

Bernd Holznagel/Kang
Yanrong/Thorsten
Ricke/Pascal
Schumacher

China's Telecommunications Regulation – Development, Structure and Challenges

China is on the move. Its economy is powered among others by the TC market. Two Chinese TC concerns figure in the "Fortune List" of the 500 world concerns with the highest turnover. Taking Place 148 is China Mobile, the fifth largest concern in China, with a turnover exceeding US \$ 47 billion and a profit of over US \$ 8.5 billion in the financial year 2007. With a turnover of approximately US \$ 28 billion and over US \$ 2.2 billion profit in the financial year 2007, China Telecom, the 14th largest concern in China, achieved place 288. The following article shows how China succeeded in getting its TC concerns so high on the list and analyses the challenges faced by China and the efforts it is making to groom its TC industries for the future.

A. Introduction

From 1871 (when the first telegraph cables were laid in Shanghai) until today, the Chinese telecommunication sector had experienced a long way, on a journey which really gathered momentum in the last few years. Today China is considered to be the largest market for mobile communication in the world (Bing 2007, p. 106; Gao/Lyytinen 2000, 719, 720.). In spite of this great leap forward, however, a marked discrepancy in the Chinese TC-system still exists between the rural and urban areas, between the eastern coastal regions and the Midwestern interior.¹⁾ Looking at the development of telecommunication in the past decades, it is clear that in the Chinese TC-sector a difficult reform process has been embarked on and that it has not yet been completed. Its political goal however is clear: China regards the TC-branch as a key industry for its economic development. Thus it is understandable that China gives great significance to the development of this sector, without however neglecting the sociological implications as a whole.

The article which follows describes firstly the origins (B.) and the reform processes (C.) of the Chinese TC-sector until 2007, taking the TC-regulation especially into consideration. Then, it points out the challenges posed today, since the recent "2008-Reform", and analyses the reform's weaknesses (D.). In conclusion it compares practices and views of China and the western countries. (E.)

B. The Emergence of a centralised State-monopoly Telecommunication Industry in China (1882 – 1970)

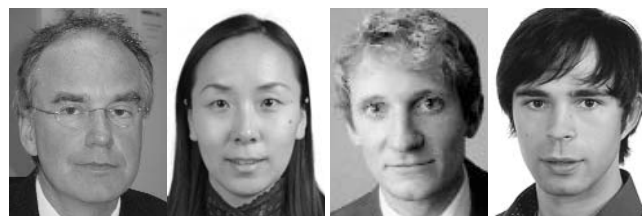
In the later stages of the Qing Dynasty, Chinese telecommunication sector was controlled by foreign firms.²⁾ The branch flourished, land and sea cables were deployed. As early as 1882, the Danish firm, the Great Northern Telegraph Company, had connected local calls in Shanghai.³⁾

None of the competitors for this market were subject to state supervision. In November 1901, the *Chinese government* of the time founded the *Ministry for Communications and Transport* as the first government agency for telecommunication industry. In 1908, the *Ministry* began to nationalise the private local telecommunication providers and all commercial operating companies had been bought up by the state within a year (Bing 2001, 461, 462; Yan/Pitt 2002, p. 11).

In the course of the takeover of power of the Communist Party of China (CPC) and the foundation of the People's Republic of China in 1949, telecommunication was primarily used for state and military purposes (Yan/Pitt 2002, p. 15). The interest of the state laid in the reunification under the CPC of a country which, after the civil war, had disintegrated into different districts, each under rivaling warlords. A nation-wide army had to be built up, capable of resisting Japan and Mao's rival *Chiang Kai-shek* in Taiwan. In these circumstances, the *Ministry of Posts and Telecommunications (MPT)* was founded on the 1st November 1949. Its task was to plan strategically and conceptually and to organise the two sectors, telecommunication and postal service. In the TC-field, the emphasis lay on the deve-

Prof. Dr. Bernd Holznagel (foto 1), Director of the Institute for Information, Telecommunication and Media Law (ITM), Public Law Department, University of Münster; **Kang Yanrong** (foto 2), member of staff at the Chinese Academy for Telecommunications Research (CATR), Beijing; **Thorsten Ricke** (foto 3), scientific assistant at the ITM, Public Law Department, Münster; **Dr. Pascal Schumacher** (foto 4), scientific assistant at the ITM, Public Law Department, Münster.

This article goes back to a joint research project lasting several years, in the scope of a project of the EC-China Information Society.



- 1) For a detailed description see Xia/Lu 2008, 686-696.
- 2) For example, the Danish firm, Great Northern Telegraph Company (GNTC). Yan/Pitt 2002, p. 9 ff; He 1997, p. 58.
- 3) Two months later, the British firm Shanghai Mutual Telephone Association had also started this. In 1883 another British firm, the China and Japan Telephone Company, took over the network of GNTC and combined these with those of the Shanghai Mutual Telephone Association. For 18 years this firm provided its telephone service in Shanghai; see He 1997, p. 58.

lopment of a nation-wide telephone network (Gao/Lyytinen 2000, 719, 722 f.; He 1997, p. 67; Yan/Pitt 2002, p. 13). At that time the participation of foreign firms in the fields of telecommunication and postal services was forbidden. During the Cultural Revolution, the *MPT* was initially dissolved. Telecommunication and postal services were placed in the hands of two separate agencies: the *Directorate General of Telecommunications (D&T)*, which was under the control of the People's Army,⁴ and the *Directorate General of Posts (D&P)*, which belonged to the Ministry of Railway and Transport (Wan 2001, p. 161). Only three years later however, on 1.6.1973, the *DGT* and the *DGP* were reunited as the *MPT* (Yan/Pitt 2002, p. 14). The *MPT* possessed branches in all 31 Chinese provinces (which were known as the *Posts and Telecommunications Administrations, PTA*) which reported to the appropriate headquarters in the *MPT*. On the regional level there were subordinate branches as well.

C. The development of administrative structures (1970-2008)

Only since the 70's an actual telecommunication sector has really emerged in China. The starting point was *Deng Xiaoping's* politics of opening and of reform, which were always characterised by a balancing act between the socialist expectations of how the market should function on the one hand and the striving towards the opening of the economy on the other. In its long march, the administration of the Chinese telecommunication sector has so far gone through three intermediate stages, which will be described in the following paragraphs. Finally the current situation of the market will be depicted, as well as the challenges for the regulators and possibilities for meeting these challenges.

I. Paradigm Shift: Telecommunication as an Instrument in developing the National Economy

In 1978, when *Deng Xiaoping's* reform and opening policies were introduced, it was decided that the ultimate purpose of posts and telecommunications should no longer be to serve political and military goals, but rather to provide the elementary requirements for developing the national economy. The telecommunication economy was thus acknowledged to be the field of industry playing a decisive role in the development of the entire economy. The executive recognised that the underdeveloped TC infrastructure stood in the way of economic progress and of the acquisition of foreign investors (Tan 2002, 17, 20; also compare Yearbook of China Telecommunications 2003, p. 47). From then on the development of the TC sector enjoyed high priority in the strategy aimed at achieving the economic upswing of China.

In this context the organisation of independent, market-orientated company managements with clearly defined rights and duties was moved forward in priority. It is true that the provision of telecommunication services were still the sole responsibility of the *MPT* and the subordinate *PTA's*, which as state-owned enterprises managed the networks and services in the provinces. However from 1979 onwards measures to restructure state-owned enterprises

into independent economic units with wider authority and competence came increasingly into effect. Thus in 1984 the document published by the *Chinese State Council*, "China's Economic Institutional Structure Reform", specified that the state-owned enterprises should as independent units bear the responsibility for their own profit and loss, and should become de jure persons with legal rights and duties (Cf. Liu 1999, p. 365). Essentially this was implemented by a rearrangement of the finance relations between the government and those authorities de facto in charge of operating the TC companies. Instead of the profits or the losses, as the case might be, being transferred as a whole to the state, normal procedure in the centrally planned economy, a prototype of taxation system was introduced.

The relationship between the state and the companies could in this way develop into a two-way exchange of obligations. In 1978 profit contracts were already being introduced and from 1979 onwards official regulations were issued for apportioning the profits in state-owned industrial enterprises (Liu 1999, p. 312). As well as regulating how the paid-out profit was to be divided up, the specific purposes in the company to which the profits being kept back could be devoted were also defined. They could, for example, be used for development or improvement of production, or to increase salaries or social benefits. Thus the relations between state and companies were based on a foundation of law. The state-owned companies kept their own profits after taxes and bore their own losses.

II. Increasing the Efficiency of the TC Sector by Disengaging China Telecom from the MPT

The reforms introduced did not remain without effect. The annual increase in the number of clients acquiring a telephone connection rose from 7.83 % per year from 1980 – 1985 up to 17% in the period between 1986 and 1990 (Bing 2007, p. 133). The growth of the TC sector was thus just as high as that of the Gross Domestic Product in the same period of time. The branch took advantage of this boom to expand and to modernise the infrastructure. Even so, the close interdependence between the government and the state-owned concerns continued to hinder the efficiency of the TC concerns and the whole further development of the sector. Thus further reforms focussed now on remodelling the state-owned enterprises into organisations capable of sound business, and on opening the market for terminal equipment, networks and telecommunication services.

In 1988, three administrative offices (the *Industry Office*, the *Material Office* and the *Machine Office*), which until then had been internal departments within the *MPT*, were now outsourced. Thus came into existence three companies for Post and Telecommunications – the *P & T Industry Corporation*, the *P & T Equipment Corporation* and the *P & P Construction Corporation*. Furthermore the first separation between the business and the government administrative functions had been put into practice. The *Ministry* was to be mainly responsible for the guidelines, regulation and strategic planning of the post and TC sector. Fulfilling the role of entre-

4) General Strategy Bureau of the People's Liberation Army (PLA).

preneur however was no longer part of the task of the *MPT*. In the year 1993 a new corporation law⁵⁾ was passed, which made a greater latitude and freedom of action in restructuring state-owned concerns possible. From then onwards it was possible to convert those concerns into "limited liability companies" or other similar legal forms. The implementation of this law was very important in separating the functions and tasks of the concern management from those of the state. In April 1995, the *MPT* created the *China Directorate General of Telecommunications (China Telecom)*, a subordinate concern responsible for telecommunications. It is true that all shares remained in the hands of the Ministry, but nevertheless this marked the beginning of an era – China's first TC provider was now organised as a private legal body.

In spite of this structural reform the influence of the *MPT* exerted on the concern was considerable. This was especially true for the regional *PTA's*, which, although they were officially responsible as subsidiary companies of *China Telecom* for the regional network, remained in practice under the influence and were subject to the operations of the *Ministry*. They stood in direct communication with the various departments of the *MPT* and in addition, all financial and planning issues of *China Telecom* were centrally administered by the *MPT* as before. In this respect the detachment of *China Telecom* from the *MPT* was a legal definition more pro forma than real and functioning. The *MPT* still simultaneously performed the duties of the operator and of the regulator (Guan 2003, p. 22).

III. The final separation of the TC Provider and the Reorganisation of the System of Regulation

1. Introduction of Competition "à la chinoise"

Until 1994 the field of voice telephony and mains operation had been the exclusive monopoly of the state-dominated concern, *China Telecom*. In view of the continuing development of the market economy and the active promotion of her membership application to the WTO, China then furtherly opened the TC market.⁶⁾

On 14.7.1994 therefore the stronghold of *China Telecom* was stormed – *China United Communications Corporation (Unicom)* was founded, as a second network operator and voice telephony provider.⁷⁾ Three ministries and thirteen other large state concerns participated in this new concern.⁸⁾ The ministries placed at *Unicom's* disposal parts of their own telecommunication networks, which had previously been used exclusively for their own purposes (e.g. for railway or energy networks). *Unicom* founded over 300 branch offices and subsidiaries in all provinces and thus *China Telecom* was faced with its first rival. The foundation of *Unicom* can be seen as an effort to achieve a political balance of power between *MPT* and the other ministries. For the first time a rivalry had been established between two competitors in two central fields of the TC economy.

This fundamental change posed great challenges for the *MPT*. The *Ministry* now had to function as an arbitrator and assumed the role of regulator. It had however only partially learnt to fulfil this responsibility. In fact, *China Telecom's* market-dominating position could not be dismantled, and thus *Unicom* found an appropriate economic deve-

lopment difficult. *China Telecom* had a network in almost every town, while *Unicom* was only able to build up one in three towns (Tianjin, Chengdu and Chongqing). There were no regulations for access to *China Telecom's* networks, as we know them in the case of the former European monopolists. The case was similar in the field of mobile communications. Until the end of 1998 *China Telecom* had a market share of 96.9 %.

2. Reform of the TC Regulation

In March 1998 the 9th National People's Congress consequently resolved to restructure the *MPT* and to found a new regulatory government authority (Harwit 2008, p. 62 ff.) Therefore in April 1998 the *Ministry of Information Industry (MII)* was founded, built together out of the original *MPT* and the *Ministry of Electronic Industry (MEI)*, as well as sections of other related ministries. With the founding of the *MI*, the separation of posts and telecommunications, which by the end of the 80's had already started in the entrepreneur business-fields, was now officially implemented in government structures as well.

The most important task of *MI* was to encourage competition and to set up guide-lines for its regulation. In the year 2000, the "Telecommunications Regulations (TReg)"⁹⁾ were passed and regulation was enacted by the state council on which until now all important instruments regulating Chinese telecommunication have been based. A telecommunications law has yet to be passed. The TReg focuses on mandatory interconnection (Art. 17 ff. TReg), and on the price controls which apply to this (Art. 22 TReg). However the TReg also contains in Art. 23 ff. detailed specifications with regard to price-regulation for end-customers. Furthermore Art. 31 ff. TReg provides for hard-hitting consumer protection rights. For example, Art. 33 TReg stipulates that the TC-service provider must refund the monthly contribution of an end-customer, if a disturbance is not repaired within 24 hours of its being reported. Finally Art. 44 § 2 TReg gives the *MI* the option of compelling certain suppliers to provide a universal service. (On the other hand, however, the TReg does not provide for a regulation of preliminary products, such as subscribers' access lines or private lines).

Furthermore the courts can be called in to enforce the implementation of the regulations. In 2005, for example, the *Supreme People's Court* in Peking, passed an "interpreta-

5) Corporation Law of the People's Republic of China, in 29.12.1993 (5th Session of the Standing Committee of the VIII. National People's Congress).

6) Zhang 2001 461, 462. Other than the People's Republic, Hong Kong's telecommunications industry has experienced a completely different development, similar to European countries. Starting in the 1990's the city developed a sector specific competition law regime for the telecommunications sector. Lately Hong Kong is moving away from the now sector specific regulation to a general competition law regime. See Wu/Leung 2008, 652-661.

7) The basis was the Document Nr. 178, approved by the State Council on the 14th December, 1993.

8) Ministry of Electronics, Ministry of Railway and Ministry of Electrical Power.

9) Telecommunications Regulations of People's Republic of China of 25.9.2000.

tion¹⁰⁾ of the regulation guide-lines which in essence fixed judicial penalties for the denial or disruption of interconnection (Schumacher/Kang 2009, p. 21 f.).

Regulatory functions in the TC sector however are not only carried out by the *MII*. The *National Development and Reform Commission*, *NDRC*, also plays an important role. It is responsible for the complete politico-economic organisation and the corporative coordination. With its branches in all provinces, it is involved in the TC field, among other things, in price regulation, in the examination and authorisation of foreign investment projects and in the approval of technical standards. It has an important influence in decision-making.

Furthermore, there were and still are competences in the transmission of audiovisual contents that overlap with those of the *State Administration of Radio, Film and Television (SARFT)*,¹¹⁾ which is responsible for the supervision and administration of all audiovisual programmes.¹²⁾ As the *SARFT* sees it (2004), this does not only mean the classic domain of film and radio. It is extended to include all programmes using moving pictures or continuous sounds, recorded by a video camera, tape-recorder, or similar device. *SARFT* is also responsible for the main transmission of these contents. Particularly in connection with the advancing development of Triple-Play and convergence in the network branch, conflicts with the *MII* emerge.¹³⁾ This becomes clear when for instance we study the heated debates which are also being conducted in China over the promising future of IPTV. In view of the fact that IPTV's radio-like contents are transmitted over the TC network, the competences of *MII* and *SARFT* meet and overlap. The competences are not clearly allocated. At present both government agencies are claiming the responsibility and the competence for themselves (Yuhong 2005, p. 4).

Since the state holds the majority of the shares of the TC companies, the *State Council* as an owner also participates in the process of regulation. The *State-owned Assets Supervision and Administration Commission*, *SASAC*, was founded in March 2003, and took over many of the duties which had formerly been performed by other government agencies or ministries, especially those duties pertaining to the capital or labour market. The commission, answerable directly and solely to the state council, also has the responsibility of the optimal investment of state assets.

3. The Admission of further Competitors

The market however still suffered under the dominance of *China Telecom*. While *China Telecom* could build up its infrastructure to the extent of 15,1 million new landline connections in 1998, it was only in July 1998 that its competitor *Unicom* had even established its first own land-line (Kerschner 1999). Considering the enormous discrepancy in capital and share of the market between the two concerns, a competition as between two equally strong rivals was out of the question. This situation and the causes leading to the situation had to be changed. Four new companies were founded in February 1999, and the tasks of *China Telecom* were split up and redistributed between them. Each administered a specialised area of operation (Fixed Network Services, Mobile Telephone Services, Paging and Satellite Communications) and was named accordingly –

China Telecom, *China Mobile*, *Guoxin Paging* and *China Satellite*. *China Telecom* admittedly remained the provider of a relatively broad service field – it took over all landline connections and was able to offer services in the fields of local and long-distance phone-calls, as well as in data communication. *Guoxin Paging* lasted only a short while and was taken over in May 1999 by *Unicom*. *China Satellite* originated out of the fusion of two former satellite firms¹⁴⁾ which were controlled by *MII*. In addition two newcomers were admitted into the TC market. One of these was the *China Network Communication Corporation (Netcom)*, founded in 1999. The *Chinese Academy of Sciences (CAS)*, the Ministry of Broadcasting, Film and Television, the Ministry of Railways (MOR) and the local government administration of Shanghai all held shares in this concern. *Netcom* provides mainly IP-technology and value-added services and it is planned that it will be able to compete in basic services with *China Telecom* und *Unicom* in the future (Yan/Pitt 2002, p. 107). The other newcomer, the *China Railway Telecommunications Corporation (Railcom)*, was founded in the year 2000, the main owner being MOR and its licensed area of operations being Landlines, Data communications and Internet Services.

When China joined the *WTO* on 11.12.2001, it undertook to open step by step the TC market to foreign providers. In this respect, the service field, which until then had only been operated by state-owned concerns, was of most importance. China also signed the "WTO Basic Telecommunications Agreement". The most important commitments were the transparent regulation of the market, the introduction of fair licensing procedures for access to cable network, the reduction of tariffs and duties and the introduction of independent regulatory agencies.

The day after China joined the *WTO*, the State council announced the second round of radical reorganisation with the "Concept for Reforming the TC System". To begin with, *China Telecom* was partitioned into a north and a south section. In the provinces of North China, the local TC networks which had belonged to the erstwhile *China Telecom* were now the property of *China Telecom North*. Afterwards *China Telecom North* merged with two other TC concerns (*Netcom* and *Jitong*) to form the new *China Network Communications Group Company (Netcom Group)*. The provinces of South and Western China were combined in May 2002 into the *China Telecommunications Group Corporation (China Telecom Group)*.

Thus 30 % of the national long-range networks formerly belonging to *China Telecom* were transferred to the *Netcom*

10) In this regard, compare Art. 5 of the Court Guidelines (Various Provisions of the SPC concerning the Work of Judicial Interpretation, 23rd June 1997.

11) On this point compare <http://www.sarft.gov.cn>.

12) Dealing in detail with the regulation of broadcasting Scharping 2007; Guo 2003; Ollig 2002, p. 15 ff.; Kops 2007, p. 25 ff.

13) To the term Convergence, compare most recently Hain 2006, p. 325 ff. With regard to convergence development in China, Ricke/Rong 2009, p. 130 ff.

14) China International Broadcasting Satellite Company (CIBSC) and China Eastern Communications Satellite Company (CECSC). CIBSC was founded in 1985 and taken over in 1995 by China Telecom. CECSC was founded in 1995.

Group. Later the regional restrictions were annulled so that the *Netcom Group* could do business in South China, build and operate local land-lines. Conversely the *China Telecom Group* were also able to acquire customers and do business in North China. The advantages which *China Telecom* had originally enjoyed when competing with other firms were greatly reduced after it had been broken up.

D. Focus on Global Competition: Reintegration of the TC Economy

In the Chinese TC sector, the economists and politicians, when deciding on their strategies, found that the new problems lay in the conflicting priorities of competitive capability in the international market as opposed to the development of technical convergence (Ricke/Rong 2009, p. 130 ff.).

I. The Starting Position

In spite of the reforms, the Chinese TC markets were characterised from 2003 until 2007 by a structural imbalance. The new concern dominating the market was no longer *China Telecom*, but *China Mobile*. Its expansion rate fairly exploded, while those of its competitors stagnated or decreased. In 2006 *China Mobile* had a share of 42 % of the total TC market, and in 2007 this rose to 48 %. In contrast, *China Telecom's* share fell to 24 %, *Unicom* and *Netcom* to 13 % (Schumacher/Kang 2009, p. 1 ff.). In the field of market shares, their loss was *China Mobile's* gain. The reason for this development was the increasing significance of mobile telephony, as opposed to land-lines. This factor was even more effective because the land-line providers, *China Telecom* and *Netcom*, had no mobile-radio concession and therefore could not participate in this boom.

II. New Attempts at Restructuring the TC Market ("2008 Reform")

1. Concentration of Companies

On the 23.5.2008, the newly founded *MIIT* and the *NDRC* began a new round of restructuring companies, in order to meet the requirement of the convergence, remedy the imbalance in the market and the flagging development of the land-line section. The CDMA 2000 network and customers of *Unicom*, and *Satcom*, the Universal Service Provisions were transferred to *China Telecom*. *Unicom* with GSM network took over *China Netcom* and the smaller provider, *China Tie Tong*, merged with *China Mobile*. Thus the number of Full-Service-Providers was reduced to three (*China Mobile*, *China Telecom* and *China Unicom*), all relatively evenly matched in the fields of network resources, customer numbers and financial power. When the "leveling of the playing field" had been achieved, all three competitors were issued with 3G licences separately with TD-SCDMA, CDMA2000 and WCDMA standard.

2. New Alignment of the Government Supervision System

In March 2008 the *Ministry of Industry and Information Technology (MIIT)* was founded. Its most important task was the modernisation of China's IT infrastructure, a task which

the XVII. National People's Congress had declared to be the key to an industrial advancement which would put China into a position to successfully compete and innovate on a global scale. In the *MIIT* were merged the competences of the erstwhile *Industry Ministry*, the *NDRC* and the *Administrative Commission for Science, Technique and Defence Industries* (with the exception of nuclear supervision); it also took over the tasks of the *MII* and those of the *Informatisation Office*, which had formerly been affiliated to the *State Council*. With the *MIIT*, a "super ministry" had been created with the goal of strengthening the Chinese economy as a whole. It is made up of 24 departments. Alongside those which concerned themselves with general duties and with industry development, there are 8 departments which are responsible for the telecommunication field and the advancement of the information society. Among others these include the *Department for Communication Development*, the *Bureau for the Administration of Telecommunication*, the *Bureau for Radio Frequency Management* and the *Bureau for the Guarantee of Information Security*.

Those powers exercised by the *MIIT* which specifically concern themselves with telecommunication include firstly fixing guide-lines as to the strategy to be followed in the further development of the TC industry. In this context, the *MIIT* is also empowered to formulate the basic principles for regulating this industry. Further the Ministry is responsible for all regulation of the TC branch and of the technical information services. This responsibility includes also the allocation and the management of the appropriate resources, for example of frequencies. Finally the ministry is assigned to the rather vaguely formulated duty of guaranteeing "national information security", as well as supervising and advising other ministries and industry in this field.

With the creation of the *MIIT* and the new-structuring of the provider market at the same time, the course of the TC branch in China was given a new direction. In the past, great efforts had been taken to move the sector away from a state-administered monopoly, towards a fully differentiated and specialised structure, with regard to the providers as well as the government agencies. Today the trend is to some extent reversed. The fragmented, dismembered concerns are now being reassembled to oligopolies, and a powerful ministry supervises them. In this ministry however telecommunication is only one of many industries being supervised. It has changed in character from an IT specific Ministry to a ministry responsible for all types of industries. It remains to be seen whether this change means a loss of political attention towards the TC sector. It is very noticeable, however, that notwithstanding the extensive new structuring of the supervisory agencies, an independent regulator that could effectively implement the access commitments of the incumbent is lacking. Here the political approach has a completely different goal. With the creation of three equally strong full-service concerns, it is intended that an effective access regulation be no longer necessary.

E. Conclusion and Prospects

The first phase of the development of the Chinese TC branch and of its regulation was in part parallel to those of

western economies. For example, in Germany in the case of the postal reforms 1 – 111, there was a similar development of the postal system away from a state administered monopoly past the separation of the TC sector from the rest of the concern up to its new establishment as a business concern on the free market, with competitors being allowed.

Foundations however had never been laid for a really effective access regulation (as there had been in the West), and therefore in practice there had been no need for an independent regulatory government agency as well. The Chinese supervisory structure fitted far more into an industry guided and controlled by the state policy, a policy which culminated in the reforms of 2008. This enforced reorganisation of the market had been undertaken precisely to avoid an access regulation now or in the future, and in spite of this to equip the TC branch with a power of innovation which would fit it for global competition.

It is therefore doubtful whether China's deploying its forces for global competition can be taken as a sure sign that the Chinese TC sector is being opened for the TC market. The lack of an independent regulatory government agency and of a robust, unambiguous legal foundation means that foreign investors must reckon with inadequate legal security. All in all, the reforms have as their goal not so much the liberalisation of the TC sector, as the consolidation and preparation of the Chinese industry for international competition.

In this respect China has a very different approach in the TC industry to those of Western countries, where in a liberalised market the emphasis is placed, first and foremost, on the "Ladder of Investment" formula, a combination of incentives (to encourage newcomers) and restrictive rules (to prevent dominators of the markets from becoming or remaining monopolists).¹⁵⁾ Thus the proverbial "Competition of the Systems" is growing in vehemence in the IT branch as well. However, even though the two systems are so different, it should not be forgotten, that considerations which have such importance for the Chinese, also enjoy a certain persuasive force here in Germany, as we can see in the energy branch where the catchword "Ownership Unbundling" is pervasive. With its oligopolistic provider structure, China would be in a good competitive position in a sector like the TC branch, where abundant financial resources are so important, in furthering research, innovations and technical progress and in advancing exports. This is however on condition that three competitors, all roughly equal in strength, should succeed in gaining and holding their ground. Up till now, all reforms, with all their radical restructuring, have not been able to achieve this goal. It remains to be seen, if the 2008 reforms achieve this. *Deng's* well known saying can be applied here: "It is of no importance whether a cat is black or white; so long as she catches mice, she is a good cat".

References:

Bing, Zhang (2007), Comparative Analysis of the Telecommunication Reforms in the Federal Republic of Germany and in the People's Republic of China. A Sociological, Systemtheo-

retical Observation of the functional Differentiation in Society and Organisation.

- Bing, Zhang, Assessing the WTO agreements on China's telecommunications regulatory reform and industrial liberalization, *Telecommunications Policy* 25 (2001) 461–483.
- Cave, Martin, Remedies for Broadband Services, Study for the Commission, Sept. 2003, available at http://europa.eu.int/information_society/topics/ecommerce/useful_information/library/studies_ext_consult/index_en.htm#2003.
- Cave, Martin/Vogelsang, Ingo, How access pricing and entry interact, *Telecommunications Policy* 27 (2003) 717–727.
- Gao, Ping/Lyytinen, Kalle, Transformation of China's telecommunications sector: a macro perspective, *Telecommunications Policy* 24 (2000), 719–730.
- Guan, Scott Yunxiang, China's Telecommunications Reforms: from monopoly towards competition, 2003, New York: Nova Science Publishers Inc.
- Guo, Zhenzhi, Television Regulation and China's Entry into the WTO, Cologne 2003, available at <http://www.rundfunkinstitut.uni-koeln.de/institut/pdfs/16803e.pdf>.
- Hain, Karl, Regulierung in Zeiten der Konvergenz, K&R 2006, p. 325 ff.
- Harwit, Eric, China's Telecommunications Revolution, 2008, Oxford University Press.
- He, F.C., A history of telecommunications in China: Development and policy implications, in Lee, P. (Ed.) *Telecommunications and Development in China*, 1997, Cresskill, N.J.: Hampton Press.
- Kerschner, Susanne, The Opening of China, in "Funkschau" 99/10, 1999.
- Kops, Manfred, The German Broadcasting Organisation. A Model for China, Cologne 2007, available at <http://www.rundfunkinstitut.uni-koeln.de/institut/pdfs/21506e.pdf>.
- Ollig, Stefan, Rahmenbedingungen und Entwicklungsmöglichkeiten ausländischer Fernsehprogrammanbieter in der VR China, Arbeitspapiere des Instituts für Rundfunkökonomie an der Universität zu Köln Heft Nr. 156. Cologne 2002, Institut für Rundfunkökonomie.
- Ricke, Thorsten/Wang Rong, Regulation on New Services, in Bernd Holznagel, Xu Junqi, Thomas Hart (Eds.), *Regulating Telecommunications in the EU and China*, 2009, Münster: Lit Verlag.
- SARFT, The Regulating Measures for Dissemination of Audio-Visual Programs on Information Networks, Beijing 2004.
- Scharping, Thomas, Administration, Control and Censorship in the Chinese Media; Cologne, October 2007, available at <http://www.rundfunkinstitut.uni-koeln.de/institut/pdfs/23307.pdf>.
- Schumacher, Pascal/Kang Yanrong, Telecommunication Regulation Policy, in Holznagel/Xu/Hart (Eds.), *Regulating Telecommunications in the EU and China*, 2009, Münster: Lit Verlag.
- Tan, Zixiang Alex, Product cycle theory and telecommunications industry – foreign direct investment, government policy, and indigenous manufacturing in China, *Telecommunications Policy* 26 (2002), 17–30.

¹⁵⁾ Compare in more detail here Cave/Vogelsang 2003, 717–727; Cave 2003, p. 20.

- Wan, Yan, Sector Reform, in Jintong Lin/Xiongjian Liang/ Yan Wan (Eds.), *Telecommunications in China: Development and Prospects*, 2001, New York: Nova Science Publishers Inc., p. 159-180.
- Wu, Richard W.S. / Grace L.K. Leung, Competition regulation in the Hong Kong telecommunications sector – Challenges and reforms, *Telecommunications Policy* 32 (2008), 652-661.
- Xia, Jun/Ting-Jie Lu, Bridging the digital divide for rural communities: The case of China, *Telecommunications Policy* 32 (2008), 686-696.
- Yan X./Pitt D. (2002). *Chinese telecommunications policy*. London: Artech House.
- Yearbook of China Telecommunications 2003, available at http://www.stats.gov.cn/english/statisticaldata/yearlydata/yearbook2003_e.pdf.
- Yuhong, Qiu, IPTV Regulation and Triple-Play convergence in China, 2005.

Background information

ITM and the EU-China Information Society Project

The University of Muenster's Institute for Information, Telecommunications and Media Law (ITM) was founded in June, 1997. The primary goal is to research the legal framework of modern information society. Special emphasis is placed on Comparative law in order to learn from other countries experiences of.

This article goes back to a joint research lasting several years, in the scope of a project of the EU-China Information Society. The EU-China Information Society Project was established in 2005 as a 4-year project to support the Information Society Dialogue between the EU and China and pursue the wider aim of fostering information exchange on solutions and strategies for the 21st Century digital society. Its module on telecommunications policy provided a framework for a wide range of activities. In particular so as the efforts of the Chinese government, led by the requirements of a modern service society, and most clearly formulated through the accession process to the WTO, are directed towards a modern legal and regulatory framework that is able to foster market development and serve citizen's needs. How this general thrust can be combined with the factual requirements of a strong government hold on the telecommunications industry, with the currently perceived impossibility to implement a regulatory authority truly independent of government and industry, with the extreme heterogeneity of the Chinese infrastructure and social structure ... all these questions need to be addressed when engaging in a dialogue between European and Chinese experts and decision-makers. The EU-China Information Society Project tried to address such questions and support the development of "the Chinese way" that still accommodates the spirit of competition, rule-of-law, innovation and Information Society Policy as a way to facilitate access to information resources for everybody. It did so by inviting European experts to introduce the EU's communication policy history and status quo, by organising know-how exchange workshops, internships and study tours for Chinese experts and government staff to the EU, by facilitating expert and know-how exchange.

The centrepiece of this cooperation was a research partnership between ITM and the China Academy for Tele-

communications Research (CATR). Together with the Chinese Ministry for Industry and Information Technology (MIIT) research topics were formulated, areas of interest defined and research teams formed to compile relevant materials about the EU's and China's regulatory traditions and challenges and to come up with recommendations for the Chinese government's next steps for their policy reform process. Apart from many workshop materials and accompanying documents, two book publications resulted from this: In 2008, China Law Press published the first comparative analysis, covering the topics of market access, universal service, regulatory institutions and network convergence. The ITM-CATR research team then followed up with another set of questions, focussing on various regulatory challenges under the headline of convergence: the general adjustment of a regulatory framework in the age of convergence, the regulation of specific "convergent services", frequency allocation and management, and the challenge of market definitions and the assessment of significant market power. The second book "Regulating Telecommunications in the EU and China: What Lessons to be Learned?" resulting from this second stage was published in Germany in 2009.

The EU-China Information Society Project ended 2009, after four years of project work under the headlines of e-commerce policy, e-government regulation, convergence policy and other issues apart from the telecommunications policy topic. All those activities have been documented under the project's website at www.eu-china-info.org. Specific telecom-related documents have also been incorporated in the website that was set up as part of a new cooperation between ITM and CATR, www.uni-muenster.de/ITMCATR/.

Thorsten Ricke, scientific assistant at the ITM, Public Law Department, Münster