

# Public property, political regulation and independent regulation for the public services

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## **public property, political regulation and independent regulation for the public services**

1. Public services: definition, development
2. Public ownership is changing
3. Network services
4. The rise of regulation
5. Are uniformity or coordination necessary?

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# 1. Definition: what is “public service”?

- Traditional definition: **all services provided by public entities**
- Referring to contents: services
  - which are necessary or very useful to life (of individuals, of the community) so as to be included in the area of public responsibility
  - which will not be provided by an unregulated market in a satisfactory way because of:
    - **inequalities (in income, wealth)**
    - **externalities (benefit / damage to third parties)**
    - **public goods (non-rival, non-excludable)**

# Public services in the EU

- The reference term is “services of general interest”
- Member states identify them
- Separate treatment of
  - “services of general economic interest” are subject to the rules of the EU Treaty: open market, competition or competitive bidding
  - “services of general non-economic interest” are not: usually provided by public entities (these include the typical tasks of the State)

# Public services: increasing or shrinking?

- Needs grow
- Expenditure for services increases (health, education, networks)
- Provision increasingly by private companies, public provision shrinking

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## 2. The historic role of public ownership: the reasons in favour

- a. a substitute for missing private initiative and an engine for development
  - the “infant industry” theory: basic industries
- b. a provider of public goods
- c. a remedy to monopoly, externalities, inequalities
- d. a remedy to “natural” monopoly (network services)
- e. ideology: “public is always better”

The opposite belief “private is always better” has been held:

- a symmetric ideology?
- or a consequence of a disappointing performance of the public sector?



## The declining role of public ownership: the reasons for doing without

- Most objectives may be attained with other means:
  - Legal obligations, limitations
  - Economic incentives
  - Competition among suppliers
- ideology: rather than “public is always better”, an opposite belief “private is always better” has been held:
  - A symmetric ideology?
  - Or a consequence of a disappointing performance of the public sector?

## The historic role of public ownership: the weaknesses of public ownership

- Conflict between profit maximisation and implementation of political directives
  - **Evaluation of results: which benchmark? how to assess the responsibility of managers?**
  - **Government-owned company expected to behave different from private and to compete at the same time**
- State aid: contrary to trade agreements (and to EU law), hard to define

# When a decision to privatise is taken

- Half-hearted privatisation:
  - when originated not from a programme for improvement
  - but from Government need for revenue or inability to fund company growth

# The alternatives to public ownership

- promote development: good rules, infrastructures, incentives
- provide public goods: contracting out
- contrast monopoly: large open markets, antitrust law and competition authority
- correct externalities, inequalities

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### 3. Network services

- In presence of a network (physical or virtual), competition may be impossible or uneconomic: the case of “natural” monopoly
- Monopoly presents a risk of high prices and exploitation of consumers
- Concentrating attention on the exploitation issue, **the remedy has been seen in the public ownership of the networks, and public provision of the related services**

# Public provision meets objections

## **Public monopoly is still a monopoly and does not escape the monopoly's weaknesses:**

- no contest, no incentive to efficiency, no choice, no room for entrepreneurship
- moreover: political interference, investment is a burden on public finance
- size of company limited by political boundaries

## Alternatives: a) private monopoly, price regulation

- If the main fault of monopoly is exploitation of the consumer via high prices, then the remedy can be to have prices (tariffs) set by a public body
- This is the traditional notion of “regulation”
- Regulation should not be limited to prices and include quality levels, environmental standards
- Some important faults remain:
  - **No choice**
  - **No room for initiative and entrepreneurship**
  - **Risk of political patronage**



## Alternatives: b) tendering the service

- Tendering introduces competition in bidding
- The service is provided under (a temporary) monopoly
- Monitoring of tariffs and of performance is required
- Monopoly power is limited by terms of tender and by contractual obligations

### **Difficulties and Requirements:**

- duration of contract
- public administration's capacity for tendering, monitoring
- sufficient competition in bidding is necessary

**Problem:** local preference for local company

## Alternatives: c) network unbundling, free access, competition in services

### Networks regulated and accessible:

- Unbundling (accounting, legal, ownership)
- Contents of network regulation: tariffs, rules for access
- A role for the industry regulator
- A role for the competition authority

**Problem:** should the network remain under public ownership?

# Competition for services

- A sufficient number of competitors is necessary
- A market large enough to allow optimal size of company
- Transition problems in liberalisation: divesting the public company or parts of it
- Transition problems in liberalisation: from regulated tariffs to free market prices
- **Problem:** protection of low-income or otherwise disadvantaged customers

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## 4. The rise of regulation

- the US tradition of regulation
  - **Public Utilities Commissions since early 20th century**
- a weaker European tradition
  - **tradition of public (or semi-public) ownership**
  - **municipal tradition**
- a revolution started around mid-1980s
  - **deregulation, opening of markets, privatisation**
  - **objectives: efficiency through competition, shrinking and re-orientation of State functions**
  - **an independent authority seen as necessary**

# Political regulation vs. independent authorities

- reference case: the rise of independent central banks
- the case for “tying one’s hands” in the regulation of public services
  - necessary in presence of Govt-owned companies
- problematic relationship between government and regulator
- the rise of regulatory authorities in energy 1990-2005 ([www.iern.net](http://www.iern.net))

# The task of a regulator

- set tariffs for monopolistic services
- promote competition where possible
  - access to networks
- set technical standards for safety, interoperability
- promote development of infrastructures using obligations and incentives
- protect weak consumers
- advise Government

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## 5. Are uniformity or coordination necessary?

- the extreme cases:
  - high uniformity needed in financial markets
  - low uniformity needed in local services
- instruments for coordination
  - top-down: treaties, legislation, institutions
  - bottom-up: cooperation, information, best practices
- Problem: the “regulatory gap” between multinational companies and national (local) regulation

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