The Limits of Europeanization:

Regulatory Reforms in the Spanish and Portuguese Telecommunications and Electricity Sectors

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Does Europeanization lead to changes in the governance of the European economies or is it only a reflection of these changes? In particular, is market liberalization a product of Europeanization? While research on the European Union is thriving, only limited systematic and empirical attempts have been made to distinguish its effects from those of wider and global liberalization processes. In order to deal with this question, we compare the progress of regulatory reform in two network industries – telecommunications and electricity – in Spain and Portugal and examine the role of Europeanization in this process. The study is multi-level in the sense that it examines national and sectoral changes in the context of the creation of European-level telecoms and electricity regimes. These European regimes represent two of the most significant successes of the European policy process. In both cases, a coalition of political actors led by the European Commission was highly successful in promoting Europe-wide liberal regimes for telecoms (a key sector in the creation of the ‘information economy’) and electricity (one of the sectors that until the mid-1990s were thought of as immune to change).

Building on an emerging tradition of cross-sectoral research of these two sectors (Schmidt, 1997 1998; Levi-Faur, 1999, 2003, 2004a; Bartle, 1999, 2002, 2003; Coen, 2001; Padgett, 2001, Curien and Matheu, 2001; Murillo, 2002), we ask to what extent the establishment of new European regulatory frameworks in these sectors is the driving force behind the liberalization in the two countries and sectors. We then further ask to what extent the emergence of new EU-level regimes for these two industries constrains neo-mercantilist behaviour in the two countries. Do these new European regimes serve as the major framework for governance and economic behaviour? Or are they so minimal in scope and so
loosely formulated that they leave major issues to the discretion of member states and national policy communities? In order to answer these questions, this paper compares similarities and variations in regulatory reforms in the telecoms and electricity sectors in Spain and Portugal and examines the impact of Europeanization on (a) similarities across both sectors and nations; (b) similarities across sectors and variations across nations; (c) variations across sectors and similarities across nations; and (d) variations across both sectors and nations. We observe how the different cases evolved before and after the creation of the EU regimes, looking at both the Europeanization of markets (that is, creation of single European market) and the Europeanization of governance (that is, the creation of a distinctive European model of public control over private action). In doing so, the paper examines also the limits of the single market and the process of Europeanization.

Europeanization has many faces. Olsen (2003) mentions five: (1) changes in external territorial boundaries; (2) the development of institutions of governance at the European level; (3) the penetration of national and sub-national systems of governance by the centre; (4) the export of forms of political organization and governance that are typical of and distinct for Europe; and (5) a political project aiming at a unified and politically stronger Europe. Our definition is admittedly demanding, yet it supplies clear empirical criteria for our analysis. We define Europeanization as the institutionalization of a common political and economic order at the trans-national level mainly through membership in the European Union and particularly the creation of issue- and sector-specific regimes at the EU level.

As said, we examine the impacts of Europeanization on both nations and sectors. First, we look at the Europeanization of governance as it is reflected at the level of the institutions of the state in Spain and Portugal and specifically in the role of the
regulatory authorities, their autonomy and their relations with the ministries. Second, we analyse the Europeanization of markets as it is reflected in the processes of privatization and the creation of competitive and open environments within and across national borders. We suggest that, if ‘Europeanization matters’, then the creation of EU regimes will lead to: (a) the faster and smoother advance of liberalization than otherwise; (b) similar patterns of market integration and similar institutions of governance across the two countries; (c) varying degrees of liberalization depending on the extent to which the specific European regime promotes liberalization. Specifically, we may expect the lesser degree of delegation to the EU in electricity (intergovernmental regime) to be reflected in a lesser degree of market liberalization in electricity than in telecoms where delegation to the EU regime was more extensive (supranational regime); (d) a lesser degree of neo-mercantilism (promoting national champions and interests) with the advance of Europeanization; and (e) new strategies of internationalization of market operators, corresponding to the opportunities and constraints accompanying the progress of Europeanization. The methodology and research design that we adopt in examining the process of change in light of the above criteria is discussed in the next section of the paper.

I. Case Selection and Research Design

Case selection is of particular importance in small-N analysis. We first clarify the space of variations in our cases and in particular the process of ‘casing’ as a tool in our step-wise design. Casing is a process of setting the boundaries of the cases, which in this paper we do in three dimensions. The first type of case includes two regulatory regimes at the European level; section II compares the 1993 European regime for telecoms with the 1996 European regime for electricity (see Table 1). Our second type of case includes eight sectoral regimes bounded by time. The first four are telecoms cases (section III) and the remainder electricity (section IV).
They are defined by time and by country; thus, we have the telecoms sector in Portugal up to 1993 or the electricity sector in Spain after 1996. Third, we have the four compound cases of telecoms and electricity and of Spain and Portugal (section V). Here we look, not at the telecoms sector in Portugal in particular, but at the telecoms sector across all countries and at Portuguese patterns of liberalization in general, that is, beyond telecoms and electricity. These comparative strategies make the inferential process more formal and transparent on the one hand and more systematic on the other. Thus, we articulate what comparativists usually leave implicit (Levi-Faur, 2004b). At the same time, these strategies test research questions against a myriad of cases and thus potentially increase their consilience.

<table>
<thead>
<tr>
<th>Step</th>
<th>Section</th>
<th>Comparison</th>
<th>Comparative Approach</th>
<th>Nations</th>
<th>Time</th>
<th>Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>II</td>
<td>Telecoms and electricity regimes in the EU</td>
<td>International Regime Approach (IRA) &amp; Policy Sector Approach (PSA)</td>
<td>Constant</td>
<td>Constant</td>
<td>Vary</td>
</tr>
<tr>
<td>2</td>
<td>III</td>
<td>Telecom liberalization in Spain and Portugal up to 1993</td>
<td>National Pattern Approach (NPA)</td>
<td>Vary</td>
<td>Constant</td>
<td>Constant</td>
</tr>
<tr>
<td>3</td>
<td>III</td>
<td>Telecom liberalization in Spain and Portugal after 1993</td>
<td>National Pattern Approach (NPA)</td>
<td>Vary</td>
<td>Constant</td>
<td>Constant</td>
</tr>
<tr>
<td>4</td>
<td>IV</td>
<td>Electricity liberalization in Spain and Portugal up to 1993</td>
<td>National Pattern Approach (NPA)</td>
<td>Vary</td>
<td>Constant</td>
<td>Constant</td>
</tr>
<tr>
<td>5</td>
<td>IV</td>
<td>Electricity liberalization in Spain and Portugal after 1993</td>
<td>National Pattern Approach (NPA)</td>
<td>Vary</td>
<td>Constant</td>
<td>Constant</td>
</tr>
<tr>
<td>6</td>
<td>V</td>
<td>Telecoms and electricity in Spain and Portugal combined</td>
<td>Compound: PSA &amp; NPA combined</td>
<td>Vary</td>
<td>Constant</td>
<td>Vary</td>
</tr>
</tbody>
</table>

* For the comparative terminology, see the introduction of this special issue as well as Levi-Faur (2004b).
We begin with a presentation of our two pairs of ‘compound cases’. Spain and Portugal share certain common characteristics that set them somewhat apart from other members of the European Union. From a historical perspective, we can cite their similar authoritarian legacies, Catholicism, late industrialization, strong religious institutions, late democratization, traditions of centralism, as well as, more recently, wide public support for Europeanization (Sapelli, 1995; Malefakis, 1995; Giner, 1986; Medrano-Diez, 2003). None of these similarities makes the two countries identical, and we suggest that the notions of ‘liberal étatism’ and ‘social étatism’ capture reasonably well the specific mixture of variations and similarities in Spain and Portugal. Étatism is often contrasted with liberal and corporatist patterns of state-business relations or ‘styles’:

Liberal-pluralist styles comprise a preference for market solutions to policy problems and use market-like structured associational systems (open network boundaries, many network members, flexibility, general accessibility of state agencies, lobbyism and limited involvement of interest associations in public policy). Étatism implies a preference for ‘state’ solutions to policy problems, i.e. a dominant role of the state in policymaking and in network structures and by implication a role for interest associations limited to lobbying. Corporatism represents a preference for ‘associational’ solutions to policy problems, that is, self-regulation by civil society and/or delegation of public policy to interest associations, and framework regulation facilitating this. The network structures are characterized by relatively small size, closed boundaries, privileged access, representational monopolies and stability over time. (Waarden, 1999, 104)

These ideal types of policy style are often exemplified in paradigmatic cases. Thus, France is usually the paradigmatic case for étatism, Britain (and the US) for liberal-pluralism and the Scandinavian countries for corporatism. Note that these are theoretical constructions to which, obviously, individual nations constitute better or worse fits. Why étatism for Spain and Portugal? At the most obvious
level, étatism is a default option that captures the characteristics of these polities much better than the notions of liberal-pluralism and corporatism. Liberal-pluralism is usually identified with the Anglo-Saxon countries, and its major characteristics are largely foreign to Spain and Portugal (although less so the former than the latter). As for corporatism, Spain and Portugal are both low on trade union membership, have highly concentrated public administration and industrial sectors, and have relatively weak employer associations. As well, étatism seems to capture some important characteristics, such as a history of late industrialization in both countries that is associated generally with a much more active role for government than in liberal economies and societies (Gerschenkron, 1962). Another important aspect in both countries is the historical centralization of power in their domestic business community and society as well as in their colonial administration. Spain, however, moved faster with industrialization and was less centralized than Portugal, and always had strong domestic civil opposition to the centre (thus, Portugal did not experience a civil war). More recently, in Portugal it was the armed forces that led the insurrection that resulted in democratization (April 1974). In Spain, it was the death of General Franco that triggered the transition, which was led by regime reformists and the monarchy (Linz and Stepan, 1996; Maxwell, 1995). Another notable difference in the degree of étatism is the significant territorial decentralization that has occurred in Spain in the democratic era but not in Portugal.

A second adjective is necessary in order to refine the commonalities of étatism in the two countries. Liberal étatism seems to us to capture the essence of government-business relations in Spain, while social étatism seems to fit the Portuguese case. Liberal étatism signifies the existence of a stronger business community in Spain than in Portugal. This is best reflected in the structure of the financial system, notably the existence of private banks (BBVA and BSCH) that exercise control over a wide array of private (and privatized) business in Spain in
contrast to the dominance of a public bank in Portugal (CGD). Social étatism best captures the Portuguese system since it better reflects the strong social orientation of the Portuguese revolution and constitution (Fishman, 2003). It might also be reflected in the fact that, while for most of the post-war period the Spanish expenditures on social protection were larger than the Portuguese, by the end of the 1990s Portugal was spending more on this item as a percentage of GDP despite being poorer than Spain (Guillen et al., 2002: 234-7). While the health systems of both countries cover the whole population, Spanish labour policies, unlike those of Portugal, seem to endorse or at least to tolerate high unemployment. Indeed, unemployment in Spain was almost three times higher for most the period 1980-2000 than in Portugal (e.g., in 2000 it was 4.1 percent in Portugal and 14.1 percent in Spain). Given their statist traditions and relatively peripheral status in the EU, the two countries are the least likely cases for liberalization. The liberal and supranationalist agenda of Europeanization is, therefore, examined here in light of the least favourable cases (Portugal was even less favourable to the liberalization agenda than Spain).

The other pair of our compound cases comprises telecoms and electricity, which were closely intertwined with the nation-state. Yet since the mid-1980s these two network industries have experienced radical degrees of liberalization. Indeed, the extent of change exceeds that of other infrastructures in the modern economy (e.g., gas, oil, railways, roads, airlines, and media). Both sectors are constructed around extensive and very expensive grids. More so than any other element of these sectors, it is the grids that display their natural monopoly characteristics. The grids are strategic assets that in the absence of regulatory constraints allow their owners to control other segments of the sector and, more important, the access of other suppliers to customers. Yet the constraints on the grids are such as to make electricity less prone to competition than telecoms, for four technological and economic reasons.
First, alternatives to the copper wires of telephony are available to an extent that does not exist in electricity. Mobile telephony, and then wireless and cable telephony, have provided alternative networks to the wire-telephony grids. Second, technology offers new options for using electricity grids for the transmission of telecom data (packet-switching) and new options for electricity (and railway) companies to use their internal communication systems (and right-of-way) to supply telecom services. While it is possible to use the electricity grids and assets to transfer telecom the reverse is impossible. There is a one-way convergence between these technologies, implying that telecoms will face competition from electricity but not vice-versa. Third, electricity transportation is sensitive to distance in a way that is unknown in modern telecoms. While at the moment it is feasible to produce electricity in Germany and consume it in Portugal, this option is costly. The transmission losses and the considerable costs involved in the construction of electricity interconnections weaken competitive pressures from distant generators; after the digital revolution, telecom interconnections are much simpler and easier to monitor. Fourth, the transportation of electricity requires grids that cost about ten times more than the transportation of telecom, which further limits the options for plurality of networks that are so essential for competition. Thus, we have good reason to expect competition in electricity to be more limited than in telecoms, and the ‘goodness of fit’ between the ideas of liberalization and the realities of the sector to be greater in telecoms than in electricity.

II. Varieties of EU-level regimes

Efforts to promote European-level policies in the telecoms and electricity sectors were evident before the Single European Act (SEA) of 1986 and even before the
rise of neo-liberalism to a hegemonic position (Kalyvas, 1994). Yet these early
efforts were basically connected to industrial policies and the safety of energy
supply. Signs of policy change in telecoms in the early 1980s included the
divestiture of AT&T in the US and the privatization of Cable and Wireless and
British Telecoms in the UK and of NTT in Japan. At the EU level, notable was the
publication of ‘Action Lines’ (1983), which later served as the basis for the
Community's telecoms plan (Schneider et al., 1994). In 1986 a directorate for
telecoms was established in the European Commission and serve to promote a
European regime in the sector.¹ The publication of the Green Paper on the
liberalization of telecoms equipment and services in 1987 provided additional
impetus and set the agenda for future discussion and legislative initiatives. Four
more Green Papers were published between 1990 and 1996, and between 1984
and 1999 the Council and the Commission enacted about 170 pieces of telecoms
legislation (Natalicchi, 2001, 190). Up until 1992, liberalization efforts were
directed towards terminal equipment, services and satellites. A more radical step
was taken in June 1993 with a Council resolution to open voice telephony, the
major segment of the market, to competition as of 1 January 1998 for all EU
countries (but with moratoria for specific cases). Liberalization efforts that were
first confined to minor segments of the market were now focused on the major
ones.

In electricity, like the energy sector at large, both liberalization and
Europeanization proceeded extremely slowly. True, the directorate of energy
(DGXVII) was institutionalized as far back as 1968, long before the directorate for
telecoms. But energy was generally considered a ‘national concern’ (Andersen,
1993, 134). A modest move was the adoption of a directive in 1990 concerning the
transparency of electricity and gas prices for industrial consumers. The
Commission hoped thereby to increase the bargaining power of industrial users
vis-à-vis suppliers. In the same year a Transit Directive was adopted to promote
open access for a third country member states that did not share a common border (Midttun, 1996, 266-270). A significant attempt to promote reform came only in 1992, when the Commission published the draft of a directive intended to abolish exclusive rights, thus promoting (a) building new electricity grids; (b) building new generation facilities; and (c) open access to distribution and transmission grids. In addition, the draft required the unbundling of the generation, transmission, and distribution functions of integrated monopolies as a safeguard to competition in this sector.

This proposal was fiercely opposed by the industry and the member states (Padgett, 1992, 69-70). There was good reason to believe that Article 90 of the Treaty of Rome, which provides the Commission with competencies to prohibit state monopolies from engaging in anti-competitive practices, could be applied to electricity. However, the Commission opted for a cooperative procedure to facilitate consensual decision making (Schmidt, 1998). It took five years of negotiations and extensive efforts at compromise before a Franco-German deal paved the way in 1996 for the creation of a European regime (a similar deal made possible progress in telecommunications). By the end of 1996 an Electricity Directive (96/92/CE) had been adopted. The directive called for open access to the transmission and distribution networks and set up eligibility criteria for implementation according to the level of consumption. A February 1999 deadline was set for the provision of choice of electricity supplier to large industrial users; the directive also aimed to extend choice of electricity supplier to households, albeit some time later. A new directive (2003/54/CE) of 26 June 2003 amended some of the legal provisions of the 1996 regime. It contained further measures requiring legal unbundling of network activities from generation and supply, established a regulator in all member states with well-defined functions, imposed transparent network tariffs, and reinforced public service obligations. It came into force in July 2003, and established deadlines for opening the electricity market to
all non-household consumers of 1 July 2004, and to all consumers (households included) of July 2007. By establishing these deadlines, the new directive aims to harmonize open market provision across the EU member states.

While the EU-level regime is a fact of life in both electricity and telecom sectors, the extent to which the member states transferred controlled upward to the EU level varies. Since the extent of transfer for electricity has been much more restricted than for telecoms, Levi-Faur (1999) has proposed a distinction between supranationalism in telecoms and intergovernmentalism in electricity. The lesser degree of transfer of control of electricity, and thus its intergovernmentalism, is evident in the wide discretion of member states that is recognized in four elements of the electricity directive of 1996. First, the directive allows member states to opt either for a Third Party Access (TPA) principle or for Single Buyer status. In the former case, consumers or suppliers negotiate terms of access with the operator of the grid, while in the latter case a single national operator handles all requests for import and is directly responsible for the supply of electricity to consumers. Second, the directive opens the way for a member state to choose a system of negotiated or regulated access. Here, the question of tariffs takes centre stage. The generators and the consumers are critically dependent on the grid operator, which may abuse its power. Member states can leave tariffs and conditions of access to the electricity operators and distributors to negotiate (negotiated TPA) or they can regulate them (regulated TPA). Clearly, only the second case provides safeguards for competition, but the directive allows member states to avoid competition and Europeanization. Third, a reciprocity clause allows member states, for a period of up to nine years, to restrict import of electricity from countries that open their markets to a lesser extent. Finally, the issue of whether to allow distribution companies to shop around freely for the electricity they distribute is left to the discretion of the member states. This is a critical aspect of competition as the distribution companies are well-placed to exert pressure on generators and
transmission operators to lower their electricity prices. The changes that were introduced by the new directive of 2003 do not substantially affect the differences between the EU telecoms and electricity regimes.

III. Telecoms Liberalization in Spain and Portugal

To what extent was the establishment of a new European telecoms regime the driving force beyond the liberalization of telecoms in the Spain and Portugal? And to what extent do the new EU-level regimes constrain mercantilist behaviour by governments and market actors? This section compares developments in the telecoms sectors in the two countries before and after 1993, the year in which the key decisions to create the European regime were taken.

Telecom Liberalization in Spain and Portugal up to 1993
Telecoms regimes in Spain and Portugal shared some important similarities even before the era of liberalization. Unlike almost all west European countries, Spain and Portugal did not fully nationalize their operators. In Spain, Franco’s regime purchased in 1946 a controlling share of the private monopoly owned by International Telephone and Telegraph (Little, 1979). Yet the company, Telefonica, continued to enjoy a considerable degree of autonomy (Jordana, 2002, 87-90). In the Portuguese case, nationalization came only in the late 1960s. Private ownership in Portugal was accompanied by a fragmented industrial structure in which different operators covered different parts of the country (again an exceptional case in Europe, where the industry was consolidated almost everywhere as one operator for one country). Both states had only a marginal interest in the sector until the 1980s. Indeed, some efforts were made to create local technological capacities (especially in Spain after the 1960s), yet the state
did not take on a steering role in the sense of formulating goals and priorities, apart from odd measures of the industrial development type.

The role of the state changed only in the context of democratization of both countries and an increasing awareness of the importance of telecoms in the information society. In Portugal, it resulted in the establishment of the first telecom regulatory agency in Europe, Instituto das Comunicacoês de Portugal (ICP), in 1981. In Spain, the General Secretary of Communications and the General Directory of Telecommunications were created in 1985, with the aim of studying, controlling and coordinating the sector. What is evident in both countries – in the 1980s and even before they joined the EC/EU – is that the state became increasingly interested in the sector and that that interest increased in the second half of the 1980s and well into the 1990s.

In April 1986, four months after Portugal joined the EC, the government set up a special commission to study the sector. The commission’s report formed the basis of a Telecommunications Act of 1989, the first piece of legislation whose scope embraced the whole Portuguese telecom industry. It defined public responsibilities, guaranteed access to certain services and opened value-added services to competition. The functions of the ICP were extended and the agency was granted a certain amount of autonomy. In Spain, the government paid less attention to telecoms at that time but the trend was similar to that in Portugal, and in 1987 the Parliament approved the first telecommunications act in more than seventy years. This law provided a clear legal framework and a clear distinction between the state and the operator. At the same time it distinguished between monopolistic and competitive services, the latter to be authorized by the government case by case.
Signs of change were evident also in the increasing tendency to open some segments of the telecoms market to competition and to make the first moves towards privatization. New legislation liberalized the equipment market in both countries in 1989. Portugal went even further by opening value-added services to competition in the same year, a step which was followed in 1992 by Spain in the context of the implementation of the 1990 EU directive on value-added services. A major arena of change was the emerging market for mobile telephony. Portugal once again made the first move in this market. The incumbent had been operating a land mobile phone system since the late 1980s, but a second licence was granted in 1991 to Telecel, a consortium comprising mainly Portuguese partners, with France Telecom providing the technology. Similarly, Spain awarded a mobile telephony licence to a new group (AIRTEL) in 1994.

A first step towards privatization was taken in 1987, when the Spanish government allowed capital mobilization by Telefonica that reduced the state’s shareholding in the company from about 40 percent to about 32 percent. Yet it took eight more years for the first privatization of Spanish shares to occur. In Portugal the main changes were the restructuring of the sector and the consolidation of three operators with different organizational identities and traditions into one company, Portugal Telecoms (PT) – a process that culminated in 1994–95. Thus, by 1995, a time of wholesale liberalization of telecoms markets, Portugal paradoxically centralized government control over the telecoms operators and achieved what other countries had had for decades: a single public operator running a monopoly (Sousa, 1996, 663). Partly for this reason, and despite the removal of constitutional constraints, no effort was made to privatize until the government ensured the creation and consolidation of a national champion.

Some provisional conclusions about the first years of policy change can be safely made at this stage. First and foremost is the observation that the Spanish and the
Portuguese started to steer the sector only in the context of democratization and before the consolidation of the European regime. Second, these governments promoted liberalization without waiting for the creation of a European regime for telecoms, but partially anticipated it. True, the steps that were taken were only modest, as they focused on relatively minor markets. Neither country privatized, but the first signs of a new approach were evident in both. It would, therefore, be misleading to see the process as one in which the European Commission is struggling against reluctant member states. Since the mid-1980s, the dynamics of market liberalization in this sector was evident even outside the context of Europeanization.

*Telecom Liberalization in Portugal and Spain after 1993*

The establishment of European regime for telecoms since 1993 (see section II) coincides with a similar move towards liberalization in the two countries. Looking at the Portuguese and Spanish sectors, we find important similarities and differences. At the level of the organization of government, we see the consolidation of the position of the regulatory authorities as the major locus of liberal government intervention in the two countries. As was clarified above, a regulatory authority was established in Portugal as early as 1981, clearly beyond any influence of the EC/EU. Some changes that increased its autonomy were introduced at the end of the 1980s and once again in 2001, when more comprehensive changes resulted in the establishment of ANACOM. Spain moved more slowly in this respect. The first indications of the intention to establish a regulatory authority in Spain came in 1994 under the Socialists. Yet the actual step was taken in 1996 by a centre-right government, and the new regulatory authority, *Comisión del Mercado de las Telecomunicaciones* (CMT), has operated since 1997. If the regulatory agencies became a major locus of regulation-for-
competition, the ministries kept enough power – as we will see later – to protect ‘national interests’ mainly through the promotion of national champions.

Unlike in the reform of the governance structure, Spain was ahead of Portugal in privatization. In 1995 the Spanish Socialist government sold 11 percent of Telefonica’s shares in the context of an effort to adjust the public finances to the criteria laid down in the Maastricht Treaty of 1992. Privatization was far from ‘natural’ or ‘liberal’. A year later, the new Spanish government of the right-wing Popular Party nominated a chairman for Telefonica who had a close relationship with the party, and only then moved towards a public offering of the remaining 21 percent of shares at the beginning of 1997. A ‘golden share’ allowed the government to veto changes in control for ten years, and it was used to block Telefonica’s proposed merger with the Dutch incumbent in 2000. Both decisions point to the continuity of the Spanish government’s interest in the sector. This was also evident when a decision was taken to establish a second national operator to compete with Telefonica. The goal was to establish a transitional duopoly for two years to allow the new company to strengthen itself before the market was opened in November 1998. Retevisión, a public firm operating in the radio and TV communications sector, was used as a basis for the creation of the new operator. The creation of second operator aimed to concentrate most of the competition among strong Spanish operators after liberalization. It also gave politicians an opportunity to make more decisions in this sector.

In Portugal, privatization was begun by the government of the Social Democrats – a centre-right party – and was continued by the Socialist government elected in 1995. The Socialist government signed a contract with Portugal Telecoms (PT) for thirty years in May 1995, granting the company use of the network (which remained publicly owned) in return for guaranteeing universal service. The quid pro quo was that PT would guarantee access to the network by other operators in
accordance with EC legislation on fair competition. Privatization also advanced very gradually and was completed only in 2000. After that, the Portuguese state retained golden shares which gave it the final say on certain strategic matters and some small level of indirect ownership. The Portuguese concentrated their energies on the consolidation and formation of PT as a national champion and avoided the creation of second operator. The processes in both countries reveal that privatization was not simply about government retreating from the economy. It was seen as an opportunity to take decisions and to shape the sector in ways that would have a long-term impact on the extent of competition and on the structure of ownership of the operators. The Spanish and Portuguese governments were hesitant in promoting competition at the beginning of the 1990s, and bargained with the European Commission in 1993 for delays in opening the market to competition. However, it was the good performance of the major operators at home and abroad that enabled both governments to move faster and along with the majority of the EU’s member states.

In certain respects the single telecoms market is a success, as both countries, along with the other member states, implemented the bulk of the liberalization programme as laid down in the 1993 European regulatory framework. Yet, at another and perhaps more important level, this development reveals the limits of Europeanization. Not only are the Portuguese and Spanish national telecom markets integrated to only a limited degree with Europe; they are not even integrated with one another, and regulatory policy is decided on a national basis (Henten and Schneider, 2003). There is no single Iberian telecoms market but two separate ones, each liberalized to a degree but not in a way that could not have been achieved without the European supranational regime. This is highly visible at the level of the operators of fixed telephony, but it is also the case in the mobile-telephony market, in which some firms are really global operators.
No less revealing of the limits of Europeanization are the strategies of internationalization of the Spanish and Portuguese operators. Rather than investing in each other’s markets, either in collaboration or through competition, they turned to their former colonies. Telefonica acquired controlling shares of the incumbents in Chile and Argentina in the late 1980s and early 1990s. In 1994 it acquired the Peruvian incumbent. In 2001, Telefonica controlled 56 percent of the fixed lines in Argentina, 34 percent in Brazil, 73 percent in Chile and about 100 percent in Peru. In addition, it has interests and activities in Venezuela, Mexico, Guatemala, El Salvador and Puerto Rico (Rozas, 2003). Portugal Telecoms has major activities in Brazil, where since 1998 it has controlled significant mobile operators as well as a major Internet provider. It is also active in, and controls, fixed-line operators in the former Portuguese colonies of Cape Verde, Guinea Bissau, Macau, Mozambique and Timor. While both companies have some investments in Europe, these are minor in comparison with the investments in their linguistic areas (and former colonies). Indeed, the extent of integration of the Spanish and the Colombian telecoms markets is quite similar to that of the Spanish and the Belgium markets. Despite the strong similarities between the trajectories of liberalization in the two countries, we have no reason to believe that these similarities are either dictated by the European regime or directed mainly by the project of creating a single European telecoms market. Liberalization and Europeanization are usually portrayed as constraints on national decision-making. However, what we found here is that they were used as opportunities for modernization and, where they were believed to involve constraints on the national interest, both liberal and European principles were modified.

IV. Electricity Liberalization in Spain and Portugal

Moving now from telecoms to electricity, we first examine the changes in the Spanish and Portuguese regimes for electricity up to 1996. We then move to a comparative analysis of the two countries’ electricity policies from 1996 onwards
under the new European regime (steps 4 and 5 in Table 1). Our analysis shows that both countries continued making significant attempts at liberalization even before 1996. This is particularly true in respect of privatization, but we also identify clear efforts to promote competitive arrangements and to redesign the structure of governance at the national level in the two countries especially with regard to the generation sector. While efforts to promote competition were not successful, and liberalization was implemented only in the post-1996 era, our research once again throws doubt on the argument that Europeanization was the major driving force for change in the two countries.

Electricity Liberalization in Spain and Portugal up to 1996

While Spanish electricity supply had already been proclaimed a public service in 1924, private suppliers dominated the governance regime and limited the role of the state. Thus, planning for electricity growth was in the hands of the association of electricity suppliers (UNESA) until the 1970s, and only thereafter was it transferred to the government. Indeed, the first comprehensive framework for electricity regulation in Spain was the 1994 law (LOSEN). The major public institution was Endesa, which was established by the Franco regime in 1944. Endesa was expected to construct and operate thermo-generators using local coal and thus to contribute to the import-substitution strategy of the state. It operated as a minor actor in a market that was largely supplied by private companies that were backed by private financial oligarchies (Lancaster, 1989). Further growth in the role of the state came with the nuclear programme, which was largely aimed at the production of electricity by private operators but still involved some important policy decisions and institutionalisation of energy functions at the government. Major change came in the mid-1980s when the Socialist government nationalized the high-voltage transmission network and expanded the role of the public company Endesa, though it avoided comprehensive nationalization in the British and French post-war style. Another change came about in 1994, when an
autonomous authority for electricity (Comision del Servicio Electrico Nacional, CSEN) was established (Boira-Segarra, 1997), albeit with only advisory functions.

Somewhat similar developments are evident in Portugal, although they occurred much more slowly than in Spain. The constitution of the Estado Novo (New State) of 1933 placed constraints on state enterprise and ensured the primacy of private enterprise. However, in the context of the post-war hydroelectric development, the state invested in the sector and some kind of ‘mixed enterprise’ prevailed. The administrative capacity, however, was very limited and the various ministries enjoyed only nominal capacity for control. Unlike Franco, who backed the idea of state-led industrialization, Salazar was hostile to it and kept Portugal aloof from the international conventions of the period (Bermeo, 1990, 138). The transition to democracy radically changed the governance of the sector. The 1976 constitution proclaimed the state enterprises as ‘the inalienable property of the Portuguese people’ (later, it would require a constitutional change to sell more than 50 percent of the state enterprise: Corkill, 1994, 217). Accordingly, the fragmented electricity sector was consolidated and nationalized in 1976 under a state-owned entity called Electricidade de Portugal (EdP) and subsequently private investment in the sector was legally barred (Cross, 1996, 183). For almost two decades, EdP was the major state agency in the electricity sector in Portugal. While formally it performed only service functions, its expertise and the institutional vacuum at the ministerial level made it the most important organization in the sector. Yet in 1995, as part of a reorganization of the sector, the Portuguese government decided to establish a regulatory authority for electricity, Regulatory Entity of the Electricity Sector (ERSE). While this regulatory authority started its operation only in 1997, it signified the coming transformation.

In all that concerns liberalization in this period, Spain moved faster and at a more decisive and self-assured pace than did Portugal. Privatization was promoted in
In 1988 by Felipe Gonzalez’s ruling Socialist Party (PSOE) via a partial public offering of the public assets in Endesa in the stock exchanges of Madrid and New York. A second offering was made in 1994, and a final one in 1998 transferred all remaining shares. Portugal moved slowly, yet in the same direction. Constitutional restrictions were removed by the ruling centre-right Social Democrat Party (PSD). Two years later, in 1991, EdP was corporatized and became a public limited company, with public ownership but operating under private law. In 1996 the first decisive move towards privatization was made with the sale of 30 percent of EdP in the Lisbon stock exchange. This was followed by more offerings in 1997, 1998 and 2000 that reduced the government stake to about 33 percent. If privatization is one criterion of change in the electricity market, the other is government policy vis-à-vis independent power producers. Here it was Portugal that led the way, perhaps in the context of having more constraints on investment in electricity than Spain. While the first independent generators entered the Spanish market only at the end of the 1990s, Portugal had already made private investment in electricity legal in 1988. However, it was five more years before a private consortium in 1992 won an international tender to supply electricity in Portugal.

The move towards a more competitive environment was, however, very hesitant in both countries and focused mainly on competition in generation. In 1994, about two years before the creation of the EU regime for a single market in electricity, the Spanish government advanced competition in the generation segment of the industry while maintaining regulatory control over the transmission and distribution segments, and created an advisory regulatory agency (Curien and Matheu, 2001). Yet the law faced significant opposition from the established operators and was difficult to implement. With the rise of the centre-right government of the Popular Party, it was in effect suspended in 1996 (Lasheras, 1999, 292). The Portuguese government made a similar move towards
competition in generation in 1995, introducing legislation that recognized some generation activity as competitive and even before the consolidation of EU regime.

All in all, some strong indications are evident in both countries in the period before the 1996 regime, especially with respect to private ownership and the development of autonomous regulatory capacities. Specifically, we observe some moves towards independent regulatory authority in Portugal and a regulatory advisory agency in Spain already in 1994. In addition, we observe the opening of the market for independent power producers (in the case of Portugal) and the privatization of the public operators in both countries. Moreover, in both countries in 1994 and 1995 came the first moves towards the creation of a competitive order in the generation of electricity. These moves, which eventually failed in the case of Spain and had only limited effect in the case of Portugal, indicate that the picture of inertia and member states reluctantly reacting to the pressures of the European Commission is partial at best. Since the single market programme does not enforce any preference for a particular form of ownership, the changes that are evident in the Spanish market since the late 1980s can hardly be seen as an expression of Europeanization. Nor can it be suggested that Portugal and Spain are exceptional here, as the majority of the privatizations that were undertaken among the EU member states before 2002 occurred before 1996 (Levi-Faur, 2004a).

**Electricity Liberalization in Spain and Portugal After 1996**

We move now to the period after the creation of the European electricity regime in 1996. As already mentioned, the establishment of autonomous regulatory institutions in Spain and Portugal predates the new EU regime. The Spanish authority Comisión del Sector Eléctrico Nacional (CSEN), established in 1994, was renamed in 1997 Comisión Nacional del Sector Eléctrico (CNSE). A third act in 1998 renamed it Comisión Nacional de la Energía (CNE) and extended its authority to other segments of the energy sector. Nominally, the Spanish agency
presents itself as an independent authority, yet this is hardly the case. Indeed, it is one of 'these kinds of agencies which provide advice to the ministry and are responsible for monitoring and arbitration, but have no definitive regulatory powers. In accordance with their advisory role, the areas of activity of these organizations are broadly defined to include most regulatory issues. Governance and decision-making structures and independent safeguards are similar to those adopted by independent regulatory agencies’ (Ocaña, 2003, 22).

Unlike the Spanish politicians, who were thus reluctant to delegate control and were careful to preserve their authority by making only a limited commitment to autonomous regulation outside the scope of competition laws, the Portuguese seem to follow the blueprint of independent regulatory authorities (Ocaña, 2003:20-22). The Portuguese Regulatory Entity of Electricity Sector (ERSE) has operated since 1997 under legislation dating from 1995. In 2002, ERSE competences were extended to the autonomous regions of Madeira and Azores, and to natural gas, and thus it became to become known as the Regulatory Entity of Energy Services. Another important step, taken in 2002, was the creation of the Competition Authority, which also exercises some authority over energy markets. Yet it is too early to assess its impact on the electricity market.

If in 1995 competition was understood to be possible and desirable in the generation segments of the Spanish and Portuguese electricity sectors, after 1996 competition was applied to consumers, and choice of suppliers – for eligible consumers – was guaranteed at least at the legal level and, following the agreement, at the EU level. After the suspension of the implementation of the pre-1996 liberalization act, the new centre-right government in Spain concluded a Electricity Protocol that was signed with the industry in 1996 and led to a new electricity law designed to create a new electricity regime. The New Electricity Law came into force in January 1998 and introduced the liberalization of
generation and freedom of choice for eligible consumers. Then, in 1998, another agreement between the Ministry of Industry and Energy and the electricity sector, called the Miner Agreement, was signed in order to accelerate the liberalization process even beyond the EU minimum requirements for eligibility for choice of electricity supplier. Indeed, all consumers have been eligible for free choice of supplier as of 2003.

The Portuguese also moved towards a more competitive market. While the law of 1995 still provides the framework of electricity regulation, it was modified in order to adjust it to the EU directive in 1997. Most important, the regime for access to the transmission network was defined as regulated Third Party Access (regTPA) and the eligibility of consumers was set according to EU obligations. In 2001, however, the Portuguese government took one further step and, like its Spanish counterpart, raised the qualified consumer’s thresholds beyond the EU requirements. Thus, while the EU obligation was to liberalize the market for consumers of more than 9GWh by 2003, the Portuguese government brought the deadline forward to 2001. Yet, although Portugal went beyond the EU in this respect, it has been always behind Spain. The most striking difference here is the difference between the countries’ ability to switch electricity supplier. While this ability was estimated to extend to almost 32 percent of consumption in Spain, it accounted only for 4 percent of total Portuguese consumption (CNE and ERSE, 2002, 8). While Spain has already liberalized its entire market, Portugal fixed mid-2004 as its deadline for total liberalization. However, it is important to remember that it is mainly large business consumers that are affected. Households in Spain are practically still out of the game of switching suppliers, despite having had the right to do so since January 2003 (open competition at this level is very limited).

Unlike in the sphere of competition, in Portugal the restructuring of EdP was only minimal, and the market is still dominated by the former public operator. The
market is thus horizontally concentrated and, to the extent that vertical restructuring was promoted as a policy, this was already achieved in 1994. In that year, EdP was turned into a holding company and divided into six major independent subsidiaries, with one company for generation, one for transmission (REN), and four regional distribution companies. However, the restructuring did little to affect the dominance of the EdP, as all the subsidiaries operate under the group’s headquarters authority. Some important developments in this sphere occurred in 1998, when accounting separation between generation and transmission was achieved. Administrative and legal separation between generation and transmission followed in 2000, when REN left the EdP Group and the state became the major shareholder in REN, owning 70 percent and leaving EdP only 30 percent.

The variation in the move towards a more liberalized environment in the electricity industries of Portugal and Spain have been accompanied by some similarities. First is the tendency towards the internationalization of national champions, in both cases mainly towards Latin America. Thus, the Spanish Endesa internationalized mainly to Latin America (Chile, Argentina, Colombia, Peru, Brazil and the Dominican Republic) but also undertakes significant activity in Portugal and Italy and, to a more limited extent, in a few other European countries. The Spanish Iberdola has a significant presence in Mexico, Guatemala and Bolivia, as well as in Brazil, but none in Europe. In Portugal, EdP has a major presence in Brazil, Macau, Cape Verde and also Guatemala, but none in Europe. Thus, in neither country has liberalization made the operators Euro-centred. Second, governments and companies are now actively promoting the creation of an Iberian market as a distinct unit with a common market operator and extended interconnection of the countries’ transmission networks. The process that started at the end of the 1990s faced some regulatory and technological difficulties, and consequently the creation of the Iberian market had to be postponed from the
original date of January 2003 to July 2004. This is a significant development at the national level and demonstrates a somewhat relaxed attitude on the part of the Portuguese towards ‘Spanish imperialism’ but, as we will soon see, it reveals the ability of the four leading corporations (three Spanish and one Portuguese) to protect their position even in the context of a liberalized and Europeanized market. It also reveals the limits of the European regime and of the concept of a single European market for electricity.

All in all, while the movement towards liberalization is consistent across the two periods, the creation of an EU regime for electricity in 1996 had an impact on the extension of the goals of competition for consumers by introducing eligibility for small consumers. Yet, while this goal is formalized at the level of laws and regulation, it is still far from a practical option for consumers, and since 2003 has been introduced very slowly, even in Spain. At a different level, we observe that the changes both in the governance level (autonomous regulatory authorities) and in the market (private ownership, competition) are becoming more legitimate over time in both countries (that is, especially after 1996). Those actors who moved along only reluctantly did not see it as a major threat to their essential interests. This is true at the level of government officials as well as at the corporate level of managers and employees. This observation, and especially the fact that the two countries proceeded with liberalization, first in advance of the creation of the European regime and later beyond its requirements, suggests that the European regime was not a major force behind liberalization.

V. Similarities and Differences across Sectors and Nations

We move on with our stepwise and iterative process of pair-wise comparisons to the aggregate level of liberalization and its relations to Europeanization. Instead of
comparing the Spanish and Portuguese electricity and telecoms sectors, we now compare the Spanish and Portuguese liberalization policies and their relations to Europeanization. Instead of looking at the Spanish telecoms sector, the Spanish electricity sector, the Portuguese telecoms sector, and the Portuguese electricity sector, in this section we compare the telecoms sector in the two countries with the electricity sector in the two countries. In other words, we are ‘casing’ our units of analysis in a ‘compound’, higher level of aggregation. At the same time we aim at a systematic and holistic review of variations and similarities across these sectors and nations and use Table 2 as a heuristic device.

On the basis of our analysis, we expect European Union regimes to exert pressure for the creation of a single market in both sectors, but greater pressure for liberalization in telecoms than in electricity. We also expect Portugal and Spain to move reluctantly towards liberalization, though the degree of reluctance is expected to be higher in Portugal than in Spain. Finally, we expect liberalization to move ahead more forcefully in telecoms than in electricity due to the technological and economic characteristics of the two sectors. In the rest of this section we test these expectations against observations of four combinations of similarities and differences across the two countries and two sectors in order to draw some conclusions about the relations between Europeanization and liberalization. We discuss expectations, observations and implications in respect of each of the four combinations of differences and similarities.

At the level of expectations, cross-national and cross-sectoral similarities in the advance of liberalization across Portugal and Spain and the two sectors suggest that variations in the EU regimes for telecoms and electricity and variations in the degree and type of étatism in Spain and Portugal were not critical determinants of the process of change. What we have observed, however, is that, despite a slow and hesitant start in electricity, liberalization has progressed well beyond initial
expectations. In both nations liberalization was promoted beyond the minimum obligations set by the EU, and the latest EU directive (2003/54/CE) seems to follow rather than to lead developments. This observation is of critical importance since, if it is the nature of the EU regime that shapes the extent of liberalization, we should have observed less electricity privatization, less delegation to national regulatory authorities and less regulation-for-competition. Yet what we have found is that apart from the technological and economic constraints that limit the extent of competition in electricity, this industry is increasingly and surprisingly subject to a liberal regime at the national level. This achieves a level that cannot be inferred from or explained by the nature of the EU’s intergovernmental regime and thus sheds sceptical light on the characterization of the process of Europeanization as the motor of liberalization in this case. We also observe strong similarities at the national level and, against our expectations for lesser degree of liberalization in Portugal, we have found that in general Portugal has moved in the same direction as Spain. Again, this might be seen as an effect of Europeanization; but our cross-temporal comparisons as presented in the two preceding sections of the paper do not support this interpretation. Cross-national and cross-sectoral similarities were found also in the selection of ‘national champions’ which are recognized to be ‘capable of competing abroad, of opening new markets for other Spanish business, and supplying new technologies to the country’ (de Real Valdivielso, 2001, 171). These policies are major expressions of mercantilism and are complemented by the final set of similarities that we wish to emphasize. Both countries, in both sectors, supported the internationalization of their companies, which expanded their operations in the direction of Latin America rather than Europe.

Insert Table 2 about here

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If we are to derive our expectations from the PSA, we should look out for cross-sectoral variations in liberalization; these should certainly be greater than national-level variations. Specifically, we should expect a higher degree of liberalization in telecoms than in electricity due to the greater constraints on competition in electricity. Yet we have found only limited support for these expectations, as both sectors made considerable progress towards liberalization with the technological and economic effects of higher barriers for competition affecting mainly household consumers. The legal and regulatory framework enables competition, while technology and the economics of supply limit competition in household supply. Thus, the variations across sectors are grounded less in politics than in technology and economics. Our expectations of cross-national variations (following the NPA) were based on the variations in state traditions, namely, the liberal étatism of Spain and the social étatism of Portugal: specifically, Portugal’s social étatism would result in a lesser propensity for liberalization. What we observe is significant processes of liberalization in both countries that cannot be explained fully by Europeanization, but for different policy strategies in each country. Indeed, as expected, the Portuguese moved more slowly in market-level changes but faster in governance reforms. To some extent, Spain did the contrary. Regulatory authorities in the two sectors are more autonomous in Portugal than in Spain, and Portuguese policy makers were capable of delegating to a greater extent that the Spanish authorities. Yet at the market level reforms moved faster in Spain for both sectors. The variations in national liberalization processes are additional evidence that the EU is not the driving force behind the process.

This critical observation is expressed in table 2, where we argue that cross-sectoral variations are greater in Spain than in Portugal. This is reflected mainly in the lesser degree of independence that was granted to the Spanish electricity authority when compared to the telecoms agency (CMT) and the greater degree of emphasize on competition in telecoms than in electricity in this country. Sectoral
variations are more pronounced in Spain probably because of the strong position of private electricity providers in Spain and their strong connection with central and regional governments. These established electricity providers while jumping on the liberalization bandwagon were careful to oppose changes that were potentially threatening to them. In Portugal where nationalization preceded the restructuring of the market and of governance, the government did not have to take into account the interests of the private industry and thus we see a more unified outcome that represents the ‘national patterns’ of policy making. In Spain however, these interests, together with the state, were reluctant to grant too much authority to a new independent regulatory body. It is this respect of the entrenched private ownership of the electricity market in Spain that seems to explain better the ease of delegation in Portugal and the difficulties in Spain, and by implication the bigger variations in the privatization process.

VI. Conclusions
We are now in a position to summarize our findings concerning the process of Europeanization and to discuss its impact according to each of the five criteria that were set out in the introduction to this paper. Our emphasis on the limits of Europeanization should not be surprising at this stage. First, while we found a faster advance of liberalization after the creation of EU-level regimes for telecoms and electricity, we have some doubts whether this is indeed an effect of the EU regime. These doubts were first based on cross-regional analysis by Levi-Faur (2004a) but are confirmed in the context of the comparative analysis of this paper. Liberalization of these sectors preceded the creation of a EU regime and indeed went further than its requirements. This is all the more evident when one examines the recent change in the electricity regime (2003/54/CE), which follows rather than leads development at the level of the nation-states. Second, we found significant variations in the patterns of market integration and governance reforms. At the level of market integration we found that, despite considerable and, indeed
(from the point of view of the beginning of the 1990s), surprising progress in liberalization, we cannot really point to any integration of Iberian telecoms and electricity markets into a Europe-wide region. What we have in fact is two distinct national markets with varying degrees of liberalization. The limited integration of the Spanish and Portuguese markets does not seem to us exceptional in Europe, and thus it reveal the limits of Europeanization. At the level of governance structure, we find national variations that are independent both of the process of market integration and of the process of Europeanization.

Third, and most important, we did not find evidence that the more limited degree of delegation upward to the EU in electricity (intergovernmental regime) than in telecoms had an impact on the national regimes in the sense that it made them less prone to liberalization. Liberalization at the national level in electricity moved swiftly beyond the requirements of the EU regime and, as has already been argued, before the EU followed these developments with the most recent regime change in the sector. Fourth, we observed that adherence to the rules of EU regimes, while constraining uncompetitive behaviour by governments and market incumbents, did not curtail it. In fact, there are still wide margins for strategic behaviour by politicians to pursue their ‘national interest’ policies. The two countries stuck to their ‘national champions’ policies; and what is most puzzling is the extent to which governments and national communities could adhere to EU rules on the one hand but continue to be engaged in mercantilist policies on the other. Finally, the telecoms and electricity operators’ strategies of internationalization seem to be directed more to Latin America and former colonies than to Europe. While arguments about the advance of the ‘single market’ lead us to expect that telecoms and electricity companies’ strategies of internationalization will correspond to the new opportunities and constraints of Europeanization, the evidence for this is limited, at least at present.
Our findings on the limits of Europeanization have two important implications. First, we suggest that Europeanization should not be viewed as the motor of liberalization and thus that we should look elsewhere for an understanding of the diffusion of liberalization around the world. Second, we suggest that, even under the EU-level regime, there is enough legal and political room for national actors to pursue mercantilist policies. One caveat before we conclude: while we focus on the limits of Europeanization, we do not suggest that it is not important. Europeanization, unlike liberalization, might move too slowly to be clearly visible. It may well be that the formation of a single market will take longer than was expected. Indeed, it may still take several decades and there is no certainty about the result. Yet, unlike Europeanization, liberalization in a national context was a quite rapid policy change, which suggests again that Europeanization was not the central driving force behind these processes; and while it has certainly not prevented mercantilist policies, it has certainly established another set of policy constraints (and opportunities) for Spanish and Portuguese actors to take into account.
Table 2: Europeanization in a compound perspective

Variations and similarities in Spain’s and Portugal’s liberalization processes

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Notes

1 DGXIII. In 1999 it became the Information Society Directorate.

2 Retevision itself was fully privatized in 1999.

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