

## TELECOMMUNICATIONS—JOINT VENTURES—THE SIGNIFICANCE OF THE AT&T-PHILIPS JOINT VENTURE\*

The United States corporation AT&T International (AT&T)<sup>1</sup> and Philips, N.V. of the Netherlands (Philips)<sup>2</sup> have announced a joint venture agreement in the telecommunications field for the European market.<sup>3</sup> The joint venture will be incorporated in the Netherlands and should be in operation by late 1983.<sup>4</sup> The venture will provide a vehicle for AT&T to bypass European protectionist trade barriers<sup>5</sup> and to gain access to the European telecommunications equipment market.<sup>6</sup> Furthermore, this agreement indicates

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\* The author acknowledges the helpful supervision in this project of Fredrick W. Huszagh, Professor of Law, University of Georgia School of Law.

<sup>1</sup> AT&T is a United States-based subsidiary of American Telephone and Telegraph Company, and it is responsible for that company's overseas business. Wall St. J., Jan. 6, 1983, at 2, col. 2.

<sup>2</sup> Philips is a large electronics company in the Netherlands. *Id.*

<sup>3</sup> The joint venture will initially "focus on converting and upgrading Bell System switching equipment for the European market, using Philips' expertise. Eventually, AT&T and Philips hope to expand the joint venture into an international business that will develop, produce and market other telecommunications equipment, starting with digital switching and transmission systems." *Id.*

Switching equipment is one of the three basic elements of telecommunications equipment. The other two elements are transmission equipment and terminal equipment. *Telecommunications Equipment: Even a Growth Industry Can Have Structural Problems*, OECD OBSERVER, Nov. 1982, at 12.

<sup>4</sup> Wall St. J., *supra* note 1.

<sup>5</sup> These barriers are discussed *infra* notes 9-22 and accompanying text.

While allowing AT&T market access, the joint venture will also benefit Philips by providing the Dutch electronics company with the "resources of AT&T's Bell Telephone Labs Inc. and the manufacturing expertise of AT&T's Western Electric Co. subsidiary." Wall St. J., Nov. 29, 1982, at 31, col. 3. This is particularly important in light of rising research and development (R & D) costs. The following excerpt demonstrates the dramatic increase in research and development costs over the last 20 years:

One example of the increase in total R & D costs is given by ITT. In the early 1960's, ITT spent \$30-40 million developing its Pentaconta switching system, which had a commercial lifetime of nearly 20 years. In the late 1970's, ITT spent \$300-500 million on the 1240 switching system. Other companies have spent up to \$600 million on developing fully electric switching systems. And the lifetimes of many technologies are getting shorter and shorter.

OECD OBSERVER, *supra* note 3, at 16.

<sup>6</sup> The telecommunications field includes both telecommunications services and manufacturing. The service industry consists of non-manufacturing areas such as "engineering, consulting, banking, transportation, motion pictures, insurance, tourism, franchising, construction, advertising, and computer services." Alexander, *The Importance of Services*, 5 BUS. AM. 2 (Nov. 1, 1982). In 1980, the worldwide telecommunications and information services

continuing use of joint efforts in international telecommunications.<sup>7</sup> The AT&T-Philips venture also illustrates the current trend in the United States toward a more liberal environment for investment abroad.<sup>8</sup>

Many European nations have imposed barriers on the importation of telecommunications services and equipment in an effort to promote and protect both independent domestic industries and government-owned and controlled service monopolies.<sup>9</sup> Many Europeans believe that continued dependence on non-European telecommunications industries, particularly those of the United States, prevents development of European telecommunications industries.<sup>10</sup> In turn, this prevents growth in other domestic industries that rely on telecommunications.<sup>11</sup> In addition, European governments wish to strengthen their domestic telecommunications industries because these governments view information as the key to political and economic security.<sup>12</sup> Moreover, European nations

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market was estimated to be over \$180 billion. Arakaki, *Telecommunications and Information Services*, 5 Bus. Am. 11 (Nov. 1, 1982).

Approximately 70% of the United States work force is employed in service industries. Morris, *New Focus on Service Industries*, 5 Bus. Am. at inside of front cover (Nov. 1, 1981). In addition, according to Albert N. Alexander of the Office of Service Industries of the International Trade Administration, positive balances for the United States from "invisibles" (services and investment) in recent years have largely balanced or exceeded deficits in merchandise trade. Alexander, *supra*. Consequently, the service market is very important to the United States economy.

The manufacturing of telecommunications equipment is also a very important area. The OECD OBSERVER estimates that the world telecommunications equipment market had a value of about 40 billion dollars in 1981 and that future growth of the market will be about 8% annually in real terms. OECD OBSERVER, *supra* note 3, at 12. However, the equipment markets in Western Europe, Japan, Australia, and New Zealand are dominated by the so-called "service providers." *Id.* Service providers are government-controlled telecommunications monopolies. *Id.* at 13. In contrast, telecommunications services and equipment producers in the United States are private corporations which are subject to government regulation. *Id.* at 13-14.

<sup>7</sup> See *infra* notes 28-33 and accompanying text.

<sup>8</sup> See *infra* note 23 and notes 40-49 and accompanying text.

<sup>9</sup> Arakaki, *supra* note 6, at 11-12.

<sup>10</sup> As long as Europeans can purchase data processing and telecommunications services and products at a lower cost from the United States than from domestic producers, the local industry will not develop due to a lack of demand. Grossman, *Transborder Data Flow: Separating the Privacy Interests of Individuals and Corporations*, 4 Nw. J. INT'L L. & Bus. 1, 19 (1982).

<sup>11</sup> *Id.*

<sup>12</sup> Access to information and the ability to use it can give countries social and legal advantages over other nations. It is central to decision-making; therefore, it is a basis of power. United Nations Economic and Social Council, *Transnational Corporations and Transborder Data Flows: An Overview*, U.N. Doc. E/C.10/87, at 20 (1981). One commentator has stated that:

have implemented data protection laws to protect personal privacy;<sup>13</sup> however, these laws often function as economic trade barriers as well.<sup>14</sup>

European nations have imposed various domestic barriers on the telecommunications industry. Some examples include: restricting transborder data flows; over-pricing telecommunications services by the national postal, telephone, and telecommunications administrations (PTT's); imposing discriminatory technical standards upon both the providers and users of telecommunications and information services; requiring that domestic information and transactions be processed in the home country; implementing government regulations in a discriminatory manner; and flatly denying entry into the telecommunications market.<sup>15</sup> Most European gov-

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[r]egardless of how information rich a country may be, its sovereignty is endangered to the extent that its information resources are controlled extra-judicially. For example, the data processing service used by the Fire Department of Malmo, Sweden stores architectural firefighting information in a data base located in Cleveland, Ohio. Consider the potential hazard should technical problems or even a hostile act in the host country lead to a communications failure.

Grossman, *supra* note 10, at 19-20.

<sup>13</sup> See generally Eger, *The Global Phenomenon of Teleinformation: An Introduction*, 14 CORNELL INT'L L.J. 203, 210-17 (1981).

<sup>14</sup> Grossman, *supra* note 10, at 5.

<sup>15</sup> Arakaki, *supra* note 6, at 12. For example, under French law, processed personal data must be submitted for advance authorization or regulated by a decree of the Conseil d'Etat in order to be transmitted between France and another country. OFFICE OF TELECOMMUNICATIONS, U.S. DEPARTMENT OF COMMERCE, SELECTED FOREIGN NATIONAL DATA PROTECTION LAWS AND BILLS, Special Publication 78-19, at 46 (1978). "Germany has communications tariffs that prohibit incoming traffic from being sent to a third party without first being processed in a data processing center" in Germany. *Data Could Spark a Trade War*, BUS. WK., Nov. 29, 1982, at 100.

To illustrate the trade barriers resulting from data protection laws and other telecommunications regulations, consider the following:

In December 1978, the German Federal Ministry for Posts and Telecommunications (Bundespost) promulgated regulations that dramatically circumscribed the use which could be made of international leased channel circuits by foreign remote access data processors wishing to do business in Germany. [Telegram from American Embassy, Bonn, West Germany, to U.S. Secretary of State ¶3 (April 15, 1980)]. Specifically the Bundespost regulations, which [became] fully effective January 1, 1982, require all leased lines entering Germany to be "hardwired" to a single terminal device that is not connected to any other communications network in Germany, or to terminate in a computer in Germany that performs "true" data processing on the data transmitted. [*Id.*] If the latter condition is satisfied, the leased line may access the public networks operated by the Bundespost. As a result of these restrictions on the use of leased circuits, United States remote access data processors cannot do business in Germany unless they perform data processing there. This requirement that data processing be performed in Germany, however, would defeat many of the economic and technical advantages of operating a

ernments control the telecommunications industries in their countries; thus, they can easily promote their domestic industries through subsidies, export credits, and setting specific equipment approval and certification requirements.<sup>16</sup> Europeans feel that it is essential to use government-industry cooperation to overcome United States dominance in the information market.<sup>17</sup>

The Commission of the European Communities has recognized the need to foster the European telecommunications industry on an international level. In the past, the members of the European Communities (EC) were not able to compete effectively with the United States and Japan in the telecommunications market.<sup>18</sup> The Commission examined the teleinformatics field<sup>19</sup> in light of the Treaty of Rome<sup>20</sup> objectives of promoting harmonious European economic development and a higher standard of living for member

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worldwide distributed data processing network.

In both purpose and effect, the Bundespost regulations are non-tariff barriers to trade. The regulations not only protect West Germany's data processing services industry (and the jobs that it provides), but they also assure that the Bundespost will derive higher revenues. Foreign data processors that are not prepared to locate some or all of their processing operations in Germany will be required to transfer their transatlantic and other international traffic to more expensive usage-sensitive services. Indeed one of the *admitted* goals of the new regulations is to shift all data traffic to the Bundespost's usage-sensitive services—both domestic and international. [*Id.* ¶6].

Markoski, *Telecommunications Regulations as Barriers to the Transborder Flow of Information*, 14 CORNELL INT'L L.J. 287, 317-18 (1981).

Several countries are considering placing duties on imported information. European Community countries have already imposed import duties on computer programs. Bus. Wk., *supra*, at 100.

The United States Department of Commerce has stated that foreign governments restrict telecommunications trade with the United States through "discriminatory tariffs; 'dumping' practices; bilateral trade agreements; longstanding traditions of corruption, which erect barriers by necessitating graft payments; and the often dilatory methods of central PTT's." OFFICE OF TELECOMMUNICATIONS, U.S. DEPARTMENT OF COMMERCE, *Lowering Barriers to Telecommunications Growth*, Special Publication 76-9, at B-8 (1976).

<sup>16</sup> OECD OBSERVER, *supra* note 3, at 17.

<sup>17</sup> Grossman, *supra* note 10, at 4.

<sup>18</sup> Members of the EC had followed uncoordinated individual national strategies in the areas of telecommunications, computers, and related goods and services. These diverse policies prevented assertion of unified European strength in the world market. Several of these policies are particularly noticeable in telecommunications. The PTT's "have developed distinct technologies, procurement procedures, and tariff and service policies." Ramsey, *Europe Responds to the Challenge of the New Information Technologies: A Teleinformation Strategy for the 1980's*, 14 CORNELL INT'L L.J. 237, 239-40 (1981).

<sup>19</sup> The teleinformatics market includes telecommunications, computers, and related goods and services. *Id.* at 237.

<sup>20</sup> Treaty of Rome, Mar. 25, 1957, 298 U.N.T.S. 11, in force Jan. 1, 1958; [1973] Gr. Brit. T.S. No. 1, Part II (Cmd. 5179 II).

states.<sup>21</sup> As a step toward these goals, the Commission proposed that member states of the EC attempt to secure one-third of the world teleinformatics market.<sup>22</sup>

In contrast with Western European protectionist measures, the United States has instigated efforts to curb protectionism on a multilateral level and to ensure equitable access to the telecommunications market.<sup>23</sup> The United States has proposed that the Organization for Economic Cooperation and Development (OECD) declare that member governments will commit themselves to avoiding restrictive international data flow measures and to maintaining open international communications.<sup>24</sup> The United States

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<sup>21</sup> Ramsey, *supra* note 18, at 238. The proposal was made in 1979. COMMISSION OF THE EUROPEAN COMMUNITIES, EUROPEAN SOCIETY FACED WITH THE CHALLENGE OF NEW INFORMATION TECHNOLOGIES, Doc. COM (79) 650 final (1979) (The Dublin Report).

Article 2 of the Treaty of Rome states:

It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States.

Treaty of Rome, *supra* note 20.

<sup>22</sup> Ramsey, *supra* note 18, at 237.

<sup>23</sup> Arakaki, *supra* note 6, at 12.

Legislation has also been introduced in the United States to help combat protectionist measures. One example is the Trade in Services and Trade in High Technology Products Act of 1982, S. 2058, 97th Cong., 2d Sess. (1982) [hereinafter cited as Trade in Services Act of 1982], which is aimed at moving "service issues to center stage in global trade discussions." Alexander, *supra* note 6, at 4. In 1981, Senators Pressler and Inouye sponsored the Services Industries Development Act, S. 1233, 97th Cong., 1st Sess. (1981), which, among other objectives, would promote overseas service trade by accelerating efforts to eliminate foreign barriers to the services trade. In 1982, Senators Roth, Chaffee, and Inouye supplemented the Pressler-Inouye bill by introducing the Trade in Services Act of 1982. The bill, among other things:

gives high priority to negotiations to reduce services trade barriers, expands and clarifies the application of existing U.S. trade law to services, and requires U.S. regulatory agencies to take into account the treatment that U.S. companies receive abroad when considering the entry or operations of foreign companies in the United States.

Alexander, *supra* note 6, at 4.

Congressmen Gibbons and Florio introduced, respectively, the Trade in Services Act of 1982, H.R. 5383, 97th Cong., 2d Sess. (1982), and the Services Industries Commerce Development Act of 1982, H.R. 5519, 97th Cong., 2d Sess. (1982), which parallel the Senate legislation.

There has also been legislation introduced which includes reciprocity provisions to fight foreign trade barriers in the telecommunications industry. The Telecommunications Competition and Deregulation Act of 1981, S. 898, 97th Cong., 1st Sess. (1981), and its companion House bill, H.R. 5158, 97th Cong., 1st Sess., (1981), include reciprocity provisions. Arakaki, *supra*.

<sup>24</sup> The proposed declaration would not be legally binding; however, it would be recognized

also attempted to establish a work program in the service sector at the ministerial meeting of the General Agreement on Tariffs and Trade (GATT) in Geneva in November 1982.<sup>25</sup> The GATT system presently does not cover services.<sup>26</sup> The November GATT meeting produced nothing more than an agreement that the members will exchange information on service sector barriers.<sup>27</sup>

Although efforts at curbing protectionism have not yet been overwhelmingly successful, the AT&T-Philips joint venture points to continued United States dominance in telecommunications technology despite European market barriers. There has not been a strong demand for the development of European telecommunications technology because the United States has always provided most of the technology through joint efforts. Joint ventures provided the early transatlantic telephone cables.<sup>28</sup> Later, foreign nations joined with the United States in forming the International Telecommunications Satellite Corporation (Intelsat) to provide in-

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as a political commitment. Arakaki, *supra* note 6, at 12.

<sup>25</sup> Before departing for the GATT meeting, Under Secretary of State for Economic Affairs W. Allen Waller stated three goals that the United States delegation wanted to accomplish at the meeting:

First, we believe it important that there be a firm recommitment to the principles of free trade. We are urging the contracting parties to agree to a standstill—to commit themselves not to use protectionist measures in the future, and to roll back those that already exist. Second, we expect that some unfinished business not resolved during the Tokyo Round will move forward, for example, safeguards and dispute settlement procedures. Safeguards, or ground rules under which countries can take temporary measures to protect industries severely threatened by imports, is an exceptionally important area, as these measures have proliferated under the present difficult economic situation. Third, and most important, we hope that work programs will be established in those areas where the key trade problems of the future will lie. We have put forward proposals for working groups on trade in services, or trade-related investment issues, on the problems of trade in high technology goods, and on agricultural export subsidies. With 87 nations participating in the meetings, inevitably some will have different concerns from our own, and the end result will reflect negotiations and compromise on what GATT can tackle now.

National Foreign Trade Council Bulletin, Nov. 24, 1982.

<sup>26</sup> *The United States and the World Economy, 1982 Policy Declaration of the National Foreign Trade Council, Inc.*, 16 (1982).

<sup>27</sup> National Foreign Trade Council Bulletin, Jan. 13, 1983.

<sup>28</sup> AT&T and the British Post Office combined in a joint venture in 1956 to lay a transatlantic cable (TAT-1) between Scotland and Nova Scotia. Grad and Goldfarb, *Government Regulation of International Telecommunications*, 15 COLUM. J. TRANSNAT'L L. 384, 439 n.272 (1976). Another cable (TAT-2) was placed between the United States and France in 1959 as a result of joint efforts between AT&T and the French and German postal/telegraph departments. *Id.* at 419.

ternational telecommunications satellite service.<sup>29</sup> United States companies contributed most of the technological expertise in both the cable systems<sup>30</sup> and the satellite system.<sup>31</sup> Since the United States provided most of the necessary technology, no strong demand emerged for the development of European technology in these areas.<sup>32</sup> Consequently, United States companies maintained a dominant position in equipment and technology.<sup>33</sup>

Western European governments have attempted to encourage their domestic telecommunications industries by raising the protectionist barriers discussed previously.<sup>34</sup> Provision of services and equipment through joint ventures such as the AT&T-Philips joint venture, however, will circumvent these efforts and allow contin-

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<sup>29</sup> Three separate agreements established the Intelsat system: Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, *done* Aug. 20, 1964, 15 U.S.T. 1705, T.I.A.S. No. 5646, 514 U.N.T.S. 25; Agreement Relating to the International Telecommunications Satellite Organization (Intelsat), *done* Aug. 20, 1971, 23 U.S.T. 3813, T.I.A.S. No. 7532; and Operating Agreement Relating to the International Telecommunications Satellite Organization (Intelsat), *done* Aug. 20, 1971, 23 U.S.T. 4091, T.I.A.S. No. 7532.

<sup>30</sup> Shortly after World War II, Bell Laboratories developed the underwater repeater which restores strength and quality to a signal. This repeater enabled AT&T to begin laying transatlantic cables. Grad and Goldfarb, *supra* note 28, at 417-19.

<sup>31</sup> Under the Intelsat arrangement, each signatory is required "to contribute a percentage of the costs of the design, development, construction and establishment of the space segment equal to its quota." Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite, *supra* note 29, Special Agreement, art. 3 at 15 U.S.T. 1746. The Communication Satellite Corporation (COMSAT) of the United States originally owned 61% of Intelsat. *Id.* annex at 15 U.S.T. 1778. Great Britain owned the second-largest share with a mere 8 4/10% of Intelsat. *Id.* Further demonstrating United States dominance of Intelsat, COMSAT was designated as Intelsat's manager. Grad and Goldfarb, *supra* note 28, at 424.

Article X of the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, *supra* note 29, 15 U.S.T. at 1715, instituted the procurement policies of Intelsat. The parties designed Intelsat to "design, develop, and procure the best equipment and services at the best price for the most efficient conduct and operation of the space segment." *Id.* Article X also stated the Intelsat policy of distributing contracts for equipment design, development, and procurement to member nations in proportion to their percentage of Intelsat ownership if the member nations produced equipment of comparable price and quality. *Id.* Thus, United States manufacturers were assured of 61% of the Intelsat equipment contracts for comparable equipment. In addition, if United States companies could produce equipment of a superior quality or at a lower price than foreign competitors, United States manufacturers could provide an even higher percentage of the Intelsat equipment. For a discussion of the Intelsat procurement policy, see Huszagh, *Relationships Between Foreign Policy, National Security and the Regulation of International Commerce: Variations With or Without a Theme?*, 18 Am. U.L. Rev. 709, 730-34 (1969).

<sup>32</sup> See *supra* notes 10-11 and accompanying text.

<sup>33</sup> For an explanation of United States dominance in equipment, see *supra* notes 10 and 31 and accompanying text.

<sup>34</sup> An explanation of these barriers is presented *supra* notes 9-17 and accompanying text.

ued reliance on United States technology.<sup>35</sup> The AT&T-Philips venture and other joint ventures incorporated in Europe will not be foreign entities; therefore, as domestic companies, they will not be subject to protectionist barriers imposed on imported services and equipment.<sup>36</sup> European companies may continue to suffer from a lack of demand which could stifle growth in European domestic telecommunications.<sup>37</sup> Therefore, the AT&T-Philips agreement indicates that the competitive position of United States companies in European telecommunications is likely to continue through joint efforts.

The AT&T-Philips joint venture is also significant in that it brings AT&T into conflict with the EC's goal of securing one-third of the world teleinformatics market for member states.<sup>38</sup> Possible future expansion of the joint venture suggests further conflict with the EC objective to promote telecommunications industries in member states since AT&T is a United States corporation.<sup>39</sup>

Not only does the AT&T-Philips joint venture typify attempts by United States corporations to avoid European protectionism, it also symbolizes current antitrust enforcement practices in the United States. Current trends involving the extraterritorial application of United States antitrust law are favorable for competitiveness and overseas expansion of United States business.<sup>40</sup> In 1977, the Department of Justice issued its *Antitrust Guide for Interna-*

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<sup>35</sup> In reference to the AT&T-Philips joint venture, the Wall Street Journal reports: "Some competitors and European officials fear such a venture. 'There is a danger of European manufacturers becoming second class,' says one Common Market official, referring to the trend toward joint ventures that includes non-European technology." Wall St. J., *supra* note 5. Industry observers also note that due to the vast capabilities of AT&T and Philips, the joint venture could "lead to a merging of the telecommunications and data-processing abilities of the two electronics giants." Wall St. J., *supra* note 1. Such a merger would further strengthen the position of AT&T and Philips in the European market.

<sup>36</sup> See *supra* notes 9-17 and accompanying text. "For AT&T, it was essential to find a European partner. The company has been eager to expand both its data processing and telecommunications businesses outside the U.S., and needed a wedge into foreign markets." Wall St. J., *supra* note 5.

<sup>37</sup> See *supra* notes 10-11 and accompanying text.

<sup>38</sup> See *supra* note 22 and accompanying text.

<sup>39</sup> Furthermore, many Europeans favor government-industry cooperation. AT&T will be competing directly with this concept because AT&T is a United States corporation and government-industry cooperation is meant to promote European industry. See *supra* note 17 and accompanying text.

<sup>40</sup> For a discussion of the current trends, see Fox, *Updating the Antitrust Guide on International Operations—A Greener Light for Export and Investment Abroad*, 15 VAND. J. TRANSNAT'L L. 709 (1982).

*tional Operations*.<sup>41</sup> According to the *Guide*, in 1977 the two main purposes of United States antitrust enforcement were to protect consumers by assuring a competitive market and to protect United States nationals from privately imposed restrictions on exports and investment.<sup>42</sup> In contrast, comments by Attorney General William French Smith in 1981 indicate a change in United States antitrust enforcement policy in that the federal government should no longer impede efforts by United States corporations to compete in international business, particularly through joint ventures that probably would not affect competition in United States domestic markets.<sup>43</sup> Arguably, the AT&T-Philips joint venture fits into this category.

The Foreign Trade Antitrust Improvements Act of 1982<sup>44</sup> is a legislative change that will also help broaden the freedom of

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<sup>41</sup> UNITED STATES DEPARTMENT OF JUSTICE, ANTITRUST DIVISION, ANTITRUST GUIDE FOR INTERNATIONAL OPERATIONS, Jan. 26, 1977, rev. Mar. 1, 1977, reprinted in ANTITRUST & TRADE REG. REP. (BNA) No. 799, at E-1 [hereinafter cited as GUIDE]. The GUIDE examines several examples of international transactions and attempts to give an illustration of government antitrust policy covering these areas.

<sup>42</sup> *Id.* at 4-5. The GUIDE states that "[a]ntitrust enforcement by the United States Government has two major purposes with respect to international commerce. The first is to protect the American consuming public by assuring it the benefit of competitive products and ideas produced by foreign competitors as well as domestic competitors." *Id.* at 4. In addition, "[t]he second major antitrust enforcement purpose is to protect American export and investment opportunities against privately imposed restrictions." *Id.* at 5.

<sup>43</sup> Attorney General William French Smith's Remarks to District of Columbia Bar, ANTITRUST & TRADE REG. REP. (BNA) No. 1021, H-1 (July 2, 1981). Attorney General Smith stated that:

We will also undertake a broad reassessment of our antitrust enforcement practices concerning international commerce—and especially joint ventures by American businesses that are not likely to have anti-competitive effects on domestic markets. The federal government should not—and rational antitrust enforcement need not—impede American firms' efforts to compete internationally.

In addition, we are studying those serious problems caused by the extraterritorial reach of our antitrust laws. Too mechanical an extraterritorial application of those laws fails adequately to take account of our own commercial interests as well as the legitimate interests of our trading partners.

When legislation now or in the future creates domestic or international antitrust concerns, we will ensure that both the Administration and the Congress have as full an understanding of the competitive impact of that legislation. Although many such bills inevitably seek other worthy goals that should receive full consideration, the importance of competition to the prosperity of our economy demands the accurate weighing of competitive effects in the legislative balance. The price and quality of American goods and services—as well as the jobs of American workers—depend upon such due consideration.

*Id.* at H-3.

<sup>44</sup> Foreign Trade Antitrust Improvements Act of 1982, Pub. L. No. 97-290 (1982) [hereinafter cited as the Act].

United States nationals doing business abroad.<sup>45</sup> Title IV of the Act restricts application of the Sherman Act<sup>46</sup> to conduct which has a direct, substantial, and reasonably foreseeable effect on United States domestic, import, or export trade.<sup>47</sup> United States businesses are now responsible under United States antitrust law only for possible harm to others doing business in or from the United States, not for possible harm to competition in foreign markets.<sup>48</sup> United States corporations such as AT&T will have considerably greater freedom in joint ventures abroad due to the new legislation as well as to the changing attitude of the Justice Department.<sup>49</sup>

The AT&T-Philips joint venture provides an entrance for AT&T into the profit-producing area of European telecommunications. The use of joint ventures constitutes an immediate solution to the problem of telecommunications protectionism in Europe.<sup>50</sup> The AT&T-Philips joint venture indicates continuing use of joint ef-

<sup>45</sup> See Fox, *supra* note 40, at 711.

<sup>46</sup> Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (1983).

<sup>47</sup> The Act amends the Sherman Act by inserting a new section seven:

This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless

(1) such conduct has a direct, substantial, and reasonably foreseeable effect;

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade as import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.

Act, *supra* note 44, Title IV. Section 403 of the Act adds a similar restriction to the Federal Trade Commission Act, 15 U.S.C. § 45(a)(3) (1983).

<sup>48</sup> Fox, *supra* note 40, at 711-12.

The previous section seven of the Sherman Act applied to "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country." The previous section seven did not limit the application to conduct affecting the United States. However, the new section seven imposes such a limitation. See *supra* note 47.

<sup>49</sup> Fox, *supra* note 40, at 714-15. Professor Fox argues that the current pro-business trend in the application of antitrust law is further demonstrated in *Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc.*, 441 U.S. 1 (1979). She argues that the *Broadcast Music* case reinforces indications in the GUIDE that joint ventures are permissible when high costs and risks would make independent action infeasible or unattractive. See Fox, *supra* note 40, at 713. The AT&T-Philips joint venture presents such a situation. Rising research and development costs make joint ventures such as the AT&T-Philips venture much more attractive. See generally *supra* note 5.

<sup>50</sup> See *supra* notes 9-17 and 34-37 and accompanying text.

forts in international telecommunications.<sup>51</sup> Use of joint ventures should increase as more United States corporations attempt to avoid protectionist measures which hamper entry into competitive areas.<sup>52</sup> Current antitrust enforcement practices should also encourage United States corporations to enter joint efforts in foreign markets.<sup>53</sup>

The utilization of joint ventures and the relaxed extraterritorial application of United States antitrust law do not diminish European trade barriers in the telecommunications industry. These trade barriers are retained to protect European efforts to advance its own telecommunications industries. Revolutionary changes in modern business due to extensive replacement of management personnel with telecommunication and computer systems demonstrate the importance of developing telecommunications industries.<sup>54</sup> Given the European reliance on trade barriers, the importance of the telecommunications industry in the modern business world, and the EC Commission's goal of securing one-third of the world teleinformatics market,<sup>55</sup> European efforts to promote telecommunications barriers outside of Europe which are favorable to European interests are a foreseeable possibility.

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<sup>51</sup> See *supra* notes 28-33 and accompanying text.

<sup>52</sup> See *supra* notes 9-17 and 34-37 and accompanying text.

<sup>53</sup> See *supra* notes 40-49 and accompanying text.

<sup>54</sup> See generally *A New Era for Management*, *Bus. Wk.*, Apr. 25, 1983, at 50.

<sup>55</sup> See *supra* note 19 and accompanying text.

