

**ISSUES OF INTEREST TO LDCs IN THE WTO SERVICE NEGOTIATIONS
SERIES NO 2: TELECOMMUNICATIONS SERVICES**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. UNDERSTANDING THE TELECOMMUNICATIONS SECTOR.....	2
A. Telecommunications Sector and Growth.....	2
B. Characteristics of the Telecommunications Sector	3
1. <i>Imperfect Competition</i>	3
2. <i>Need for Regulation</i>	4
C. Importance of the Telecommunications Sector in LDCs	4
III. GATS LIBERALIZATION OF TELECOMMUNICATIONS SERVICES	6
A. Issues and Considerations	6
1. <i>Competition Issues</i>	6
2. <i>Investment Issues</i>	7
B. WTO Reference Paper on Telecommunications	8
IV. NEGOTIATIONS ON TELECOMMUNICATIONS AND RECOMMENDATIONS.....	10
BIBLIOGRAPHY	12
ANNEX 1: REFERENCE PAPER	14

I. INTRODUCTION

1. The telecommunications sector is of crucial importance in every economy. Almost every other sector of an economy depends on telecommunications services in their economic activity. Most businesses today rely to a great extent on data transmission by information and communication technologies for their operations – in other words, functioning without telecommunications services is inconceivable for most business operations. Moreover, the rapid spread of knowledge and information is very desirable in the development process, be it for economic or personal reasons, and contributes in a positive way to the well-being of a population. For example, fast transmission of information can allow businesses, organizations and individuals to better understand global issues and problems. Furthermore, reaction to events, such as decline of commodity prices or exchange rates, would be more prompt with modern telecommunications services enabling domestic adjustments to external developments in a timely manner. Therefore ensuring a sustainable well functioning telecommunications sector needs to be an important consideration in a country's national development policy.

2. In section two this note focuses on the characteristics of the telecommunications sector, particularly its important features of imperfect competition and the need for regulation. Additionally, the state of telecommunications in least developed countries (LDCs) is briefly explained. In section three, the paper focus on liberalization, discussing arguments in favour of liberalization as well as pointing to the risks that such an undertaking could entail. The role of the WTO Telecommunications Reference Paper within the context of GATS negotiations is also discussed. Finally recommendations are outlined together with questions that LDCs should consider in deciding what strategy to pursue in GATS liberalization of the telecommunications sector.

II. UNDERSTANDING THE TELECOMMUNICATIONS SECTOR

A. Telecommunications Sector and Growth

3. There is a link between economic development and the growth of telecommunications services. Usually the larger the economy, the larger is the demand for such services and greater the need for improved efficiency. On the other hand, having well-functioning telecommunications services in place first can aid in providing more sophisticated infrastructure and a wider range of services and as a result stimulating economic activity.¹ Therefore, there seems to be a “chicken and an egg question” of whether telecommunications foster economic growth or the opposite, i.e. whether demand in telecommunications services arises once an economy grows. Several studies have demonstrated a positive relationship of the growth in telecommunications services on overall economic growth.² This finding seems to be particularly accentuated when it comes to mobile telecommunications, where the positive impact on GDP growth is found to be even more pronounced³. As it seems to be a trend that persons in ‘developing countries’ are becoming more frequent users of cellular phones than land line phones, this fact must be kept in mind not while only determining national development strategies for the telecommunications sector but also in international trade negotiations.⁴

¹ Macro environment and Telecommunication, Chapter 6, Module 5, *Direct effect of Telecommunication on economic development*:

<http://cbdd.wsu.edu/kewlcontent/cdoutput/TR501/page66.htm>

² An overview of literature is provided in a paper by SRIDHAR Kala Seetharam and SRIDHAR Varadharajan, (March 2004), *Telecommunication Infrastructure and Economic Growth: Evidence from developing countries*, Working Paper No. 14, National Institute of Public Finance and Policy.

Available at <http://www.nipfp.org.in/working%20paper/wp14.pdf>, last accessed June 05

³ *idem*

⁴ For example in Africa, the number of subscriber of main telephone line is lower than the one of mobile subscribers in 2003. See http://www.itu.int/ITU-D/ict/statistics/at_glance/af_ictindicators.html

B. Characteristics of the Telecommunications Sector

1. Imperfect Competition

4. The telecommunications sector presents certain unique particularities. It is a sector that was formerly highly monopolized in many countries. Governments tried only in the last twenty years in the North and even more recently in the South to deregulate their telecommunications sectors. However, to date, competition in this market remains imperfect. There are various reasons for this characteristic.
 - First, it is neither practical nor desirable and at times technically not feasible to have several telecommunications infrastructures, e.g. fixed lines, power lines, etc. for providing the same telecommunications services - one well functioning backbone network is sufficient. Therefore a national telecommunications infrastructure must be designed efficiently.
 - Secondly, an enterprise operating in this market, especially when dealing with the provision of fixed land lines, has high sunk costs. Also infrastructure costs for mobile telecommunications are not low and therefore require substantial financial resources. Large and powerful companies therefore tend to dominate the telecommunications market.
 - A third reason for the tendency of this market to be monopolistic in structure is that telecommunications services experience rapid technological change. Technological invention can affect this sector very quickly, which has been demonstrated in the last decade, for instance the increased possibilities due to the new economy, telecommunications through webcams, etc. Therefore enterprises in this business must always keep up with the latest trends and invest in research and innovation programs – all of which require substantial resources.
 - Finally, telecommunications services, being traditionally provided by the government in the form of a monopoly, are often only partially privatized which leads to the best extent a duopoly or oligopoly. The incumbent firm therefore retains most of its market power. This result is also at times due to the obligation many governments have to provide telecommunications services to its population, i.e. a universal service obligation (USO).⁵ Moreover many governments also may desire or depend on revenues from the telecommunications sector and as a result are reluctant to fully privatize incumbent firms.
5. Telecommunications services can also be considered to have a strong public good dimension. This public good character⁶ of telecommunications infrastructure becomes especially relevant when competition is introduced.

⁵ See Box 1 on page 5

⁶ A good is said to be a “public good” when access to it cannot be restricted and the use of it by one consumer does not impede the use by other consumers.

Entrant firms will not build up their own infrastructure when entering a market where a backbone network already exists. Rather, entrant firms will require access to the existing network operated by incumbent firms. The WTO Telecommunications Reference Paper does not allow incumbent firms to recover all costs incurred from setting up the backbone network and requires unbundled access (to only those services requested) to new entrants. Domestic incumbent firms therefore essentially provide a public good when setting up a national telecommunications infrastructure. Therefore, public goods are usually easier to provide either through an incumbent firm that has market power or a government controlled firm.

2. Need for Regulation

6. Due to these imperfect market competition characteristics, even when the sector has been partially or fully privatized, there is great need for regulation. As stated above, governments have (or should have) a USO, therefore they must make sure, if it is no longer possible through a state monopoly as a result of privatization policies or introduction of competition, that universal access is guaranteed. Another rationale for regulatory norms concerning the sector is the inherent tendency of it to be concentrated. A deregulated market requires regulation to ensure a dominant firm does not abuse its market power and nullify all benefits that accrue from a well functioning telecommunications sector, such as the improvement of the quality of the services, lower prices, etc. A sufficient and desirable degree of competition can be ensured by way of regulation.
7. The sector can either be regulated through sector specific regulation or it can be governed under general competition law. Since many LDCs do not yet have functioning competition law in place, they might consider sector specific regulation. Telecommunications regulation is complicated and can vary among countries. However, with the conclusion of the GATS and the Annex on Telecommunications, Members drafted a Reference Paper⁷ which deals with regulatory norms more precisely targeted at controlling anti-competitive behaviours. This is a first attempt of harmonization of regulatory norms relating to the telecommunications sector at the international level. The implications of the Reference Paper are discussed below.

C. Importance of the Telecommunications Sector in LDCs

8. Telecommunications services are very important in LDCs. Most developing countries and LDCs still have mainly monopolies for fixed lines with some instances of partial privatization. As for mobile telecommunications, this

⁷ For more detailed discussion, see below p.8

market seems to be subject to more competition.⁸ In general, telecommunications infrastructure in LDCs, particularly for fixed line services, is relatively poor and not well functioning, and universal services access is not normally the rule, which has resulted in especially low tele-density in rural areas.

9. Due to technological changes, for example the move from fixed line to wireless services, the telecommunications sector is of growing importance to poor countries. LDCs that lack resources would need assistance, be it technical or financial, to build up or strengthen infrastructure in telecommunications that is able to serve their needs.

BOX 1: Priority of provision of Universal Service Obligation

Ensuring Universal Service Obligation (USO) is aimed at social goals such as decreasing the digital divide between inhabitants of the same country.^a For LDCs, since the spread of information is one key to development, ensuring USO should be a priority. Achieving provision of USO seems to be unlikely on a free market-oriented basis, and therefore regulation is needed. It is worth noting that even developed countries achieved the provision of universal access to telecommunications services through public monopolies, where it is easier to impose such obligations on the main operator. Privatization of such monopolies only occurred once universal access was ensured. LDCs however are on a different level. In most such countries basic telecommunications is even not in place yet. Many of those countries would need substantial external funding in order to be able to build up well-functioning infrastructure. However, investors tend to be averse to high-risk, low-return investments. A telecommunications network that allows universality however is only one prerequisite for the supply of universal services conditions. In addition, once a universal network is established, the condition of supply of the service must be regulated to ensure that the service remains affordable to everyone.

Introduction of liberalization into the telecommunications sector needs special regulatory measures to ensure supply. LDCs have the choice to either ensure it through some form of subsidization to generate the funds for infrastructure investment or use implicit subsidies generated in a monopoly.^b A third model advocated by the Organization of Economic Cooperation and Development is the use of direct subsidies to invest in infrastructure. However, this is not realistic for LDCs, since it is not affordable to them to fund investment programs from government budgets.

Since there is pro-competitive regulation contained in the Annex on Telecommunications and the Reference Paper the question arises whether provision of USO is compatible with GATS rules. Section three of the Reference Paper defines the right of a Member “to define the kind of USO it wishes to maintain. USO is not regarded as anti-competitive per se, as long as it is administered in a transparent, non-

⁸ HODGE James and NJINKEU Dominique, (2002) *African Telecommunications commitments, policy, potential offers and requests*, a paper prepared for the Workshop on Issues of Interest to African Countries in the WTO Services Negotiations, Geneva, Switzerland, 17-18 September 2002

discriminatory and competitively neutral manner and is not more burdensome than necessary". However, some complex issues are involved. One arises around the ban on anti-competitive cross-subsidization, and another around the rules of interconnection. Possibly as a reaction to the difficulties associated with the provision of the Reference Paper on USO, some developing countries have carefully removed obligations which potentially limit the USO from the Reference Paper^c and thereby only endorse the Reference Paper partially.

^a What follows is based on KRAJEWSKI Markus, (2003) *National Regulation and Trade Liberalization in Services*, Kluwer Law International, the Hague, p. 173-178

^b The first model could involve some regulation that the investor in return for an asset (for instance access to infrastructure) would be required to invest in the infrastructure. The second model could for instance involve the combination of licenses to operate in profitable regions with those to operate in non-profitable regions. *Idem* p. 174-175

^c For instance India neither included the reference to cross subsidization in section 1 of the Reference Paper nor the reference to cost-oriented rates in section 2. Other examples of countries which attached reservations or modifications to the Reference Paper include Malaysia, Bolivia, Columbia, Pakistan, Venezuela, South Africa and the Philippines. *Idem* p. 178

III. GATS LIBERALIZATION OF TELECOMMUNICATIONS SERVICES

10. The GATS' Annex on Telecommunications contains obligations concerning the access of service suppliers to telecommunications networks whereas the schedules of specific commitments provides for market access, national treatment and additional commitments. This reflects the dual role of the telecommunications sector as being an economic activity in itself but also the foundation of many other economic activities. The Annex applies regardless of commitments in the telecommunications sector, because it only addresses access to and use of telecommunications services, but not their supply.⁹

A. Issues and Considerations

1. *Competition Issues*

11. Many arguments have been made in favour of liberalization in telecommunications. It is also often stated that through liberalization domestic monopolies will face greater competition and in the end could force them to lower prices to the benefits of the users. However prices in many LDCs for telecommunications services are not determined on a free market basis; they are fixed artificially low, meaning below the international level. Because of low purchasing power of people in LDCs, especially in rural areas, keeping prices low ensures them access.¹⁰ Since the sector is many times operated by a fully or partially government controlled firm, it is possible to ensure access through low prices by government regulations. This is at times crucial for ensuring universal access to telecommunications especially in countries with a

⁹ KRAJEWSKI Markus, (2003) *National Regulation and Trade Liberalization in Services*, Kluwer Law International, the Hague, p. 167

¹⁰ SRIDHAR, SRIDHAR, <http://www.nipfp.org.in/working%20paper/wp14.pdf>

significant poor population. In order to make up for the loss incurred from such pricing practices, incumbent firms would set prices for other services, for example international services at a higher price. LDCs use revenues from international services in order to cross-subsidize other services. Such a practice would not be possible if LDCs sign on to the Telecommunications Reference Paper.¹¹ Cross-subsidization in LDCs is also used to fulfil the governments' USO.

12. In addition, LDCs' firms face competition from abroad; including from companies that are Northern based that are difficult to compete with for the sole lack of resources and financial capacity.¹² It is possible that domestic enterprises could be driven out of the market, and with foreign firms and investors being mainly interested in profits operating in the country, the government would be unable to meet its USO.¹³ As long as domestic incumbent firms are not able to face competition from other national enterprises, an opening of the sector to foreign competition should not occur.
13. For all these reasons, it is not clear how the argument of increased competition leading to lower prices and therefore greater benefits to consumers holds for the telecommunications sector.

2. Investment Issues

14. An argument for LDCs to engage in liberalization of the telecommunications sector would be that it would create incentives for investors. To some extent this could be a valuable rationale in favour of liberalization, especially when LDC firms can engage in joint ventures and technological transfer can be more easily ensured. It can also be argued that WTO commitments present some kind of safeguard to investors, because of the enforcement capacity through the Dispute Settlement Body. However one has to be clear that the more powerful attraction for investment in the telecommunications sector has been seen more with privatization, and not liberalization of the sector.¹⁴ Investors are aware of Governments' USO and as long as there is a government-owned or controlled incumbent domestic firm, they can assume that the USO is imposed on that firm. Ensuring universal access to the poor however is an investment that has a high-risk premium and yields a low-return, especially for foreign investors. Therefore as long as the sector is not privatized, investment might not flow into the telecommunications sector even if the sector is liberalized.

¹¹ §1.2(a) of the Reference Paper: http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm

¹² There are 8 Telecom firms among the world's largest Trans-national Corporations. However among the 30 Telecom TNC, 4 companies from developing countries are included. UNCTAD, WIR 2004, A.III.7, p. 327

¹³ Experience of Antigua with AT&T; United States – Measures affecting the cross-border supply of Gambling and betting services, WT/DS285, First Submission of Antigua and Barbuda, 1 October 2003, §11

¹⁴ UNCTAD, World Investment Report 2004, p. 117

15. However it should be noted, that since the telecommunications sector calls for strong regulation, especially given the market power of a major supplier, even if the market is deregulated, such regulatory changes that would be favourable to investment can also be made without engaging in commitments under GATS.¹⁵ This approach has been pursued by some African countries, particularly in the regional context. Telecommunications Regulators Association of Southern Africa¹⁶ has developed a Southern African Development Community (SADC) telecommunications policy and an accompanying model telecommunications legislation. Most SADC countries are pursuing managed liberalization strategies, which allow countries to proceed at different speeds¹⁷. The advantage of making regulatory changes without it being a GATS commitment is that, whenever such countries decide to bind their already existing reforms, there is no significant cost to their development strategy, for example through the loss of policy options.¹⁸

B. WTO Reference Paper on Telecommunications

16. The need for regulation is of course even more important, when the sector is opened to foreign competition through multilateral liberalization. Trade advantages would become nullified if effective market access is not ensured through regulation. For instance, if interconnection agreements or licensing procedures are not transparent, foreign firms will not be able to effectively compete in a given market. Lack of transparent regulation of the telecommunications sector therefore can be viewed as a barrier to trade. Being aware of this fact, Member countries of the WTO drafted a Telecommunications Reference Paper which is supposed to address this issue.

17. The Reference Paper reflects six principles and is generally a compilation of regulatory norms in place in Member countries. These regulatory norms, however, mostly reflects practices of more advanced countries.¹⁹ The aim is to harmonize certain rules relating to regulation. The Reference Paper in short covers principles relating to competitive safeguards; rules related to interconnection; the right of members to define the universal service obligation it wishes to maintain; rules concerning public availability of licensing criteria; obligation to set up independent regulators; and rules related to allocation and use of scarce resources.²⁰ Given the fact that GATS contains in the Paragraph IV of its Preamble the sovereign right of a Member country to regulate, the Reference Paper only creates obligation when it is incorporated

¹⁵ Experiences of Costa Rica and Uruguay may serve as additional examples, UNCTAD, WIR 2004, p. 138

¹⁶ TRASA was inaugurated in 1997: <http://www.trasa.org/bw/> For further information cf. HODGE, NJINKEU, p. 8

¹⁷ The strategy is outlined in HODGE James, (January 2003), *WTO Negotiation in Telecommunication: How should the SADC countries respond*, SATRN, No. 2, Available at <http://www.tips.afrihost.com/research/papers/pdfs/660.pdf>, last accessed June 05

¹⁸ *idem*

¹⁹ KRAJEWSKI, p. 171

²⁰ http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm

and endorsed in a country's schedule of commitment. But it is clear that once endorsed the right of a Member to regulate is limited.

18. The Reference Paper was adopted in full or in part by 61 Member countries as additional commitment in their schedules of commitments²¹. Once the paper is adopted in a countries' schedule of commitments it creates full obligation and is enforceable through the DSB, as Mexico learned in a dispute against the USA.²²
19. The Reference Paper presents certain challenges. There is an insufficient degree of definition of scope and meaning of certain provisions.²³ Some of its provisions disable governments from regulating the sector in order to ensure access for the poor, especially the ban on cross subsidization and other rules of interconnection. In this regard LDCs particularly would have limited ability to encourage the expansion of their domestic infrastructure by regulation.²⁴
20. Another disadvantage with LDCs adopting the Reference Paper are the high implementation costs involved. Since it is drawn upon rules that are not yet in place in poor countries and implementation of these rules would require resources, which may not always be readily available in some LDCs. However it is possible for a country to commit itself to the Reference Paper only in part, i.e. reservations can be made. A wider problem is that the Reference Paper relates to competition policy. Even though there is a need for regulation, developing countries in general fear that the Reference Paper is a backdoor for bringing the issue of competition policy into the WTO, which most LDCs oppose in the Doha Development Agenda.²⁵ Certain attention should be given to this in a review process, since it is evident that the Reference Paper needs to be reviewed also for other reasons, such as the insufficient clarity on its definitions and obligations.²⁶

²¹ Almost every country that undertook commitments in basic telecommunications attached the reference paper to its country schedule. Exceptions are Brazil, Thailand, Djibouti, Congo and Gambia.

²² Mexico was found to be mainly in violation with provisions of the Reference Paper. Mexico-Telecoms Services, Panel Report WT/DS204/R, 02 April 2004. For discussion of this Panel findings, please refer to South Centre (January 2005), *GATS Disputes Settlement Cases: Practical Implications for Developing Countries*, Analytical Note SC/TADP/AN/SV/10. Available at http://www.southcentre.org/tadp_webpage/research_papers/services_project/gats_dscases_jan05.doc, last accessed June 05

²³ GUERMAZI Boutheina, *Exploring the Reference Paper on Regulatory Principles*, Centre of Studies of Regulated Industries. Available at <http://www.law.mcgill.ca/institutes/csri/paper-guermazi-reference.php3>, last accessed June 05

²⁴ GOULD Ellen, (July 2004), *Telmex Panel strips WTO of another fig leaf*, Briefing Paper Trade and Investment Series, Vol. 5, No. 2, CCPA.

²⁵ GUERMAZI: <http://www.law.mcgill.ca/institutes/csri/paper-guermazi-reference.php3>

²⁶ The review process should also examine proposals of other Members, particularly developed countries, to ensure that additional obligations are carefully assessed for their implications of LDCs development goals and objectives.

IV. NEGOTIATIONS ON TELECOMMUNICATIONS AND RECOMMENDATIONS

21. Thus far, over 60 developing countries made commitments in the telecommunications sector, among them eight LDCs.²⁷ The general approach among developing countries and LDCs when they took commitments in the telecommunications sector was to restrict competition in fixed lines, because they want to ensure the provision of land lines by domestic suppliers while allowing for a greater degree of competition in mobile telecommunications. Some of the countries accepted the Reference Paper, fully or with reservations.

22. LDCs have rather defensive interest when formulating offers in the telecommunications sector since they are mainly importers of telecommunications services. Trade in mode 1 is mostly provided through a national operator and is likely to stay this way.²⁸ Through trade in mode 3, many LDCs, even developing countries generally, pursue a strategy of gradual introduction of competition. Although such gradual liberalization policies are more likely to face the pressure by more developed countries for further far-reaching liberalization, however, if such programs are carefully designed for national development needs and priorities and implemented in a transparent manner and in good faith, rich countries would be more reluctant to challenge development justifications entailed in such programs.

23. Recommendations:

- **What is the national development strategy and what is the role of telecommunications services in it?** LDCs should work out a national development strategy of how to address the telecommunications sector. They should identify their primary interests and focus for the different sub-sectors services. They must have a clear understanding of the price structure of the service, establish fair rules relating to interconnection, address the issue of USO and set up effective telecommunications regulatory boards. Transparent regulation of the sector is useful for internal efficiency and investor confidence. Investment programs should be worked out jointly by the governments that assess priority needs and interested investors. Appropriate sequencing together with a gradual liberalization program, if appropriate, might better address the needs of LDCs than rapid liberalization which entails the danger of domestic firms' inability to withstand competition.
- **Are national regulations to be amended to reflect better international practices and meet development objectives?** With technical and financial

²⁷ http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm. LDC which have made commitment in telecommunications services are Djibouti, Gambia, Lesotho, Uganda, Democratic Republic of Congo, Senegal, Bangladesh and Nepal. Lesotho only made commitments in value-added telecommunications services, the remaining LDCs also made commitments in basic telecommunications.

²⁸ HODGE, NJINKEU, p. 25

assistance, LDCs should bring their regulation of their telecommunications sector more in line with international practice, however, whilst fulfilling development objectives as the basis. As mentioned above, this would assist in making the sector more attractive for investment, especially with those regulations that are required for an appealing investment environment. Investment in this sector should be wisely used, in coordination with national development policies, i.e. the provision of universal access to telecommunications services. Whenever countries consider introducing more competition in the sector they should follow a gradual liberalization strategy and not open the market to external firms when incumbent public or private enterprises are unable to face competition from within.

- **Does the Reference Paper help the country to reform the telecommunications sector?** LDCs might have difficulties in implementing many or all elements of the Reference Paper, for example the establishment of an independent regulatory authority. Given that they are lacking resources, technical and human expertise, it might therefore be wise not to commit prematurely to the Reference Paper in the form of an additional commitment. If they do so, they should not do it entirely, but make reservations, especially when cross-subsidization is used in order to fulfil USO. Since in most LDCs extensive legislative and administrative reforms must take place, it is better to conduct this exercise domestically without any pressure from international obligations. WTO Member countries should be weary that rules contained in the Reference Paper do not get transformed into general obligations under GATS. Since developed countries advocate full adherence to the reference paper and would like to see strengthened regulatory norms, LDCs can expect pressure to move in this direction. Proposals from developed countries on strengthening the discipline of the Reference Paper should be watched closely.
- **Is there any scope for S&D in telecommunications negotiations?** LDCs should introduce S&D provisions, for instance by extending/introducing longer implementation timelines for commitments, and introducing more flexibility. They should also make clear that telecommunications needs to be addressed from a development perspective.
- **Do regional strategies present an alternative?** LDCs might consider regional cooperation especially in coordination of regulatory matters where an Regional Trade Agreements already exists. Introduction of competition as well as regional joint ventures seems to be a reasonable strategy, since countries are more likely to be on the same development level and are facing similar obstacles and problems.

When considering the above recommendations the core question that LDCs need to answer before engaging in liberalization of the telecommunications sector is **whether they expect telecommunications liberalization to be conducive to growth of their economy *and* their development.**

BIBLIOGRAPHY

1. Articles and Papers

- 1.1 BRESSIE K, KENDE M, WILLIAMS H, (2004), *Telecommunication Trade liberalization and WTO*, a paper presented at the 15th ITS Biennial Conference in Berlin “Changing peoples, societies and companies: Telecoms in the 21st Century”, Berlin 5-7 September 2004. Available at <http://www.harriswiltshire.com/Telecommunications%20Trade%20Liberalization%20and%20the%20WTO.pdf>, last accessed June 05
- 1.2 GOULD Ellen, (July 2004), *Telmex Panel strips WTO of another fig leaf*, Briefing Paper Trade and Investment Series, Vol. 5, No. 2, CCPA.
- 1.3 GUERMAZI Boutheina, *Exploring the Reference Paper on Regulatory Principles*, Centre of Studies of Regulated Industries. Available at <http://www.law.mcgill.ca/institutes/csri/paper-guermazi-reference.php3>, last accessed June 05
- 1.4 HODGE James and NJINKEU Dominique, (2002) *African Telecommunications commitments, policy, potential offers and requests*, a paper prepared for the Workshop on Issues of Interest to African Countries in the WTO Services Negotiations, Geneva, Switzerland, 17-18 September 2002
- 1.5 HODGE James, (January 2003), *WTO Negotiation in Telecommunication: How should the SADC countries respond*, SATRN, No. 2, Available at <http://www.tips.afrihost.com/research/papers/pdfs/660.pdf>, last accessed June 05
- 1.6 KRAJEWSKI Markus, (2003) *National Regulation and Trade Liberalization in Services*, Kluwler Law International, the Hague, p. 164-178
- 1.7 SRIDHAR Kala Seetharam and SRIDHAR Varadharajan, (March 2004), *Telecommunication Infrastructure and Economic Growth: Evidence from developing countries*, Working Paper No. 14, National Institute of Public Finance and Policy. Available at <http://www.nipfp.org.in/working%20paper/wp14.pdf>, last accessed June 05
- 1.8 South Centre (January 2005), *GATS Disputes Settlement Cases: Practical Implications for Developing Countries*, Analytical Note SC/TADP/AN/SV/10. Available at http://www.southcentre.org/tadp_webpage/research_papers/services_project/gats_dscases_jan05.doc, last accessed June 05

2. Reports

- 2.1 UNCTAD (2004), *World Investment Report*. Available at <http://www.unctad.org/Templates/webflyer.asp?docid=5209&intItemID=3235&lang=1&mode=toc>, last accessed June 05

3. WebPages

- 3.1 World Trade Organization, www.wto.org, last accessed June 05
- 3.2 Telecommunication Regulators Association of Southern Africa, www.trasa.org.bw, last accessed June 05
- 3.3 Washington State University, Centre to Bridge Digital Divide, <http://cbdd.wsu.edu/kewlcontent/cdoutput/TR501/index.htm>, last accessed June 05
- 3.4 International Telecommunication Union, www.itu.org, last accessed June 05

ANNEX 1: REFERENCE PAPER

TELECOMMUNICATIONS SERVICES: REFERENCE PAPER

24 April 1996

Negotiating group on basic telecommunications

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 [Back to Top](#)

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 [Back to Top](#)

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.

3. Universal service [Back to Top](#)

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 [Back to Top](#)

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 [Back to Top](#)

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 [Back to Top](#)

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.

Source: http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm



**Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland**

Telephone : (41 22) 791 8050

Fax : (41 22) 798 8531

Email : south@southcentre.org

Website:

<http://www.southcentre.org>