

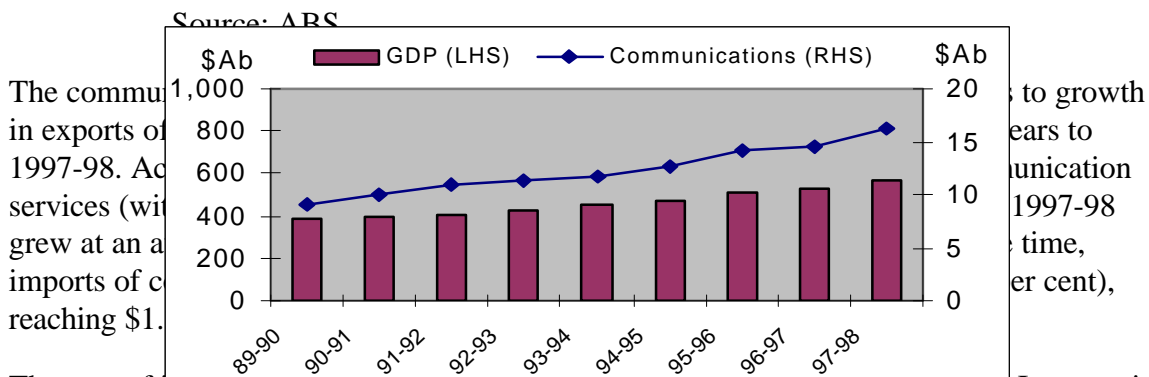
# PRODUCTIVITY COMMISSION INQUIRY INTO INTERNATIONAL TELECOMMUNICATIONS MARKET REGULATION

## SUBMISSION BY THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

### *Introduction*

Communications industries, which are now dominated by telecommunications, have become increasingly important not only as a fast-growing sector of the Australian economy in their own right but also in facilitating growth in other sectors. Between 1989-90 and 1997-98 the communications sector grew at a faster rate than the overall Australian economy (see chart below).

### **Growth in GDP and in the Communications Sector (between 1989-90 and 1997-98)**



The cost of international telecommunications, whether by phone, fax or via the Internet, is an important determinant of Australian exporters' international competitiveness and in the case of small and medium sized businesses in rural and regional Australia, good Internet access can make the difference between exporting and not exporting. This is the case not only because such costs are an important part of the costs of running an export business but also because ready and cost-competitive access to information about global markets will increasingly be a determinant of the success or failure of exporters. A trading nation like Australia, where total exports of goods and services in 1998 were equivalent to around 20 per cent of GDP, must retain a competitive edge. Ensuring access to cost-competitive international telecommunications services will be an important part of doing so.

This submission looks at the impact of international telecommunications prices on Australian business and exporters in general, including how international accounting rates and settlements affect those prices. It also sets out Department of Foreign Affairs and Trade (DFAT) and Austrade efforts to advance the interests of Australian telecommunications providers and services exporters in bilateral, regional and multilateral forums.

### *The importance of telecommunications reform to Australian industry's international competitiveness*

*.. as an input to business costs*

Telecommunications services represent a significant business input in their own right. According to the Productivity Commission's 1999 report, *International Benchmarking of Australia Telecommunications*, around 70 per cent of the Australian communications industry's output, of which telecommunications services is a large part, was used as an intermediate business input in 1993-94 (the latest year for which data is available).

In the past Australian telecommunications operators have attributed high international charges to inequitable international call settlement rates. The international accounting rate system is not the only contributor to higher international call prices, however. In mid-1997, the Productivity Commission suggested that only a quarter of the gap between long run costs and average prices was due to the international accounting rate system. The Productivity Commission assessed that three-quarters of the gap between long run costs and average prices was due to restricted competition in the domestic market.

Increasing domestic competition is, however, bringing benefits in terms of increased international competitiveness. The reforms in the domestic telecommunications industry over the last decade have helped to increase its competitiveness and have facilitated the take up of new technologies which have driven the industry's development in recent years. The most recent reforms introduced in 1997 opened the market to significantly greater competition. There are no longer any limits on the number of licences that may be issued to carriers. The Australian Competition and Consumer Commission (ACCC) now plays a key role in ensuring adequate levels of competition in the market. Since 1997, the number of carriers in the market has increased from 3 to 28 and this increased competition has meant lower prices for business and consumers.

Prices have certainly declined, but not to the same extent as costs. There is still considerable scope for further gains. Australian business telecommunications prices ranked above average amongst selected OECD countries. Prices in the best performing countries were reported to be 20-40 per cent below Australian prices on a purchasing power parity basis in most major segments. (*International Benchmarking of Australia Telecommunications*)

*... and in making the Internet and e-commerce accessible to more businesses throughout Australia.*

Telecommunications also play a vital role as infrastructure for the growing volume of commercial transactions which occur via electronic means. Competitively priced telecommunications will, therefore, have flow-on effects for the capacity of Australian firms to profit from global electronic commerce.

Transactions over the Internet account for a substantial proportion of the growth in electronic commerce. The number of Internet hosts (computers connected to the Internet) grew from 1 million to 20 million world-wide between 1993 and 1997, and is expected to rise to 120 million by 2001. Estimates of the global value of Internet commerce range from 1.3 to 3.3 percent of global GDP by that date, with the number of Internet users likely to approach one billion. Estimates of future growth have been rising rapidly.

Electronic commerce is an emerging area of trade policy which, by slaying the tyranny of distance, has the potential to affect very positively the development of Australia's small and medium-sized businesses, particularly those in rural and regional communities. These can now become involved in export activities more easily, for example in handling, via the Internet, the sale and just-in-time distribution of agricultural products and livestock to consumers overseas. Electronic commerce also generates opportunities for other kinds of industries, such as call centres, to operate from regional areas.

DFAT's research in this area (**see enclosed publications - *Driving Forces on the New Silk Road* and *Creating a Clearway on the New Silk Road* (1999)**) has revealed many examples of small companies, including in isolated parts of Australia, using Internet-based commerce to reach customers all over the world.

For example, Bush Tucker Supply Australia (BSTAust) pioneered the bush food industry in Australia. A small firm, it uses e-mail, on-line order forms and stock records and a detailed website to manage arrangements with clients (restaurants and distributors) and suppliers. The suppliers are harvesters and growers in rural and remote Australia, including from Cape York, Tasmania and the Western Desert. The success of the website in reaching consumers is apparent as BSTAust products are available in stores like Sainsburys in the United Kingdom.

DFAT has been actively contributing to strategies for developing Australia's electronic commerce which includes an emphasis on using the Internet to improve trading opportunities. Austrade has recently appointed an E-commerce Adviser to pursue e-commerce opportunities for exporters.

The case studies contained in the *New Silk Road* reports also demonstrated that the adequacy of rural telecommunications infrastructure can be a major determinant of competitiveness for business. The report also noted that if electronic commerce is going to reach its potential, new generations of non-tariff barriers cannot be allowed to become entrenched. Examples include limited and/or unfair access to telecommunications systems and obstacles to information flows.

*Australia's trade policy and telecommunications - flexibly picking up opportunities bilaterally, regionally and multilaterally*

DFAT and Austrade are pursuing market opening and market development strategies in a range of markets of interest to Australian telecommunications providers and services exporters. Australia's integrated trade strategy is deliberately flexible in pursuing fairer international trading conditions for Australian exporters in bilateral, regional and

multilateral forums. In the telecommunications sector and in relation to e-commerce issues, DFAT and Austrade have sought to pursue opportunities to advance Australian exporters' interests through all of these avenues.

### *Bilaterally*

The Government's 1999 Trade Outcomes and Objectives Statement identifies market development and promotion of Australian providers of telecommunications services as a key priority in a range of important markets: Argentina, Brazil, Canada, China, India, Indonesia, Korea and Thailand. DFAT and Austrade, in consultation with other Commonwealth agencies and industry groups, have identified these markets as providing particular opportunities for Australian providers. Australian missions in these markets are providing focused support for industry's efforts to expand Australian exports of telecommunications equipment and services.

Australia has been involved in some key bilateral agreements over the past year in this sector, notably in promoting the development of information technology industries and electronic commerce. Australia entered into a bilateral collaborative agreement on information and communications technology with the Government of Singapore in February this year after establishing a similar agreement with the Hong Kong Special Administrative Region in June 1998. These agreements, which have a strong focus on trade and investment, establish formal communication channels with major players in the emerging information economy and will enable us to maintain dialogues on international telecommunications and information technology issues.

The Australia-United States "Joint Statement on Electronic Commerce", issued in December 1998, was also an important step toward global cooperation on electronic commerce and other information issues. The Statement recorded areas of agreement on specific issues such as taxes and tariffs, electronic authentication, privacy, consumer protection, Internet content and the Internet domain name system.

In relation to international charging arrangements more broadly, negotiations are generally conducted on a commercial basis between carriers. Government-to-government negotiations on the terms of international charging take place in the context of multilateral discussions at the International Telecommunications Union (ITU) and in the WTO. Management of Australia's approach in ITU discussions is the responsibility of the Department of Communications, Information Technology and the Arts (DoCITA).

### *Regionally*

The APEC Telecommunications Working Group, established in 1990, has made significant progress in establishing a framework for liberalised trade in telecommunications in the Asia-Pacific region. In 1996, APEC Telecommunications Ministers adopted the Gold

Coast Declaration containing a Program for Action to guide further the APEC activities aimed, inter alia, at liberalising trade and facilitating business interaction. At last year's Ministerial meeting, Ministers endorsed an APEC Mutual Recognition Arrangement (MRA) for telecommunications equipment to be implemented in June 1999. Also, Ministers approved a Reference Framework for Action on Electronic Commerce and a set of principles for use by economies looking to provide universal access to telecommunications services.

The Working Group is also undertaking a study of international charging arrangements for Internet services between and among all APEC economies, including connection charges, transit charges, bandwidth and infrastructure costs and a study of local Internet access policies in each APEC economy.

### *Multilaterally*

DFAT is responsible for the management of the Government's multilateral trade negotiations in the WTO.

Telecommunications services have been subject to WTO disciplines since the entry into force in 1995 of the General Agreement on Trade in Services (GATS).

### Telecommunications Commitments in the Uruguay Round

Although WTO Members generally entered into substantial commitments on value-added services during the Uruguay Round, those made on basic telecommunications were less forthcoming. Negotiations on basic telecommunications services were concluded successfully in February 1997, with a total of 68 countries (the European Union counting as one), covering 93% of world telecommunications trade, entering commitments on market access and national treatment.

The negotiations were comprehensive in scope, covering: (i) local, long distance and international services; (ii) public and non-public services; (iii) supply on a facilities basis or through resale; and (iv) all technologies, including supply by cable, radio, satellites, stationary and non-stationary means.

Most of Australia's major trading partners offered improved access to their telecommunications markets. The European Union, Japan, United States, Canada, Korea, the Philippines and Singapore agreed to accelerate their domestic liberalisation processes. *(Further detail on the treatment of telecommunications within the WTO and of our trading partners' commitments is at Annex A)* Those Members which did not offer greater market opening made standstill access commitments (i.e., not to introduce any new measures which would restrict market access further).

The new commitments made by Australia during the negotiations did not require any changes to domestic policy, but bound the level of access Australia maintains in its telecommunications sector (in accordance with the 1997 reforms).

One of the most important outcomes of the negotiations on basic telecommunications was the development of a set of pro-competitive regulatory principles, known as the Reference Paper. The Reference Paper is legally binding for those Members which accepted it, and covers regulatory issues which have an important bearing on competitive conditions including interconnection, spectrum allocation and competitive safeguards. A total of 57 Members, including Australia, agreed to be bound by the Reference Paper. *(A copy of the Reference Paper is at Annex B)*

Members also sought but were, in 1997, unable to agree on a set of principles within the GATS for dealing with international accounting rates and settlements for telecommunications. Members reached an understanding, however, that Members would not instigate disputes against each other even where accounting rates were inconsistent with the GATS. They also agreed that this understanding would be reviewed no later than the commencement of the services negotiations commencing in 2000. *(A copy of the report of the Group on Basic Telecommunications setting out this understanding is at Annex C)*

The issues to be addressed in the forthcoming negotiations relate to the application of different aspects of the GATS framework to international accounting rates and settlements. The key issue here is whether the Most Favoured Nation (MFN) requirement is to apply to accounting rates determined by governments. MFN application would mean a Member would be in breach of its WTO obligations if the terms it accords to another Member are less favourable than those accorded to any other Member.

Accounting rates that are determined between carriers on a commercial basis are subject to GATS Article VIII (dealing with monopolies and exclusive suppliers). This provision requires that Members prevent monopoly or exclusive suppliers from acting to undermine Members' obligations not to favour one nation over another or their specific commitments. Accordingly, accounting rate regimes might be challenged on the grounds that by maintaining monopolistic structures "formally or in effect", governments were permitting suppliers to practise price discrimination.

Concerns have been raised by industry about the extent to which Members have actually implemented the commitments they undertook as a result of the negotiations on basic telecommunications. The Office of the United States Trade Representative (USTR) recently undertook a review of the extent to which WTO Members had implemented their commitments under the WTO telecommunications agreement. This review indicated that the WTO agreement had increased the openness of international telecommunications markets but noted the need for ongoing enforcement of the agreement (document available at [www.ustr.gov](http://www.ustr.gov)).

The Next Round of Negotiations on Trade in Services to commence by 1 January 2000

The GATS provides for successive rounds of negotiations aimed at a progressively higher level of liberalisation in trade in services to take place every five years. The next set of services negotiations is required to commence no later than 1 January, 2000, hopefully as part of a new comprehensive round of multilateral trade negotiations. This is expected to be launched at a meeting of WTO Trade Ministers' Meeting in Seattle in November-December this year.

Australia's negotiating position for the services negotiations is currently being developed. In addition to advertising widely this year for public comment on Australia's negotiating approach to the forthcoming WTO negotiations as a whole, DFAT wrote to around fifteen of the largest Australian telecommunications carriers and industry groups in December 1998, seeking input into its work on developing negotiating objectives for telecommunications. 120 submissions have to date been received from industry and interest groups on our general approach, including a number touching on telecommunications issues.

Based on initial consultations, the approach to services being developed is aimed at ensuring that the negotiations are comprehensive and cover all sectors. Accordingly, both basic and value-added telecommunications services should be covered in these negotiations. Australia will take the opportunity of this round of negotiations to seek improved commitments on market access and national treatment for telecommunications from our trading partners.

Barriers which remain include: the maintenance of monopolies or limited competition for the supply of international telephony services; restrictions on investment, including foreign equity caps; and restrictions on the types of activities foreign companies may undertake in host markets (e.g. countries may allow services to be supplied on a facilities basis, but not on the basis of resale). The approach is also aimed at pressing those members which have not already done so to accept the Reference Paper in full.

Our consultations to date also indicate that Australia should be seeking to augment the framework of rules on trade in telecommunications services to ensure that further liberalisation is underpinned by a legal environment which encourages fair competition. This work will include addressing rules on international accounting rates and settlements which are based on costs and which are non-discriminatory and transparent.

Another issue, raised in consultations, which Australia will be looking to address in the next round is the development of international Internet traffic pricing and access principles. Such principles include non-discriminatory treatment, appropriate compensation of all carriers for the use of their infrastructure and delivery of Internet services on terms that are fair and reasonable for consumers.

### *Conclusion*

Australian industry, and particularly Australian exporters, rely heavily on access to competitively priced international telecommunications services as an important business input. Lower costs in this area are important not simply in terms of their immediate impact

on the profitability of Australian exporters but also because access to cost-effective electronic commerce will increasingly be a determinant of success for exporters around the world.

DFAT and Austrade support efforts to enhance Australian suppliers getting a better deal in international accounting rates and settlements, both in terms of traditional telephony charges and in terms of other telecommunications transactions (including the Internet).

DFAT and Austrade will also continue to make efforts in bilateral, regional and multilateral forums as appropriate to enhance Australian industry's capacity to develop further telecommunications goods and services exports.



### **Telecommunications and the World Trade Organisation**

The General Agreement on Trade in Services (GATS), which entered into force in January, 1995, introduced a set of multilateral rules for trade in services. This made trade in telecommunications services subject to international, legally enforceable disciplines for the first time. The GATS, like other WTO agreements, is subject to the dispute settlement mechanism introduced following the Uruguay Round of trade negotiations.

The obligations on WTO members in relation to trade in telecommunication services are comprised of

- . The GATS
- . The commitments undertaken by members in their country schedules
- . The Reference Paper of pro-competitive regulatory principles (for some Members)
- . The GATS Annex on Telecommunications

#### *The GATS*

The GATS covers the vast majority of traded service sectors and applies to all measures affecting trade in services taken by all levels of government or non-governmental bodies exercising powers delegated to them by government. (An exception exists for Government Procurement.) It applies to services supplied across the border, through the establishment of a commercial presence and through movement by individual consumers and suppliers across borders.

The GATS principles and rules comprise general obligations which apply, with limited exceptions, to all services in all sectors, as well as particular obligations which apply only to those services where a Member has made a specific commitment in its schedule. One of the most important general obligations is the requirement for most-favoured-nation (MFN) treatment. This requires a Member to give to services and service suppliers from any other Member treatment no less favourable than it gives to like services and suppliers from any other country. Other important general obligations include transparency of laws and regulations; providing foreign service suppliers with access to review of administrative decisions; and non-discriminatory application of criteria for recognising foreign standards and qualifications.

Additional rules apply only to sectors in which a Member has made a binding commitment in its country schedule, that is, a specific commitment. The most important of these are market access and national treatment. Where a country undertakes to provide full market access in a particular sector, it agrees to eliminate quantitative restrictions on the sector, including limitations on the total number of firms and the permitted level of foreign equity, and to eliminate any restrictions on legal form of business entities (e.g., it would require countries to eliminate requirements for foreign investment to take the form of joint ventures.) The national treatment principle requires that WTO Members afford services and service supplies from other Members the same treatment enjoyed by their own services and suppliers.

#### *Negotiated Commitments*

Members' schedules of commitments identify the service sectors in which they will grant market access and national treatment to trading partners and any qualifications applying to those commitments. They also contain details of sectors in which Members have withheld application of MFN. (As a key principle of fair trade, however, Members are discouraged from suspending MFN.) These schedules contain the results of multilateral negotiations. The commitments entered in these schedules represent the *minimum*

level of access Members are willing to make themselves legally bound to provide. Members frequently accord a greater level of access in reality.

The commitments and limitations are entered with respect to each of four modes of supply embodied in the definition of trade in services. The four modes are

*Cross-border supply* - non-resident service firms supplying services cross-border into the Member's territory

*Consumption abroad* - Member's residents purchasing services in the territory of another Member

*Commercial presence* - foreign services suppliers establishing, operating or expanding a commercial presence in the Member's territory, such as a branch, agency or wholly-owned subsidiary

*Presence of natural persons* - entry and temporary stay in the Member's territory of foreign individuals in order to supply a service

Negotiations took place on the basis of an agreed set of services, using definitions in the UN Central Product Classification code. For telecommunications services, it was agreed that commitments would be entered against the set of sub-sectors listed below. Services fall broadly into two groups, basic services (or real-time services) (a. to g.) and value-added services (h. to n.). In general, countries are slower to liberalise basic services than value-added services.

- a. Voice telephone services
- b. Packet-switched data transmission services
- c. Circuit-switched data transmission services
- d. Telex services
- e. Telegraph services
- f. Facsimile services
- g. private leased circuit services
- h. Electronic mail
- i. Voice mail
- j. On-line information and data base retrieval
- k. Electronic data interchange
- l. Enhanced/value added facsimile services
- m. Code and protocol conversion
- n. On-line information and/or data processing
- o. Other

During the Uruguay Round, while Members generally entered substantial commitments on value-added services, those made on basic telecommunications were less forthcoming. In adopting the outcomes of the Uruguay Round, Members agreed to further negotiations to secure increased liberalisation of world trade in basic telecommunications services. New negotiations on basic telecommunications were launched in April, 1996.

By the time these negotiations commenced, it was even clearer that global information "highways" based on telecommunications infrastructure and computer networks was opening up competition in the provision of services in a global marketplace. Moreover, the experience of a number of countries had shown that progressive deregulation and liberalisation of domestic telecoms markets led to significant increases in infrastructure development, more and better services and lower process and more convenient forms of service for consumers. The growing recognition of the importance of a liberal and efficient telecommunications sector in determining global competitiveness helped generate political will to push these negotiations forward.

Guidelines developed for these discussions ensured that the negotiations were comprehensive in scope. Members agreed that the negotiations would cover: (i) local, long distance and international services; (ii) public and non-public services; (iii) supply on a facilities basis or through resale; and (iv) all technologies, including supply by cable, radio, satellites, stationary and non-stationary means.

The negotiations concluded successfully on 15 February 1997, with a total of 68 countries (the European Union counting as one), covering 93% of world telecommunications trade, entering commitments on market access and national treatment. Most of Australia's major trading partners offered improved access to their telecommunications markets. The European Union, Japan, United States, Canada, Korea, the Philippines and Singapore agreed to accelerate their domestic liberalisation processes. Those Members which did not offer greater market opening made standstill access commitments (i.e., not to introduce any new measures which would restrict market access further). These offers are also valuable, since they create a more certain legal environment for services suppliers. A summary of the commitments made by our key trading partners is attached at **Attachment 1**.

The new commitments made by Australia during the negotiations did not require any changes to domestic policy, but bound the liberal access Australia maintains in its telecommunications sector. Specifically the commitments cover:

- (i) the binding of the 1997 telecommunications regime which comprises the Telecommunications Act 1997, the Australian Communications Authority Act 1997 and other instruments which were introduced on 1 July;
- (ii) the sale of one third of the Government's equity in Telstra (with foreign equity limited to 35% of the one third available and a limit of 5% of the one third available to individual or associated group foreign investors);
- (iii) no limits on total foreign equity in Optus; and
- (iv) the limitation until 30 June 1997 of the primary supply of satellite services to two service providers and of the primary supply of public mobile cellular telecommunications to three service providers, unfettered thereafter.

#### *Reference Paper*

One of the most important outcomes of the negotiations on basic telecommunications was the development of a set of pro-competitive regulatory principles, known as the Reference Paper. The Reference Paper is legally binding for those Members which accepted it, and covers regulatory issues which have an important bearing on competitive conditions including interconnection, spectrum allocation and competitive safeguards. A total of 57 Members, including Australia, agreed to be bound by the Reference Paper. A copy is attached at B.

Members which accepted the reference paper are obliged to ensure their major suppliers of telecoms services provide interconnection at any technically feasible point in their network. (A major supplier is defined as a supplier which has the ability to affect the terms of participation in the market as a result of its control over essential facilities or its position in the market.) Interconnection must be provided on non-discriminatory terms, conditions and rates, and be of the same quality that the supplier itself and its own affiliates enjoy. Moreover, interconnection must be provided at cost-oriented rates, determined in a reasonable and transparent manner. Charges for interconnection services must be sufficiently unbundled that the user does not incur the cost of services it does not use. Members are also obliged to make procedures for interconnection publicly available, to ensure that its major suppliers publish their interconnection agreements, and set up arrangements for the settlement of disputes arising out of interconnection arrangements.

Other obligations contained in the paper include the introduction of competitive safeguards to prevent anti-competitive behaviour, including the use of cross-subsidy practices and the misuse of information; to make licensing criteria publicly available; and to establish an independent regulator. Members must ensure that scarce resources, such as frequencies and right of way are allocated a timely, objective, transparent and non-discriminatory way. The legitimacy of universal service obligations is recognised, provided these do not act as a disguised form of trade protection.

*Annex on Telecommunications*

The Annex on Telecommunications is one of the eight sectoral annexes appended to the GATS. It was developed as a result of a recognition by trade negotiators that commitments could be undermined if access on reasonable terms to telecommunications infrastructure of a trading partner was withheld. It therefore deals with telecommunications more as vehicle of trade than a traded service in its own right. The key provision of the annex requires members to ensure that foreign service suppliers are given access to and use of public telecommunication networks and services on reasonable and non discriminatory terms and conditions.

## SUMMARY OF COMMITMENTS

### USA

- . Relaxation of restrictive pre-licensing assessment procedures.
- . Removal of restrictions on the landing of submarine cable.
- . Commitment to an open market in telecommunications from 1 January 1998 with no limit on indirect foreign ownership.
- . The USA has made a commitment to all regulatory principles in full.

### CANADA

- . Removal of Teleglobe's monopoly status, from October 1 1998, opening opportunities to compete in Canada's market for the provision of overseas facilities-based telecoms services and to invest in Teleglobe Canada.
- . From October 1 1998, restrictions on the landing of submarine cable removed.
- . Traffic routing restrictions will be removed and all satellite services will be opened to competition from January 2000.
- . On April 15, 2002 Telesat Canada will no longer be authorised as the sole operator in Canada of satellite space segment facilities which are used to provide national and Canada-US fixed satellite services.
- . Canada has made a commitment to all regulatory principles in full.

### JAPAN

- . A 20% foreign investment limitation has been maintained for NTT and KDD, however, there is no limit on foreign investment in other services.
- . Japan has allowed participation in the highly lucrative area of international simple resale.
- . Competition is also permitted in long distance services, international telecommunications and cellular mobile services.

- Japan has made a commitment to all regulatory principles in full.

## EU

- Liberalisation of most EU markets from 1 January 1998, with foreign investment in telecommunications companies permitted.
- Spain and Portugal agreed to advance liberalisation to 1998; Greece and Spain have removed restrictions on mobile services; and Spain and Belgium have removed foreign investment restrictions.
- Increased access for international and mobile services and removal of foreign investment restrictions in most EU members states
- The EU has made a commitment to the regulatory principles in full

## INDONESIA:

- Commitments on existing access as a base for future liberalisation.
- The monopolies on local services (until 2011) and long distance (until 2005) and the duopoly on international (until 2005) will be reviewed upon expiry.
- There is a binding of access for foreign investment in joint ventures with PT Telkom, up to 35 per cent.
- Indonesia has committed to the regulatory principles in full.

## KOREA

Korea to open up its market to foreign participation:

- in facilities-based services (up to 49 per cent foreign equity from 2001) and
- resale (49 per cent foreign equity from 1999 and 100 per cent foreign ownership from 2001),
- and has committed to the regulatory principles in full.

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**SINGAPORE**

- . Binding of the liberalisation of its telecoms market from 2000, and
- . Allowing direct foreign investment up to 49% and indirect investment up to a total of 74%, making the establishment of a presence in this strategic market easier.

**HONG KONG**

- . Commitment to permit International Simple Resale for fax and data.
- . Hong Kong Telecom's monopoly on international services is set to expire in 2006.
- . Hong Kong has committed to all of the regulatory principles.

**MALAYSIA**

Malaysia has made a commitment to maintain access for foreign investment through existing licence holders

- . Foreign equity may be up to 30 per cent.

Malaysia has made commitments on most of the regulatory principles.

**NEW ZEALAND**

New Zealand has made binding commitments to maintain its open market for trade and investment in telecommunications and has committed to the regulatory principles in full.

**THE PHILIPPINES**

The Philippines :

- . removed its economic needs test on foreign investment in telecommunications
- . agreed to maintain foreign investment access of up to 40% in joint ventures, and
- . committed to the regulatory principles in full.

**THAILAND**



Thailand will:

- . open its telecommunications market from 2006, subject to the passage of legislation
- . commit to all of the regulatory principles from 2006
- . maintain foreign investment access of up to 20 per cent in joint ventures.

**PAPUA NEW GUINEA:**

PT Telikom's monopoly will be reviewed and a decision made on the results of the review by 1 January 2000.

Papua New Guinea has committed to all of the regulatory principles.

**SOUTH AFRICA**

- . review of mobile licences in 1998
- . move to a duopoly on other services from 31 December 2003
- . liberalise resale of services between 2000 and 2003.
- . commit to all of the regulatory principles.

**INDIA :**

- . review opening up its long distance market in 1999 and its international market in 2004
- . and commit to the regulatory principles in full.

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15 February 1997

Organization

(97-0675)

Group on Basic Telecommunications

## **REPORT OF THE GROUP ON BASIC TELECOMMUNICATIONS**

This report is made in accordance with paragraph 4 of the Decision on Commitments in Basic Telecommunications, adopted by the Council for Trade in Services on 30 April 1996 (S/L/19). In paragraph I of this Decision, the Council also adopted the text of the Fourth Protocol to the General Agreement on Trade in Services and took note of the Schedules of Commitments and Lists of Exemptions from Article 11 listed in the Attachment to the final Report of the Negotiating Group on Basic Telecommunications (S/NGBT/18).

The Decision on Commitments on Basic Telecommunications established the Group on Basic Telecommunications to "conduct consultations on the implementation of paragraph 3 of the Decision". Paragraph 3 states that "during the period from 15 January to 15 February 1997, a Member which has a Schedule of Commitments annexed to the Protocol, may supplement or modify such Schedule or its List of Article II Exemptions" and that "any such Member which has not annexed to the Protocol a List of Article 11 Exemptions may submit such a list during the same period".

At the Group's first meeting in July 1996, participants suggested that the principal issues before the GBT included the desirability of improving the quantity and quality of Schedules offered, and the need to address certain issues which had been left unresolved in April. Subsequently, the Group sponsored frequent rounds of bilateral negotiations on offers and regularly included discussion of outstanding issues in its meetings. In November participants began submitting revised draft offers of commitments on basic telecommunications for consideration. The Group's Report to the Council on Trade in Services (S/GBT/2), which formed part of the Report to the Singapore Ministerial Conference, recommended that Ministers "stress their commitment to bring the negotiations on basic telecommunications to a successful conclusion by 15 February 1997, urge all WTO Members to strive for significant, balanced and non-discriminatory liberalization commitments on basic telecommunications by that date and recognize the importance of resolving the principal issues before the GBT". The Declaration adopted by Ministers, in Singapore (WT/NIIN(96)/DEC) contained a commitment to "achieve a successful conclusion to the negotiations

on basic telecommunications in February 1997". Ministers also stated "We are determined to obtain a progressively higher level of liberalization in services on a mutually advantageous basis with appropriate flexibility for individual developing country members, as envisaged in the agreement, in the continuing negotiations and those scheduled to begin no later than 1 January 2000. In this context, we look forward to full MFN agreements based on improved market access commitments and national treatment".

In its discussions on outstanding issues, the Group considered the following matters: ways to ensure accurate scheduling of commitments - particularly with respect to supply of services over satellites and to the management of radio spectrum; potential anti-competitive distortion of trade in international services; the status of intergovernmental satellite organizations in relation to GATS provisions; and the extent to which basic telecommunications commitments include transport of video and/or broadcast signals within their scope. The Chairman issued notes reflecting his understanding of the position reached in discussion of the scheduling of commitments and management of radio spectrum. The first such Note set out a number of

assumptions applicable to the scheduling of commitments and was intended to assist in ensuring the transparency of commitments (S/GBT/W/2/Rev. I of 16 January 1997). The second addressed the allocation of radio spectrum, suggesting that the inclusion of references to the availability of spectrum in schedules was unnecessary and that such references should be deleted (S/GBT/W/3 of 3 February 1997). These Notes are attached to this Report.

By 15 February 1997 the total number of schedules submitted had reached 55 (counting as one the offer of the European Communities and their Member States). Nine governments had submitted lists of Article 11 Exemptions.

The Group noted that five countries had taken Article II exemptions in respect of the application of differential accounting rates to services and service suppliers of other Members. In the light of the fact that the accounting rate system established under the International Telecommunications Regulations is the usual method of terminating international traffic and by its nature involves differential rates, and in order to avoid the submission of further such exemptions, it is the understanding of the Group that:

- the application of such accounting rates would not give rise to action by Members under dispute settlement under the WTO; and
- that this understanding will be reviewed not later than the commencement of the further Round of negotiations on Services Commitments due to begin not later than 1 January 2000.

The Group also recalled paragraph 6 of the Decision of 30 April, which stated that Members of the World Trade Organization which have not annexed to the Protocol Schedules of Commitments or Lists of Exemptions from Article II may submit, for approval by the Council, Schedules of Commitments and Lists of Exemptions from Article II relating to basic telecommunications prior to 1 January 1998.

At its meeting of 15 February 1997, the Group adopted this report and the attached list of the Schedules of Commitments and Lists of Article 11 Exemptions, which, in accordance with paragraph 3 of the Decision on Commitments in Basic Telecommunications, will be attached to the Fourth Protocol to the General Agreement on Trade in Services in replacement of those attached on 30 April 1996.

World Trade S/GBT/W/2/Rev. 1  
16 January 1997  
Organization  
(97-0173)

Group on Basic Telecommunications

Note by the Chairman

## Revision

It has been suggested by a number of delegations that it might be helpful to produce a brief and simple note on assumptions applicable to the scheduling of commitments in basic telecoms. The purpose of the attached note is to assist delegations in ensuring the transparency of their commitments and to promote a better understanding of the meaning of commitments. This note is not intended to have or acquire any binding legal status.

## NOTES FOR SCHEDULING BASIC TELECOM SERVICES COMMITMENTS

1. Unless otherwise noted in the sector column, any basic telecom service listed in the sector column:

(a) encompasses local, long distance and international services for public and non-public use;

(b) may be provided on a facilities-basis or by resale; and

(c) may be provided through any means of technology (e.g., cable including all types of cable., wireless, satellites).

2. Subsector (g) - private leased circuit services - involves the ability of service suppliers to sell or lease any type of network capacity for the supply of services listed in any other basic telecom service subsector unless otherwise noted in the sector column. This would include capacity via cable, satellite and wireless network.

3. In view of points 1 and 2 above, it should not be necessary to list cellular or mobile services as a separate subsector. However, a number of Members have done so, and a number of offers have commitments only in these subsectors. Therefore, in order to avoid extensive changes in schedules, it would seem appropriate for Members to maintain separate entries for these subsectors.

World Trade S/GBT/W/3

3 February 1997

Organization

(97-0415)

Original: English

Group on Basic Telecommunications

### CHAIRMAN'S NOTE

#### Market Access Limitations on Spectrum Availability

Many Members have entries in the market access column of their schedules indicating that commitments are "subject to availability of spectrum/frequency" or similar wording. In light of the physical nature of spectrum and the constraints inherent in its use, it is understandable that Members may have sought to rely on these words to adequately protect legitimate spectrum management policies. There is, however, doubt that words such as "subject to availability of spectrum/frequency" as listed in the market access column of many Members' schedules achieve that objective.

Spectrum/frequency management is not, per se, a measure which needs to be

listed under Article XVI. Furthermore under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers, provided that this is done in accordance with Article VI and other relevant provisions of the GATS. This includes the ability to allocate frequency bands taking into account existing and future needs. Also, Members which have made additional commitment in line with the Reference Paper on regulatory principles are bound by its paragraph 6.

Therefore, words such as "subject to availability of spectrum/frequency" are unnecessary and should be deleted from Members' schedules.

## ATTACHMENT

Schedules of Commitments and Lists of Article II Exemptions to be annexed to the Fourth Protocol of the General Agreement on Trade in Services

Argentina S/GBT/W/I/Add.55

- S/GBT/W/12 (List of Article II exemptions) Antigua and Barbuda S/GBT/W/I/Add.44
- S/GBT/W/8 (List of Article 11 exemptions) Australia S/GBT/W/I/Add. I O/Rev.2 Bangladesh S/GBT/W/I/Add.38 + S/GBT/W/7 (List of Article 11 exemptions) Belize S/GBT/W/I/Add.52 Bolivia S/GBT/W/I/Add.4/Rev.1 Brazil S/GBT/W/I/Add.28/Rev.1 + S/GBT/W/10 (List of Article II exemptions) Brunei Darussalam S/GBT/W/I/Add.35 Bulgaria S/GBT/W/I/Add. 8/Rev. I + S/GBT/W/I/Add. 8/Rev. I /Corr. I Canada S/GBT/W/I/Add.6/Rev.2 Chile S/GBT/W/I/Add.37/Rev. I Colombia S/GBT/W/I/Add.46 Côte d'Ivoire S/GBT/W/I/Add.3 I/Rev. I Czech Republic S/GBT/W/I/Add. I I/Rev. I Dominica S/GBT/W/I/Add.51 Dominican Republic S/GBT/W/I/Add.30 Ecuador S/GBT/W/12/Add.26 El Salvador S/GBT/W/I/Add.13 European Communities and their Member States S/GBT/W/I/Add. I /Rev.2 Ghana S/GBT/W/I/Add. 17/Rev. I Grenada S/GBT/W/I/Add.22 Guatemala S/GBT/W/I/Add.41 Hong Kong S/GBT/W/I/Add. 20/Rev. I Hungary S/GBT/W/I/Add.26/Rev. I Iceland S/GBT/W/I/Add.27 India S/GBT/W/I/Add.24/Rev. I + S/GBT/W/19 (List of Article II exemptions) Indonesia S/GBT/W/I/Add. 15/Rev. I Israel S/GBT/W/I/Add.32 Jamaica S/GBT/W/I/Add.45 Japan S/GBT/W/I/Add.29/Rev.1 Korea, Republic of S/GBT/W/I/Add.33/Rev. 1 Malaysia S/GBT/W/I/Add.2 I /Rev. I Mauritius S/GBT/W/I/Add. 19 Mexico S/GBT/W/I/Add. 16/Rev.2 Morocco S/GBT/W/I/Add.54 New Zealand S/GBT/W/I/Add.25/Rev.1 Norway S/GBT/W/I/Add.23 Pakistan S/GBT/W/I/Add.31 + S/GBT/W/5 (List of Article II exemptions) Papua New Guinea S/GBT/W/I/Add. 3 6 Peru S/GBT/W/I/Add.18 + S/GBT/W/I/Add. 18/Corr. I Philippines S/GBT/W/I/Add.42 Poland S/GBT/W/I/Add. 12/Rev. 3 Romania S/GBT/W/I/Add. 14/Rev. I Senegal S/GBT/W/I/Add.43/Rev. I Singapore S/GBT/W/I/Add.7/Rev. 1 Slovak Republic S/GBT/W/I/Add.3/Rev.2 South Africa S/GBT/W/I/Add. 9/Rev.2 Sri Lanka S/GBT/W/I/Add.40
- S/GBT/W/6 (List of Article 11 exemptions) Switzerland S/GBT/W/I/Add. 5/Rev. I
- S/GBT/W/I/Add. 5/Rev. I /Corr. I Thailand S/GBT/W/I/Add. 3 9 Trinidad and Tobago S/GBT/W/I/Add.48 Tunisia S/GBT/W/I/Add.34 Turkey S/GBT/W/I/Add.49/Rev.1
- S/GBT/W/I I (List of Article 11 exemptions) United States of America S/GBT/W/I/Add. 2/Rev. I
- S/GBT/W/9 (List of Article 11 exemptions) Venezuela S/GBT/W/I/Add.50/Rev.1



## REFERENCE PAPER

### Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

### *Definitions*

Users mean service consumers and service suppliers.

Essential -facilities mean facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers;  
and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

### 1. Competitive safeguards

#### 1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

#### 1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services:

## 2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

### 2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

### 2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

### 2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

## 2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

## Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

## 4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

## 5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

## 6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.