaining its permission. If the privatization is to be done without ending the exclusivity rights of the public company, it is necessary to apply to the competition institution before the privatization. This is to achieve the implementation of competitive market conditions after the privatization process.

5.5.4.5. “Telekomünikasyon Kurumu” (Telecommunications Institution)

It was founded in 27 January 2000 with the law of 4502 as “independent Autonomous Undersecretariat”. But it started to function in 15 August 2000. It is connected to the Transportation and Communications Ministry. The highest unit for decision making is the Council which have one head, and four members. The members of the Council can not be removed from duty if they do not commit crimes that were specified in the law and abuse their duty. A member of a Council can be chosen for a second five-year period. The head of the Council is chosen from the nominees that the Minister of Transportation and Communications has declared, the member presenting the telecommunications sector is chosen from the nominees that the telecommunications operators with have market share over %10 or manufactures of telecommunications equipment suggested. The member presenting the consumer is chosen from the nominees that the Ministry of Industry and TOBB. These conditions for appointing members of the Council were established to achieve autonomy from the Ministry. The budget of the Institution (accumulated from the license, testing services and %0.05 shares from the profits of the operators) was designed also to ensure the autonomy of the institution.

The main responsibility of the institution is to regulate the telecommunications sector according to the law of 4502 and 406. Some of the responsibilities of the institution are (Telekomünikasyon Kurumu 2004a)²⁷;

²⁷ http://www.tk.gov.tr/tk2/Kurum_hakkinda/Kur_Gorevleri.htm

1. to prepare the plans of telecommunication service issues and to present them the Transportation and Communications Ministry and accompany the other institutions and organizations and real and private law corporate bodies in their activities as specified in the general law of telegraph and telephone and wireless,
2. to be informed about the technological innovations in telecommunications sector being in corporation with Universities and manufacturing firms and to support domestic manufacturing in telecommunications and participation in international facilities,
3. to follow, to control and to investigate, to evaluate all the practices according to the laws,
4. to carry out all the frequency planning, allocation and registration activities with considering capacity and broadcasting time in coordination with international organizations,
5. to investigate how the operators carry out telecommunications services and operate the infrastructure of the telecommunications and to investigate all the behaviors, practices, and plans that are against competition both in these services sector and in the general telecommunications sector after complaints or by its own initiative and demand all the information and documents for its investigations,
6. to examine and explain views about licenses, general permissions and concession agreements, to establish and implement all the necessary decrees and other official regulations in its responsibility area of operating telecommunications infrastructure to control the obedience of operators, subscribers, users and all the other corporate bodies and real people to the legal regulations and to inform related offices and implemented sanctions in cases of necessity,
7. to suggest its views about all the related investigations and decisions of Competition institution including taking over and merging of operators,
8. to decide on authorization type, authorization principles and methods, authorization conditions and implication procedures for every telecommunications service,
9. to regulate and control the using of licenses, general permissions and privileges according to the laws and regulations, to stabilize and implement all the standards in

the telecommunications systems and equipment which are base of manufacturing and usage in coordination with domestic and international organizations and considered the temporary developments,

10. to decide on and publish the names of the operators which have to sustain interconnection and roaming for other operators,

11. to keep interconnection agreements between the networks of different operators and to announce this agreements with taking necessary precautions for protecting the privacy of the firms,

12. to establish decrees and other legal regulations which show the implication principles of the law 406's 10th item, standard reference tariffs, and details of the interconnection and roaming agreements,

13. to process conflict resolving procedure regarding interconnection agreement with the application of the side demanding interconnection if the sides could not achieve a decision in three months,

14. to determine the rules, conditions and tariffs of interconnection agreement if the sides can not agree on an interconnection agreement,

15. to decide on the general issues of all tariffs regarding the methods and principles, to examine, control, evaluate and approve the tariffs.

With the law of 4673 in 2001, the responsibility to give licenses regarding the telecommunication infrastructure and services was transferred to the Telecommunications Institution from the Transportation and Communications Ministry. The lowest prices for licenses are determined by the Council of Ministers with the suggestions of the Ministry of Transportation and Communications. Moreover, the plans for concession agreements are planned by the Institution but approved by the Council of Ministers with the suggestion of Transportation and Communications Ministry.

5.5.1.6. Internet Üst Kurulu” (Higher Committee of Internet)

This institution was founded in January 1998 with the primary aim of counseling the Ministry of Transportation and Communications. The related goals of the institution are; to prepare the national strategic plan of Internet services in short, medium and long-term implications, to view and determine the problematic areas in

Internet services and to find solutions to them, to coordinate the efforts of the related institutions, to make regulatory comments on the issues of development and penetration of the internet services, to examine and evaluate the internet service development internationally for national security and development reasons. The institution includes the related private companies, users, and the public institutions with the head of Ministry of Transportation and Communications.

5.5.2. Basic Regulatory Issues

As declared in the web page of Telecommunications Institution (Telekomünikasyon Kurumu 2004b)²⁸, the main working areas of telecommunications sector regulation are authorizing operators to give telecommunications services (general permission, entrusting agreements, concession agreements and licenses), regulation (legal, economic and technical) and supervising (regulation supervising and spectrum control). The telecommunications institution declares that it will continue its function with making new technical, legal and economic regulations till to the end of deregulation process by which its function of regulation will be minimized but its responsibility to establish competitive environment in sector will continue with supervising and conflict management duties. According to the Telekomünikasyon Kurumu (2004c)²⁹, the economic regulation that are to be established till to the end of the deregulation process (mainly till to the privatization of TTAŞ and prospected liberalization in the market) is related with the regulations to determine the tariff rates of both the services for subscribers and for the operators between themselves. There is a tariff decree established by the Institution and published in Official Gazette in 28th of August 2001. With the decree published in Official Gazette in 11 January 2001, the TTAŞ is to use Maximum Pricing Method in its tariffs and the tariffs of the services presented by GSM operators are to be determined with the privilege agreements between the operators and the Institutions with a maximum period of six months.

²⁸ <http://www.tk.gov.tr>

²⁹ http://www.tk.gov.tr/Duzenlemeler/Ekonomik_Duz.htm

According to the Telekomünikasyon Kurumu (2004d)³⁰, with the law of 4502 that has changed the law 406, Telecommunications Institution supervises if the operators function in accordance with the conditions of their license agreements, the personal telecommunications system equipment are appropriate with the standards, the telecommunications sector behave in accordance with the legal regulations and control the spectrum usage. The institution has also power to implement sanctions in necessary conditions to the misbehaved operators.

According to the Telekomünikasyon Kurumu (2004e)³¹, with the law 4673 that was published 23rd of May 2001 in the Official Gazette, to plan and sustain an authorization regime, to make the necessary regulations to sustain this regime and implement these regulations in relation with the related operators are the responsibilities of the Telecommunications Institution. According to the regulatory classification of Telekomünikasyon kurumu (2004f)³², there are four authorization types. First one is the entrusting agreements. It is defined as the agreement between TTAŞ and the Institution which is an agreement regulating all the right, authority, and responsibilities of TTAŞ in carrying out telecommunications services and operating telecommunications infrastructure for a period of time that the institution agrees on. It is a privilege agreement which is done with TTAŞ. Aycell and TTAŞ made entrusting and GSM entrusting agreements with the institution.

Second authorization type is the concession agreements which are the agreements between the operators of telecommunication services and the institution about the telecommunications services that can be given by limited number of telecommunications operators in the national boundaries. While the authorization responsibility is to be done by the institution, the authorization of privilege agreements has to be approved by the Council of Ministers according to the law of 4673. The operators that has signed concession agreements are; TELSİM, TURKCELL and İŞ-TİM.

The third type of authorization is licenses which are given for operating telecommunications infrastructure and/or carrying out telecommunications services

³⁰ <http://www.tk.gov.tr/Denetleme/Denetleme.html>

³¹ http://www.tk.gov.tr/Yetkilendirme/Yet_Tanimi.htm

that were declared in the license. There are two types of licenses. First one is telecommunications services that are not national wide but has to be done by limited number of operators. The second type is given for telecommunication services that do not require a limited number of operators. Nowadays, only second type of license is given to the Satellite Telecommunications Service Providers, Satellite platform Service Providers, GMPCS Mobile Telephone Services, Providers of Data Transmission Services over Fixed Lines.

The fourth type of authorization is the General Permission which is defined as the “general regulatory process in which the operators are authorized to carry out a telecommunications service based on registration to the institution and appropriateness to certain general conditions”. These services are including message services over the mobile networks and the internet services over the fixed network (ISS) which does not have to be supplied by a limited number of operators. The first type of services that are subject to general permission are not evident in Turkey till to the privatization of TTAŞ.

5.5.3. The Problems in the Regulatory Structure of Telecommunications Sector

Mainly the problems of Telecommunications Sector regulation are based on the inefficient design and establishment of the related regulatory institutions. These institutions are not having well-separated functions and are not connected to each other either. They were established to solve the contemporary problems with short-term analysis. All the emerging problems intended to be solved independent of other problems and structures constructing a confusing regulatory system. Moreover, their autonomy from the ministries or the government is effective in policy making since the legal structure is highly complex and the policy of telecommunications could not only be established by the ministry alone and related bodies should participate in coordination with other development aims of the country. The only decision regarding the telecommunications policies is seem to be the privatization which was strictly imposed by the IMF and the World Bank. No other telecommunications policy was attempted in order to gain competitive advantages in world market or to improve telecommunications services in the country.

³² http://www.tk.gov.tr/Yetkilendirme/Yet_Turleri.htm

Secondly, there are contradictions between the responsibilities of “TGM” and “RTÜRK” in the issues of frequency planning and frequency allocation. How to allocate the frequencies and which institution’s control are still ambiguous. Thirdly, there are no precautions or rules preventing the anti-competitive behavior of the TTAŞ. This let the daily influence of government or the unfair practices in interconnection agreements for the advantage of TTAŞ. The Telecommunication Institution is especially under the political pressure of government in the interconnection agreements.

Fourthly, the license agreement requires maximum price regulation, which is preventing competition and giving advantage to TTAŞ in value-added services. Although the private companies were permitted in value-added services, TTAŞ is still the incumbent operator controlling the market.

All these problems show a lack in the coherence of regulatory bodies. Implementation of regulatory functions has to be planned under the leadership of one governmental body which is functioning according to the telecommunications sector policies and the general development goals of the country. Moreover, the relation of regulator with the executive body or the government is important in the functioning of regulatory system. Firstly, the process of policy making in regulatory matters has to be clearly bounded to the national telecommunications sector policy. Secondly, if the responsibilities and rights of the regulator and executive is clear and applicable in regulatory matters, the arbitrary decisions of the politicians and bureaucrats will be prevented. Perhaps, in the countries like Turkey, more strict regulations are needed to prevent the arbitrary decisions.

Although the regulatory system was designed to behave autonomous institutionally in Turkey, certain differences have to be made on the legal and judicial system to give it proper regulatory strength. Firstly, if the laws were less ambiguous and judicial system was more faster, the objections to the decisions of the regulatory mechanisms could have been handled more easily. If any company working in telecommunications service sector applies to the court about the regulatory issues or the acts of the regulator; the court can make a decision after a very long time. Therefore, as the example of the problems of Aria and Aycell with Telsim and Turkcell shows, the government or executive body intervenes and find

short-term solutions like making amendments in the law and enforcing the marriage of Aycell and Aria.

The proper functioning of a regulatory institution also needs high managerial qualifications. High managerial qualifications are needed to interpret and to solve the complex issues of regulatory problems without taking sides and preventing social conflicts. If the regulator has high managerial qualifications, it is able to make decisions and apply them with long-term analysis. This requires expert knowledge and foreseeing ability in legal and judicial matters.

As Levy and Spiller point out (1996); the legal and judicial structure can be used both to prevent arbitrary decisions and to achieve necessary flexibility in the implementation of the regulations. Policy makers can achieve this balance with proper examination of national decisions with the aim of achieving strategic national telecommunication policy.

Moreover, the consumers demand and needs have to be considered more on the regulation of prices and tariffs. The complaints of service quality and prices can only be handled through well-established regulatory and legal structure.

5.6. Conclusion

This chapter examines the Turkish telecommunications sector. The first section of this chapter is about the historical development of the sector. While examining the sector development, first concern was to understand the state policy about telecommunications sector with examining DPT plans, second concern was to understand the reactions of governments to the new technology through set up and revenue-sharing agreements. As seen in the development plans, the governments changed their policy towards privatization and liberalization of the sector from being security related, state-owned monopoly of services. Moreover, the government has tried to establish the necessary network and investments for cable TV, Internet services, Packet Switched Data services and Satellite Ground stations through set up and revenue-sharing agreements. Furthermore, as it is seen in the section, GSM service is the only service which has been opened to competition since 1994.

As in the Mexico chapter, the second, third and fourth sections are related with privatization of the telecommunications company. Unlike Mexico, privatization

was not completed. Therefore, the section for privatization process examines the attempts of privatization through amendments made in the laws 406 and 2813. The fifth section is about the regulatory structure of telecommunications sector. As done in the Mexico chapter, a summarizing table about regulatory structure was prepared.

Table 5: Regulatory Structure in Telecommunications Sector in Turkey

Name of Institution	Foundation Date	Main Responsibility
Ministry of Transportation		Decision making center for telecommunication policies
Higher Committee for Communication (Haberleşme Yüksek Kurulu/ HYK)	April 1983	Advisory council for license giving, decided and controls quality requirements, decides on standards for telecommunications and type approvals.
Higher Committee of Radio and Television (Radyo ve Televizyon Üst Kurulu/ RTÜRK)	April 1994	Making plans for national and regional frequency bands.
General Directorate of Communication (Haberleşme Genel Müdürlüğü/ HGM)	May 1995	<ul style="list-style-type: none"> • Controlling and implementing principles of the establishment development and coordination of Post & telecommunications facilities and services according to the social, economic and technical needs and national security aims. • Joining international standardization of telecommunication services and coordinate the implementation of them.
Competition Institution (Rekabet Kurumu)	February 1997	<ul style="list-style-type: none"> • Preventing anti-competitive behaviors in the market. • Advising Telecommunications Institution in the agreements of roaming, reference standard telecommunications tariffs, interconnection if required.

TABLE 5. C'ed

Name of Institution	Foundation Date	Main Responsibility
Higher Committee of Internet (Internet Üst Kurulu)	January 1998	<ul style="list-style-type: none"> • Preparing the national strategic plan of Internet services in short, medium and long-term implications. • Viewing and determining the problematic areas in Internet services and finding solutions to them. • Examining and evaluating the Internet service development internationally for national security and development reasons.
Telecommunications Institution (Telekomünikasyon Kurumu)	January 2000	It is main responsible regulatory agency to implement competition policy. All the important regulatory decisions (in the matters of license giving, spectrum allocation, tariffs interconnection and roaming agreements) are taken by this Institution with

As seen in the table 5, the regulatory structure in Turkey is including many regulators and interrelated and overlapping responsibilities of them. Some institutions have the same or similar responsibilities which can cause contradictions in implementation of regulatory mechanisms.

Moreover, as the main laws related with telecommunications (406 and 2813) are not explaining regulatory mechanisms in the issues of interconnection, roaming, spectrum allocation and tariffs in detail, implementing regulatory policies becomes difficult. In the sub-section of basic regulatory issues, the authorization types that the Telecommunications Institution implements were viewed. The institution gave this kinds of authorization for GSM services (licenses given to TELSİM, TURKCELL and İŞ-TİM), ISS, Satellite telecommunications Service providers, Satellite platform Service providers and providers of Data Transmission Services over fixed lines.

Considering the liberalization process in telecommunications service sector in Turkey, three points can be made.

- The national long distance and basic local services are under monopoly of Turk Telekom.
- Only cellular mobile services were opened to competition.

- Fixed wireless services are also under monopoly of Turk Telekom.

To sum up, as the chapter shows telecommunications sector policy in Turkey was not developed in order to liberalize the basic telecommunications services. The main reform activities of national telecommunication sector policy was founding new regulators (Competition Institution and Telecommunications Institution and Higher Committee of Internet) and the privatization attempts.

CHAPTER 6

CONCLUSION

6.1. Comparison of Mexican and Turkish National Telecommunications Policies

In this thesis, national telecommunications sector policies of Mexico and Turkey has been examined. As being a developing country having economical problems and a economic history having crises, Mexico has transformed its telecommunications sector with liberalization policies. Mexico firstly privatized its telecommunications company (Telmex), and then opened all the telecommunications services to competition. Like Mexico, Turkey seems to follow the same route in telecommunications sector policy; firstly privatizing the TTAŞ and then opening the basic services to competition. Mexico was a chosen as an example of a developing country which has privatized and then liberalized its telecommunications services sector.

The first kind of variable that affects national telecommunication sector policies is the political (executive), legal and judicial background of the countries. Table 6 summarizes the information about the political, legal and judicial background of Mexico and Turkey.

Table 6. Political, Judicial and Legal Background in Mexico and Turkey

	Judicial Commitment to privatization	Political Stability	Legal Stability	Dealing with Oppositions to privatization
Mexico	Courts were not active in privatization. No attempt was made to block privatization	Stable and Decisive Party (PRI) active in Privatization program	Only 1995 Federal Telecommunications Law is active.	Labor Union (STRM) and Managerial staff of Telmex was persuaded to privatization
Turkey	Civil attempts were successful blocking privatization with court decisions	Coalition governments	Several laws made changes in the laws of 406 and 2813.	No serious attempt was made to persuade opposition groups.

As briefly summarized in the table 6, Mexican telecommunications policy was constructed with the leadership of a powerful central government in a federal system. At the time of privatization of the state-owned telecommunications company (Telmex), the government effectively planned and implemented the privatization process of the company. The oppositions for the privatization were taken under control with persuading the beneficiaries (managerial staff and STRM: worker union of Telmex) of the existing system. The government of PRI was decisive in firstly privatizing Telmex and then liberalization of the telecommunications services.

The main reason of the cohesiveness of the deregulation policies in telecommunication services sector was the government's main economic plan. At the beginning of 1980s the government applied a development strategy based on liberalization of the national economy and stimulating international trade. In this sense, Mexico joined GATT, NAFTA and other trade agreements to liberalize its economy. Thus, the government designed a new regulatory reform program by creating an economic deregulation Unit at the Ministry of Trade and Industry. The new deregulation policy program (ADAE) was established in 1995. In sum, the privatization of its telecommunications company and deregulation of telecommunications services sector was an important and integrated element of deregulation plan in the national economy.

The Judicial structure of the country was under the political pressure of government party; all the important judicial decisions were taken after the president's

approval. Therefore, there were no judicial objections to privatization or any judicial attempt to prevent privatization process with any court's decision. There was no legal prevention for privatization of Telecommunications Company in the Constitution. Legal foundation for privatization and then liberalization of the telecommunications services were prepared with the government's decisive steps. The first attempt to legalize the telecommunications service sector deregulation was renewing the concession agreement for Telmex in 1990 just before privatization. This agreement clearly describes the new privatized company's obligations and rights while managing the telecommunications company. Second attempt was the new Federal Telecommunications law in 1995. This law explains the liberalization plan of telecommunications services sector in detail and briefly describes how the competition policy regarding interconnection, tariffs, licenses and permits would be implemented.

However, in Turkey, different coalition governments has started the process to privatize the telecommunications company but had been failed because of the objections to privatization and court decisions that blocked the privatization. Main legal disadvantage was that the law (406) was preventing the privatization of Telecommunications Company. Several laws were established to enable privatization by different governments. The laws explain how privatization has to be done and the managerial and administrative rights and obligations of the prospected privatized Telecommunications Company but there are several ambiguous points in the competition policy regarding the issues of interconnection, tariffs or concession agreements. The Turkish governments were neither so decisive in privatizing the company nor have prepared a liberalization program in telecommunications services sector. But the current government had established a similar deregulation unit and calendar to privatize several state economic enterprises one of which is TTAŞ and also declared that it will formulate a new telecommunications law to integrate all the laws and regulations.

The second kind of variable effecting telecommunications policies is the influence of international organizations in policy making which was summarized in the table 7.

Table 7. International Organizations' Effects on Telecommunications Sector Policy

	IMF/ World Bank Intervention	Customs Union: (NAFTA/ EU)	World Trade Organization (GATS)
Mexico	None	Very Influential	Influential
Turkey	Major Influence	None	Influential

As the table 7 shows, main advantage of Mexico was that there was no IMF restructuring loan obligating the privatization of the telecommunications company. Therefore, the country was largely independent in its decisions regarding with the restructuring of the sector and the privatization of the TELMEX.

Moreover, Mexico's membership in NAFTA agreement has increased cohesiveness in the deregulation policies of telecommunications sector. On the other hand, in Turkey, the telecommunications policy was not affected by its membership in European Customs Union.

After the establishment of telecommunication sector laws, both Turkey and Mexico have the same conditions for foreign investment in Telecommunications Company. After the last telecommunications sector laws, foreign investment in TTAŞ was enabled to the 45 % of the shares. In the process of privatization, TELMEX was not directly sold to the foreign investors since the country has foreign ownership restrictions limiting the foreign ownership to the 49%. Telmex was sold to a consortium of national and international investors (Southwestern Bell, France Cable et R.), which retained the control, and management of TELMEX by national investors officially. The country's advantage was the existence of national core investors willing to buy a telecommunications company. Also Turkey has planned to sell its company to a consortium of national and international investors.

Mexico also affected by international pressures of multinational companies more than other countries because of its regional status and its commitments related with its membership in NAFTA and WTO. The importance of the foreign ownership lies on the reality that multinational companies in telecommunications business captured the world market by extending their influence with servicing in many countries, constructing an oligopoly in telecommunications services of world market. The companies of AT&T, MCI and Sprint are all making telecommunications

business in Canada, US and Mexico in the sector segments of Wireless, Wireline Telephony, and Broadcasting /Media.

So if all the previous variables in formulating a telecommunications sector policy and a privatization plan are considered, the reasons of privatization of the state owned Telecommunications Company can be briefly described with table 8.

Table 8. Reasons of Privatization of Telecommunications Company

	Role of General Economic Policy	Role of International Debt Obligations	Role of attracting Foreign Direct Investment	Budget Deficit	Role of Increasing Sector performance
Mexico	High	Low	High	High	High
Turkey	Medium	High	Medium	High	Medium

As seen in the table 8, the reason that is most important in the privatization of the telecommunications company in both of the countries is budget deficit. This is due to the fact that both of the countries are having budget problems. Moreover, other striking difference is that Turkey has international debt obligations to IMF which enforce privatization. The difference in other variables; role of general economic policy and role of attracting foreign direct investment and role of increasing sector performance shows that Mexican sector policy is more oriented to the general liberalization policies to achieve economic development. Mexican government has believed that liberalization policy will increase sector performance and attract direct investment at the same time.

As the sections related with privatization in Mexico and Turkey explained, there are important points in privatization of state owned telecommunications company that is summarized by the table 9.

Table 9. A Summary of Privatization Process

	Mexico	Turkey
Methods in privatization	Selling of the shares with bidding process in which only selling partial stake to a consortium of domestic and foreign investors (Southwestern Bell and France Cable et R.), employees and other foreign investors.	The method for privatization has not been declared yet.
Selling price and terms for the company	20 billion USD. The government realized more than US\$6 billion for its 55% of Telmex, representing a price of US\$1,750 per line from the core investors and more than US\$5,000 per line in subsequent grounds. All sales were for cash. (Ramamurti 1996a:18)*	Not known
Process of privatization	1 year	10 years passed and still continues.
Given exclusive rights	Telmex was granted exclusive right to provide domestic and international public long distance service for six years; entry into other services, including local service and private circuits was unrestricted. Telmex was also granted the only license to offer cellular services in all regions of Mexico. It was permitted to compete in all services, equipment supply and service, Yellow pages, value added services, etc. through separate subsidiaries.	Not applicable since it has not been privatized and the conditions of privatization have not been declared yet.
Ownership	Beginning in 1991 Private enterprise Telmex or Telefonos de Mexico is owned %100 by private hands. Its shares owned by SBC (%32,5) and Carso Global Telecommunications (%59,5)	State ownership %100 of the companies Turk Telekom and Aycell

Source: *Ramumurti, R. 1996a.

As the table 9 shows, while Mexico has privatized its telecommunications company in one year with a bidding process and an exclusivity period of six years, Turkey has not privatized its telecommunications company yet.

If the privatization is the first element in a national telecommunications policy, the second element is the competition policy of the telecommunications service sector. The implementation of competition policy is observed through the telecommunications services that were deregulated. Table 10 summarizes the competition policy of two countries through examining liberated services.

Table 10. Competition Policy: Deregulated Services

	Mexico	Turkey
Competition policy: which services were opened to competition, When?	<p>POT Privatization has been accomplished in 1990 with the selling of the shares of Telmex. Cellular mobile services: it has started in 1990. National long distance voice services: Competition in long distance services has started on January 1997. There are several operators now. Basic local services were opened to competition after long-distance services, in April 1997. There are also several suppliers of this service. Fixed wireless services were opened to competition in early 1997. Also the Mexican satellite system was privatized in 1998.</p>	<p>POT Privatization has been planned to be accomplished by 31 December 2003. So the national long distance and basic local voice services are under monopoly of Turk Telekom. Cellular mobile services: There are four mobile service operators: Turkcell, Telsim, Aria and Aycell. Fixed wireless services: These services are also under monopoly.</p>
Number of operators in service in 2002 1- Fixed PTSN (local, national and international) 2- Network infrastructure capacity (only includes companies not licensed to provide voice services) 3- Cellular mobile 4- Wireless local loop: 5- IMT-2000 operators (i.e.: UMTS/3 rd generation) (OECD 2003: 34)*	<p>1- Fixed PTSN: 37 2- Network infrastructure capacity: none 3- Cellular mobile: 10 4- Wireless local loop: 4 5- IMT-2000 operators: none</p>	<p>1- Fixed PTSN: 1 2- Network infrastructure capacity: none 3- Cellular mobile: 4 4- Wireless local loop: none 5- IMT-2000 operators: none</p>

Source: *OECD Communications Outlook 2003

As the table 10 shows, while telecommunications services in Mexico was liberalized, Turkish telecommunications service sector is mainly operated by a monopoly. In Turkey, the only service that is opened to competition is GSM services that are operated through license agreements.

The competition policy is governed through the activities of governmental bodies and institutions. Therefore, comparing the regulatory structure of two countries is having a primary importance in analyzing their national telecommunications policies. In Mexico, after the establishment of the Federal Telecommunications law, a sector specific regulatory institution COFETEL was established. The responsibilities and functions of COFETEL were tried to be integrated to the functions of Competition Institution (CFC) with the supervision and leadership of SCT (Ministry of Transport and Telecommunications). Thus, the telecommunications sector policy was firstly constructed under the general deregulation plan of the government in the national economy and have its own regulatory institution and law to implement competition policy. All the aims of related administrative bodies in deregulation plan and the responsibilities of COFETEL and CFC and SCT were attempted to be integrated as a national telecommunications sector policy. But still there are problems in telecommunications sector because of the problems in interconnection agreements, tariff issues between operators. Some of the long distance service operators could not reach interconnection agreements with Telmex and Cofetel also could not manage to establish an agreement between parties.

Turkey has founded its sector specific regulatory agency in January 2000. But there are other regulatory institutions affecting telecommunications sector such as, RTUK, HGM and Competition Institution. While the telecommunications sector regulators in Mexico has relatively clarified procedures to implement competition policy, the Turkish regulatory agencies have overlapping responsibilities in the issues of interconnection, spectrum allocation and frequencies in practice. A more coherent and integrated regulatory environment is needed to implement a more stable and planned telecommunications policy.

If we compare the regulators' responsibility areas in telecommunications sector policy; a summary concerning the competition policy areas such as spectrum

allocation, interconnection, tariffs, license agreements and permits can be made as it is evident in from the table 11.

Table 11. Basic Regulatory Issues

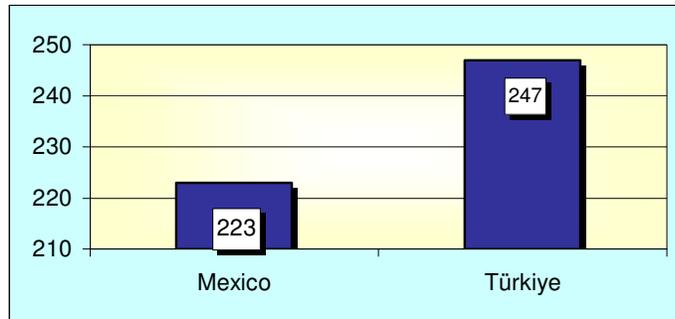
	Mexico	Turkey
Design of Competition Policy	SCT is responsible for deciding on competition policy but daily decisions are firstly taken by Cofetel and then approved by SCT. CFC is responsible for detecting and supervising anti-competitive acts of telecom operators.	HYK is responsible for deciding on services to open for competition. Tel. Institution is responsible for preparing the plans of telecommunications services issues and presenting it to the Ministry of Transportation. Telecommunications Institution decides on authorization type, principles, methods, conditions and implication procedures for every telecommunications service. In the agreements related with interconnection, tariffs, roaming the Tel. Institution can ask for the advice of Competition Institution. Both the Competition Institution and Tel. Institution are responsible for detecting and supervising anti-competitive acts of telecom operators.
Interconnection	Interconnection is based on freely negotiated commercial agreements between operators. Cofetel makes the decisions on interconnection rates (if the parties can not agree on) and then SCT approves it.	Interconnection is based on freely negotiated commercial agreements between operators.
Tariffs	Cofetel makes the decisions regarding the tariffs (ex: license fees) paid by the operators.	Tel. Institution makes the decisions regarding the tariffs (ex: license fees) paid by the operators.

TABLE 11. C'ed

<p>License Agreements</p>	<p>SCT (Ministry of T. and C.) signs licenses, permission and concession agreements on the basis of Cofetel's advice (Regulatory Institution for Telec.)</p>	<p>HYK decide on criteria on license agreements. Telekom. Kurumu examine and explain views about licenses, general permissions and concession agreements and control using of licenses. All these agreements are signed by the Ministry of Transportation.</p>
<p>Spectrum Allocation</p>	<p>Cofetel submits the spectrum usage plan to SCT for its approval. Cofetel also coordinate geostationary satellites and frequencies used by them.</p>	<p>T. Institution is responsible for carrying out all the frequency planning, allocation and registration activities. All the services that requires frequency allocation or satellite position is subject to a privilege agreement that has to be signed with the Ministry of Transportation.</p>
<p>Fixed to mobile interconnection frameworks (OECD 2003: 47)*</p>	<p>Publication of termination rates: No Determination of fixed to mobile termination rates: Commercial agreement. PL-LIRC is used to determine incumbent's charges. In addition FDC and international benchmarks are used. Regulation of termination rates: Interconnection tariffs applied by concessionaires must be registered and became part of public telecommunications registry. Cofetel on request can arbitrate and must provide a decision within 60 days</p>	<p>Publication of termination rates: Under consideration. Determination of fixed to mobile termination rates: Commercial negotiation. If the operators fail to reach an agreement the national regulatory authority shall be authorized to set such terms, conditions and prices are valid until the parties agree otherwise. Regulation of termination rates: Interconnection providers that are designated by the national regulatory agency have to determine cost based termination rates</p>

Source: *OECD Communications Outlook 2003

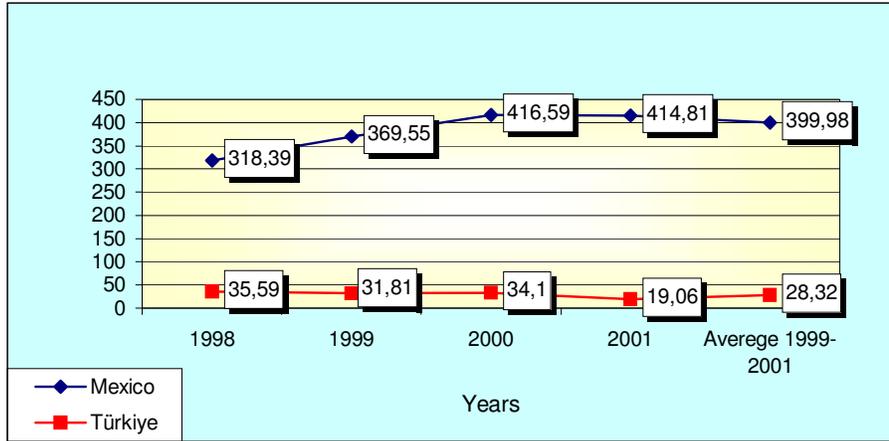
Effects of national telecommunications policy can be analyzed through examining three factors; sector performance, general economic situation of telecommunications sector and social policy goals. To assess the national telecommunication policies' effectiveness, the telecommunications sector performance of the two countries can be compared. Access paths per employee, revenues of the two companies (Telmex and TTAŞ) and investments made by two companies were compared as factors of sector performance.



Source: From data in OECD (2001), p. 246

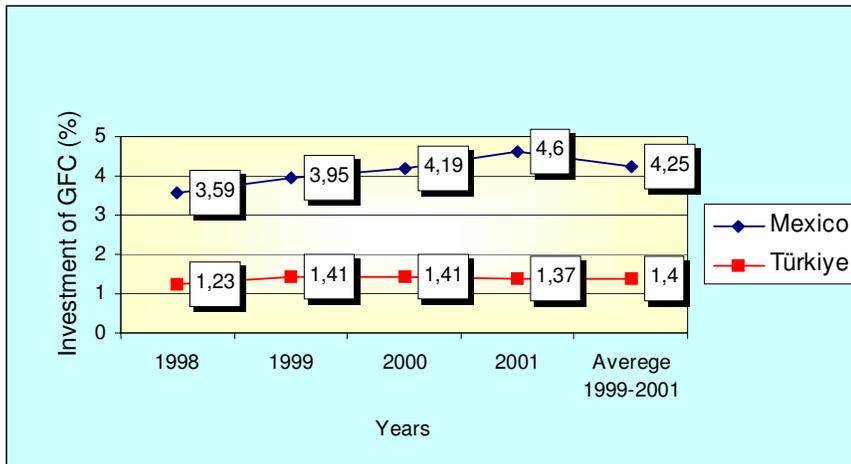
Figure 1. Access Paths per Employee in 1999

“Access Paths Per employee” measure is generally used for showing labor productivity in the telecommunications company. As the figure 1 shows, the labor productivity seems higher in TTAŞ then Telmex. Secondly, while examining sector performance, there are two investment measures to examine namely; public investments per access channel and public telecommunication investment % of GFC.



Source: From data OECD (2003), p.116

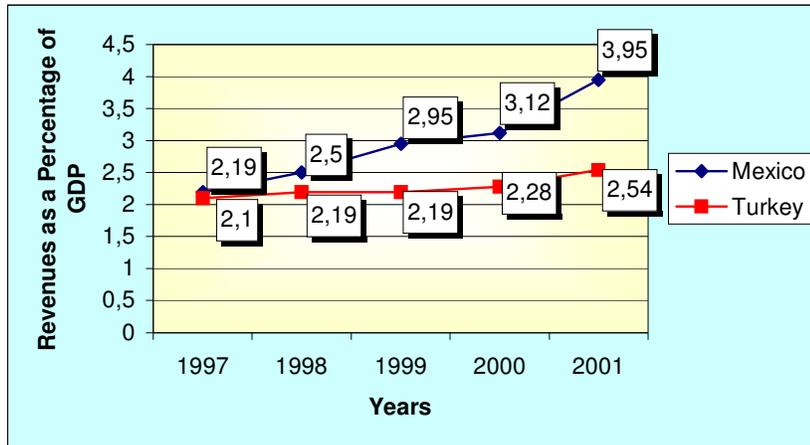
Figure 2. Public Telecommunications Investment per Access Channel (USD Millions)



Source: From OECD (2003), p.115

Figure 3. Public Telecommunications Investment (Million USD) (%) of GFC

If the investment patterns of TTAŞ and Telmex are compared between the years 1998-2001 according to the figures of 2 and 3, it can be seen that Telmex earmarked a bigger share of public investment compared to TTAŞ and that price of per access channel is more expensive than Turkey.

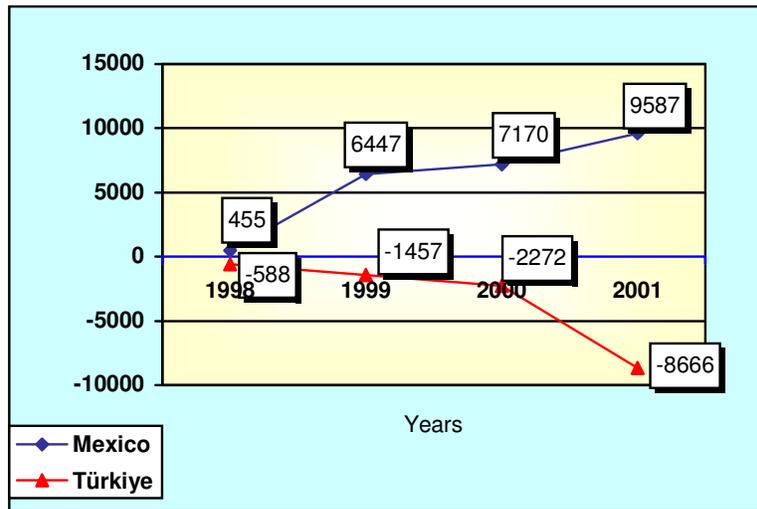


Source: From OECD (2003), p.71

Figure 4. Telecommunications Revenue as a percentage of GDP

As seen from the figure 4, revenues of Telmex are higher than TTAŞ and the difference between them increased as years passed. Thus, Telmex company has increased its revenues in the past years gradually. To sum up the comparison of sector performance in two countries we can say that labor productivity is higher in Turkey (Figure 1), investments made in telecommunications network are higher in Mexico (Figure 2 and 3) and telecommunications sector revenues are higher in Mexico (Figure 4).

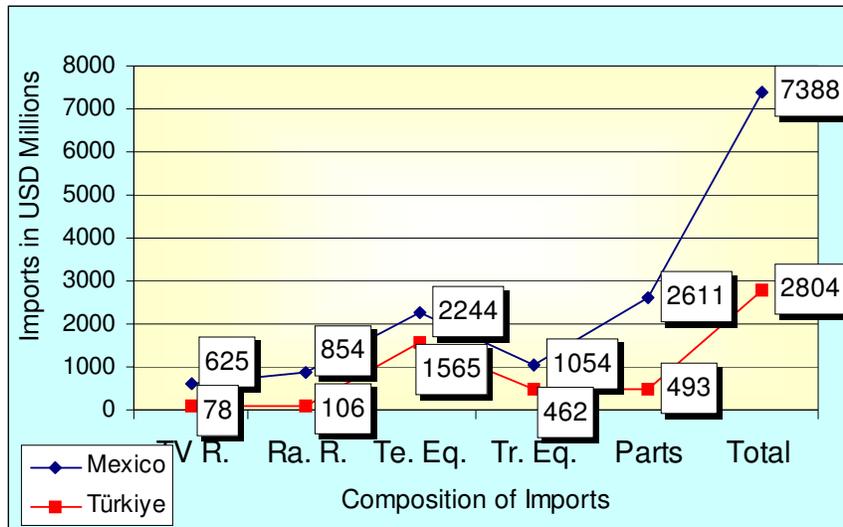
To assess the affects of national telecommunications policy on social and economical situation of telecommunications sector, several indicators can be examined. Firstly the economic aspects will be examined. To analyze economic aspects of telecommunications sector in Mexico and Turkey, trade balance in communication equipment and composition of imports and exports in 2001 will be examined.



Source: From OECD (2003), p.241-242-243, from OECD (2002) p. 275

Figure 5. Trade in Communications Equipment: Balance of Trade (USD Millions)

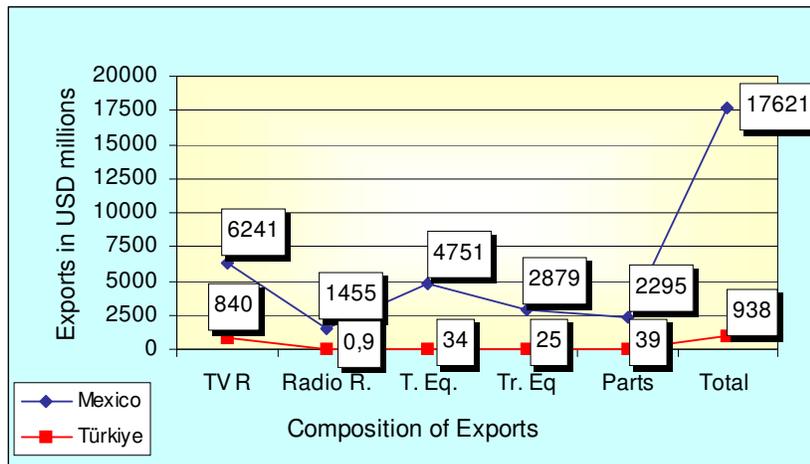
As the Figure 5 shows, while Mexico has a positive trade balance in telecommunications equipment sector, Turkey has a negative balance. This means that Turkish telecommunications equipment sector is not sufficient in itself and borrowing technology from other countries. In the other hand Mexican telecommunications equipment sector is economically active and having a positive effect on the overall economy with trade. This Figure shows that while Mexico is technologically productive in telecommunications equipment sector, Turkey is not.



Source: From OECD (2003), p. 243-244

Figure 6. Communications Equipment Imports in 2001 (USD Millions)

As the imports of Mexico and Turkey are compared in 2001 in the Figure 6, imports of Mexico are greater in every sub-sector.

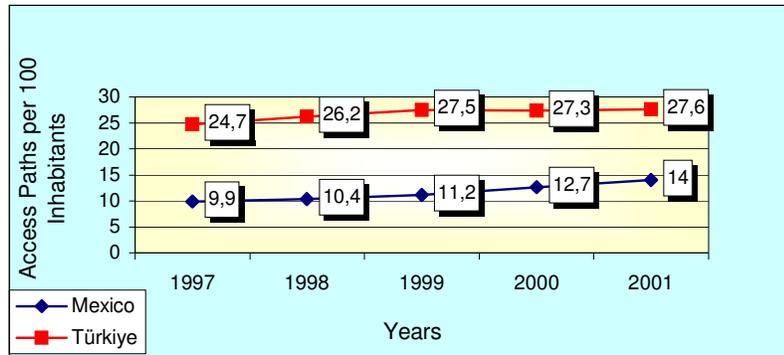


Source: From OECD (2003), p. 243-244

Figure 7. Communication Equipment Exports in 2001 (USD Millions)

Figure 7 clearly shows that in all sub-sectors the exports of Mexico are greater. The third factor affected by the national telecommunications policy is the social policy goals (access telecommunications services). Both countries face the dilemma of providing basic services to all the citizens with affordable prices but also

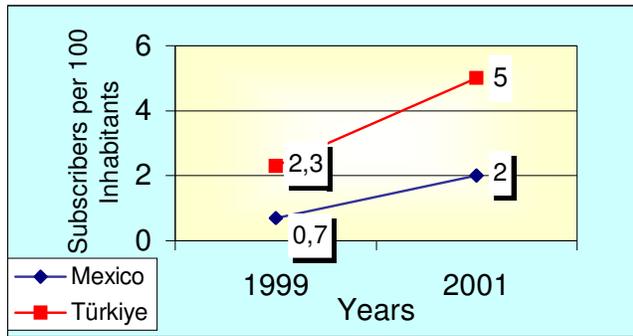
increasing the overall performance of the sector with sustaining competition in the sector. Therefore, in order to see whether the social aspect of telecommunications policy is neglected or not, the telecommunication access paths, mobile access and Internet access were compared. Moreover, broadband Internet access and tariffs of telecommunications services were compared as the other elements of social telecommunications policy.



Source: From OECD (2001), p.81 and from OECD (2003), p.103

Figure 8. Telecommunications Access paths per 100 Inhabitants

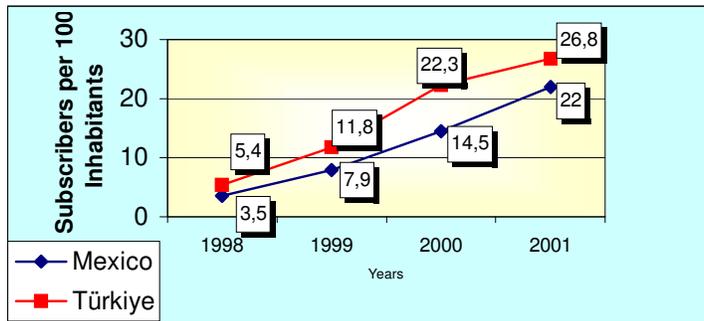
If the Figure 8 is analyzed, it can easily be seen that the privatized Telmex did not increase basic service access (universal service) sufficiently. Even the revenues and investments of Telmex are high, universal service access in the country is really low. Turkish universal service access is gradually increasing between the years 1997 and 2001 but still universal service has to be improved.



Source: From OECD (2003), p.105

Figure 9. Internet Subscribers to Fixed Networks: Subscribers per 100 Inhabitants

As can be seen from the Figure 9, Turkish Internet access is higher than Mexico in years in 1999 and 2001 even if the telecommunications sector was deregulated in Mexico.

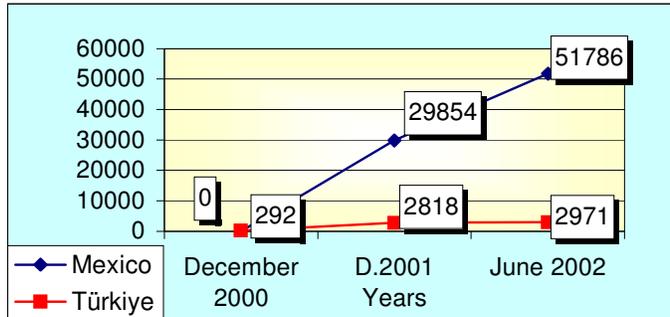


Source: From OECD (2003), p.137

Figure 10. Cellular Mobile Services Penetration : Subscribers per 100 Inhabitants

As Figure 10 shows, there is a little difference in the cellular mobile services penetration between two countries but penetration is higher in Turkey. The penetration of cellular mobile services gradually increased in both countries.

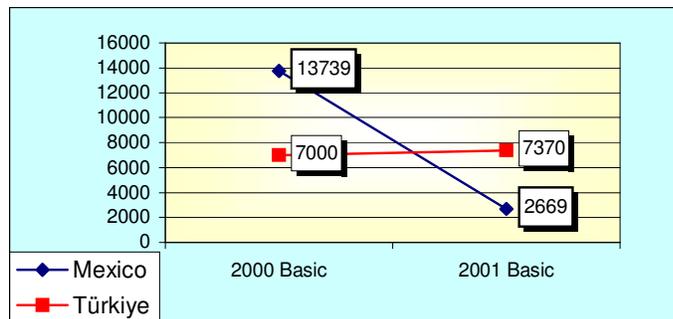
The second element of social policy goals is the penetration of Broadband Internet access. The number of DSL and ISDN subscribers in Mexico and Turkey were examined from the year 2000 to 2002.



Source: From OECD (2003), p.138-139

Figure 11. Broadband Access: DSL Subscribers

As Figure 11 shows, while the DSL Access in Mexico increased with a higher rate, DSL subscribers in Turkey increased at lesser amount.

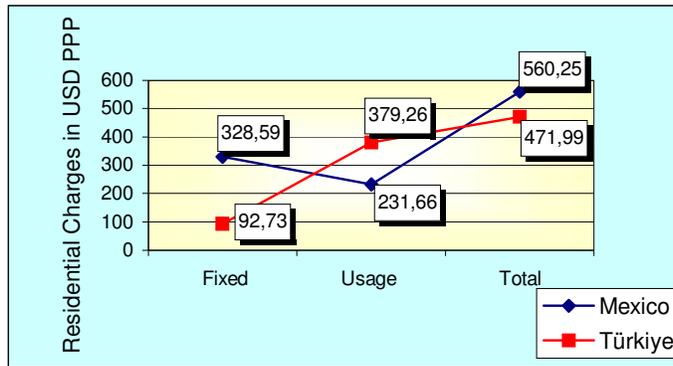


Source: From OECD (2003) p. 99-100

Figure 12. Basic ISDN Subscribers in 2000-2001 (Millions)

Figure 12 shows that while ISDN usage increased in Turkey in insignificantly, the usage of ISDN decreased in Mexico. This can happen due to investing and using DSL technology instead of ISDN in Mexico.

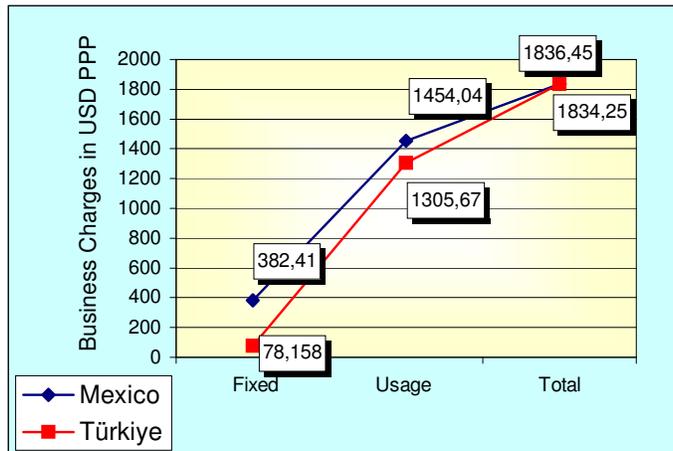
The third factor in the social policy goals is the tariffs. Residential, business and Internet charges of Mexico and Turkey were examined.



Source: From OECD (2003), p. 178

Figure 13: OECD Basket of Residential Charges (August 2002) (USD PPP)

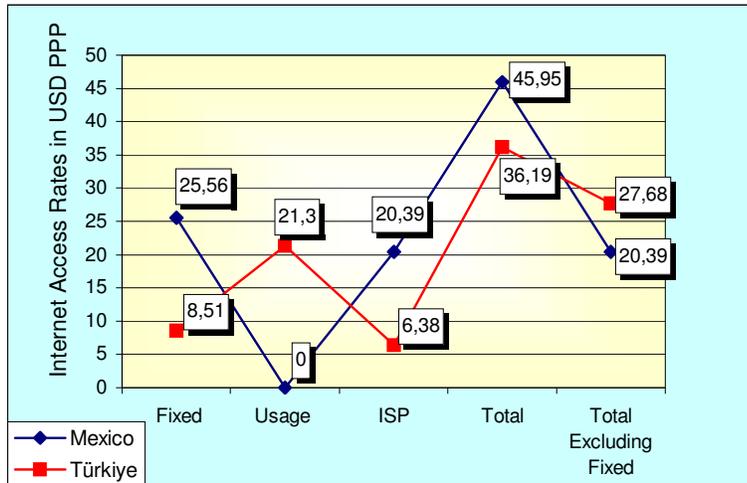
If the Figure 13 is examined, it is seen that while the fixed residential charges are higher in Mexico, the usage charges are higher in Turkey and the overall residential charges in Mexico are higher in 2002.



Source: From OECD (2003), p.180

Figure 14: OECD Basket of Business Charges (August, 2002) (USD PPP)

If we examine the Figure 14, we can see that business charges of Telmex is a little higher than TTAŞ in total but the difference is much higher in fixed business charges.



Source: From OECD (2003), p.170

Figure 15: Internet Access Basket for 20 Hours at Daytime Discounted PTSN Rates (September 2002) (USD PPP)

The third tariff basket to examine is the Internet tariffs. While Usage tariff is much higher in Turkey, the tariffs for Fixed and ISP services are much higher in Mexico and overall Internet tariff is higher in Mexico as can be seen from the Figure 15. Interestingly, the fixed Internet service is the main contributor for the high tariffs of internet usage in Mexico. So it can be guessed that in Mexico, Internet tariffs are designed to attract subscribers who intensely use Internet.

Comparing all the tariffs (business, residential and Internet), it is seen that generally tariffs of telecommunications services are higher in Mexico. Moreover, intense users in all types (business, residential and Internet) are in a more advantageous situation in Mexico because while fixed tariffs are higher in Mexico, usage tariffs are higher in Turkey.

To sum up all the three factors (sector performance, economic aspects and social policy goals) effected by national telecommunications policy, Turkey has a lower sector performance (except labor productivity), lower economic performance (negative trade balance in communications equipment) and better conditions to achieve social policy goals (access to services, penetration of broadband Internet services and lower telecom tariffs)

6.2. Concluding Remarks

The main assumption of this thesis is that the developments in the telecommunications sector including restructuring and deregulation, privatization and the new competition policies in the sector were dynamically created by the “informationalization” of the economy and the increasing importance of information to the economic actors.

The second main assumption is that telecommunications network of countries has become the strategic infrastructure that is needed to develop and sustain the new information-based economy. The national telecommunication sector policies of the two examined countries have been constructed in the global telecommunications services market conditions and have been shaped by them. Thus, the national telecommunications sector policies such as deregulation, privatization and liberalization were implemented with the influence of international actors (such as; IMF, World Bank, WTO and NAFTA), national macro-economic conditions (budget deficits and foreign debts) and socio-political conditions (policies of governing parties, legal, judicial and institutional structure of the countries).

Therefore, the telecommunications policies were redesigned according to the new economic pressures and needs of these powerful political and economic actors. The nationalized telecommunications infrastructure and management systems were designed to serve for basic telecommunication needs (basic services) but now are forced to change to be a fast information storing, analyzing and retrieving system. While the state was responsible to give telecommunications service as a basic public service and as a national security and integration tool, in this new environment the role of the state is now to enhance the opportunities for the multinational companies to reach the desired telecommunications services with speed. The reason is that the telecommunication service supply is now seen as an economic infrastructure enabling the investments in the country and increasing overall economic performance of the country.

This new role and function of the state was well explained by Levi Faur (1998). He explained state apparatus became neo-mercantilist and state implement the regulation for competition, meaning all the decisions are now based on the idea of sustaining the most suitable market conditions in telecommunications sector, both

the service and the equipment sectors. By doing so, the state can use all the tools of regulation, restructuring or deregulation. Thus state is not retreating from the area of telecommunications sector but reconstructing its role with powerful decision making, planning and preparing the sector to regulation with new institutions, and then controlling and implementing the “new” regulations. Success in the new role of the state apparatus is mainly based on the careful implementation of these successive steps. In this point of view, the telecommunications policy decision making structure is responsible for; firstly, constructing a telecommunications development plan and a competition policy in telecommunications integrated with overall development plan of the country; secondly, preparing the necessary regulations, laws and decrees to implement the plan and competition policy; and thirdly constructing an efficient institutionalized regulatory mechanism to regulate and implement the competition policy. Hence, telecommunications sector policy has to be designed with a strategical point of view knowing that the state apparatus is still responsible for creating and sustaining the competition in telecommunications market with measures partly deregulatory, partly re-regulatory.

While Faur has stated that government both implement re-regulatory and de-regulatory activities at the same time to achieve a nationally competitive telecommunications sector, strategic approach claims that national telecommunications policy formulation is based on the choose of goals. Their main argument is that national telecommunications policy should either be oriented to competition goals (creating competition or liberalization in sector) or to social policy goals (sustaining access to basic infrastructure).

As an element of national telecommunications policy, there are three main government actions to restructure telecommunications sector. These are; privatization of state-owned telecommunications company, re-regulatory activities such as regulating interconnection agreements, tariffs and spectrum allocation and de-regulatory activities such as opening telecommunications services to competition, authorization of telecom operators to give different telecommunications services. While Mexico privatized its telecommunications company and liberalized its telecommunication services sector before Turkey, the re-regulatory activities and procedures are also implemented in Turkey.

The research question of this thesis was “Can national telecommunications policy be formulated in order to liberalize the telecommunications service sector and to sustain the access to basic telecommunications services at the same time?” As an answer, it is seen that neither Mexican telecommunications policy nor Turkish telecommunications policy has formulated an integrated approach to achieve creating competition in the sector and sustaining access to basic telecommunications services.

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<http://www.proje.basbakanlik.gov.tr/mevzuat/mevzuat.asp?MevzuatAdi=&MevzuatNo=4502&Nitelik=&MevzuatTuru=1&MevzuatTertip=5&Yil1=&Yil2=&Ara=Bul&Arama=fihrist>

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