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Developing Regulatory Disciplines for Network Services

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1. A Review of Current Regulatory Disciplines in the GATS

Since provision of services would normally require commercial presence, trade in services is affected by domestic regulations to a much greater extent than is trade in goods. As the current regulatory disciplines available in the GATS are relatively weak, multilateral negotiations in services have been focusing on developing domestic rules and regulations that would not impede the flows of services across borders resulting from liberalization.

The current GATS regulatory disciplines relevant to network services can be found in (a) the GATS Articles, (b) the Annexes on Telecommunications¹ and (c) Telecom Reference paper, which is a component of the Agreement on Basic Telecommunications concluded in 1997². Note that provisions found in (a) and (b) form part of general obligations, while those found in (c) are subject to individual member's national commitment. As can be seen, regulatory development in the GATS has been concentrated mainly in the telecommunications sector, which has been most successful among sector-specific negotiations in the WTO thus far.

Regulatory disciplines in the GATS are either general obligations or specific obligations that are tied to individual member's market access commitments. These disciplines are concerned mainly on the following issues:

- (i) *Non-discrimination*: to ensure that domestic regulations do not discriminate between foreign services or service suppliers of different nationalities (most-favoured nation treatment/MFN) and between foreign and national services and service suppliers (national treatment - NT)
- (ii) *Good governance*: to ensure that domestic regulations are administered in a transparent and fair to all parties involved.
- (iii) *Competitive safeguards* : to ensure that domestic rules and regulations do not pose unnecessary barriers to competition.

¹ Other annexes, namely Annex on Maritime Services and Annex on Air Transport do not have any provision concerning regulatory disciplines.

² The Agreement on Basic Telecommunications is one of the additional agreements negotiated after the Uruguay Round and attached to the General Agreement on Trade in Services.

On *non-discrimination*, GATS Article II requires all members to accord MFN treatment to services and service suppliers of other members. MFN exemptions are allowed, but subject to periodical reviews. National treatment obligation, specified in the GATS Article XVII, is tied to the individual member's specific market access commitment only. In other words, while a member's domestic regulations may not discriminate between foreign services or service suppliers, it may do so between foreign and domestic services and service suppliers. Thus, the non-discrimination provision in the GATS is obviously weaker than that in the GATT, where both MFN and national treatment principles are two fundamental principles that must be strictly observed by all members.

Good governance is often referred to the principles of non-discrimination (MFN and NT as discussed above), transparency (information disclosure, notification), fairness (impartiality, due process). Disclosure of information seems to be the predominant governance issue in the GATS. The GATS Article III requires members to publish relevant regulatory measures of general applications. Annex on Telecommunications lists the specific type of information that must be made public, in particular those pertaining to access to and use of telecommunications network. These include, for example, tariffs, specification of technical interfaces and licensing requirement. Where specific sector or sub-sector market access commitments are made, members are required, in addition, to inform the Council of Trade in Services of the introduction of new, or changes in existing, laws, regulations and administrative measures.

The Telecom Reference Paper further elaborates regulatory rules that are consistent with good governance principles. For example, the Paper requires that the reason for denial of a license must be made known to the applicant upon request and that universal service obligation be administered in a transparent, non-discriminatory and competitively neutral manner and not more burdensome than necessary. The Paper also requires that the regulatory authority be independent of telecom service suppliers to ensure impartiality. It should be noted, however, that the more comprehensive regulatory disciplines available in the Reference Paper are subject to specific commitments made by members only³. That is, a member may choose whether or not to commit to the Reference Paper and if so, which part it would like to commit to. Thus, the application of stronger regulatory disciplines in GATS is still limited in scope.

As for *competitive safeguards*, there is very little in GATS that guarantee "contestability" of the domestic market, unless a market access commitment is made. Article VI that prescribes against overly restrictive licensing qualification requirements, Article VIII that spells out members' obligations to safeguard against abuse of monopoly positions, and Article XVI that prohibits members from limiting the number of service suppliers, total sales volume, number of employed natural persons or foreign equity share, are triggered only when specific market access commitments are undertaken. The only general obligation with regard to competitive safeguard in the GATS appears in Article IX governing Business Practices, which provides for consultations between members regarding restrictive business practices that are not covered in Article VIII on Monopolies and Exclusive Service Suppliers. Since this particular provision is rather soft, it is rarely invoked.

Similarly, competition provisions found in the Annex on Telecommunications that require members to ensure access to and use of public telecommunications networks and services on reasonable and non-discriminatory terms only apply to services included in a member's specific commitment schedules only. Finally, the Reference Paper imposes obligations on signatories to undertake appropriate measures to prevent major suppliers from engaging in anti-competitive practices. It also requires that interconnection fee charged by a major supplier is cost-based and that interconnection services are made at any technically feasible point to ensure that the service is sufficiently unbundled. But as noted earlier, such provisions are binding only for members that have chosen to commit to the specific section of the Reference Paper.

To conclude, much of the regulatory disciplines in the GATS are tied to specific commitments. Besides MFN obligations, disclosure and publication of key regulatory measures and consultation concerning restrictive business practices when requested by another member, GATS general obligations do not impose any kind of regulatory discipline on members. However, more advanced regulatory framework can be found in the sector-specific agreements, in particular, the telecommunications sector, which can serve as the model framework for other network-based services such as transport and electricity. The following section will examine the Telecom Reference Paper in greater details.

³ Sixty members subscribed to the Reference Paper either in full or in some parts.

2. An Assessment of the Telecom Reference Paper

How effective is the Reference Paper in ensuring fair competition and market access? The Paper has been criticized for its "vagueness". For example, members are to take "appropriate measures" to prevent major suppliers from engaging in anti-competitive and interconnection is to be provided under "reasonable" terms. Transparency is referred to in several sections including those concerning administration of universal service obligation, interconnection arrangements and frequencies allocation, but it is not clear what is the exact definition of transparency covered by this agreement. Similarly, obligation to provide interconnection at "cost oriented" rates provides no guidelines with regard to the basis on which the network cost should be calculated. It would therefore appear that the loose regulatory principles contained in the Reference Paper would be ineffective in safeguarding competition in the market.

At the same time, however, two disputes concerning interconnection charges filed by the United States against Mexico and Japan. In case of Japan, it agreed to lower interconnection charges substantially to avoid being engaged in a WTO arbitration process. As for Mexico, the United States initiated WTO dispute settlement proceedings and maintained its right to continue the proceedings even after the Mexican dominant carrier had agreed to lower tariffs⁴. These two cases may indicate that the Paper does have some teeth. It should be noted, however, that both cases also rely on bilateral pressures applied by the United States. It is uncertain whether similar problems faced by smaller economies will be resolved in the same manner since so far no WTO panel has arbitrated on the basis of the Reference Paper.

According to the authors' view, there is a delicate balance in trying to ensure effectiveness of a multilateral regulatory framework, while avoiding over-prescribing a regulatory regime that may not accommodate the diversity of local social, economic environment, institutional design and legal infrastructure. In this regard, a possible solution is to have a binding and non-binding mix regulatory framework where a member may be bound

⁴ Fink, Carsten (2002), in *Development, Trade and the WTO: A Handbook*, Chapter 29 Domestic Regulations and Liberalization of Trade in Services, Box 29.2, The World Bank Publication, page 293

by the more general regulatory principles similar to those found in the Reference paper, while more detailed implementing rules and regulations will be subject to specific commitments.

3 . Regulation in Network Utilities

Developing regulatory disciplines requires an understanding of the economic properties of the industry as well as an appreciation of the social objectives that it satisfies. To the extent that an industry displays the same economic properties across markets and societies share universal social objectives then a set of common regulatory principles can be developed for use in the multilateral trading regime. This section will look at such similarities in network-based services and discuss possible implications for developing regulatory disciplines.

A. Characteristics of Network-Based Services

Network-based services are typically supplied over a network of facilities involving key components such as generation, transmission, and distribution. Telecommunications, defined as the transmission and reception of signals by any electromagnetic means, involves a labyrinth of switches, transmission links, and terminal points. Energy services include “those services involved in the exploration, development, extraction, production, generation, transportation, distribution, marketing, consumption, management, and efficiency of energy, energy, products, and fuels.”⁵ Transport covers different modes such as maritime, air, railways, and roads and under each mode, types of services include passenger transport, freight transport, maintenance and repair, and supporting services. Finally, examples of water services are the provision of water, drainage, sanitation, etc. involving large water supply and wastewater systems of dams, pipelines, treatment facilities, and other infrastructure.

The production technology of these industries gives rise to both economies of scale and economies of scope. Scale economies imply that larger firms are more efficient and, depending on the size of the market, either one or only a few firms can operate profitably. Economies of scope mean that it is cheaper to produce jointly and share common inputs in supplying different types of services although not necessarily by a single firm.

⁵ <http://www.ustr.gov/sectors/services/energy.pdf>

The existence of both types of economies results in a market structure that significantly departs from a perfectly competitive market providing a strong rationale for government intervention to protect consumers from monopoly abuse. The tendency to raise prices, limit supply, behave inefficiently, overlook customer demands on the quality, and ignore environmental impacts are some of the possible outcomes in markets where supply is controlled by one or few sellers. Network industries such as telecommunications, energy, water, and transportation have therefore been one of the most regulated sectors. These industries also have the longest tradition of public oversight and even government ownership.

Technological developments over the years have relaxed monopoly arguments in network industries especially in the supply of services provided over the infrastructure. Whereas these sectors used to be dominated by one large vertically integrated firm, today's network industries are characterized by a combination of natural monopoly and competitive segments. Although the various components of a network can be unbundled there is still a high degree of vertical relationship involved the delivery of services to final consumers. Due to the changing industry structures therefore, regulators are no longer just concerned with monopoly behavior vis-à-vis consumers but increasingly more attention is being devoted to the interaction between firms especially with respect to the behavior of incumbent operators vis-à-vis newer firms.

Aside from promoting efficiency in the sector, it is equally important for regulation to encourage investments in infrastructure facilities to ensure continuous and reliable service delivery. For utilities in particular, economies of scale arise from the huge fixed costs involved, a significant portion of which is sunk. The irreversibility of such investments, which are typically long-lived assets, requires adequate protection for owners and operators in order to encourage them to continue to provide the service as well as enter the market in the first place.

Finally, there are distributional and other objectives that governments uphold which influence the regulation of network industries and its related services. The essential public service nature of utilities means that availability of the services must be guaranteed to all. However it is defined, access to a basic quantity and quality of a service (e.g. basic telephone service, electricity, water, etc.) is usually a fundamental objective common to all societies. For less advanced economies, the promotion of national development goals may also factor prominently (e.g. transport services in unprofitable areas to support a balanced regional

growth). Other social and environmental objectives relating to employment levels, health, security, sustainable development, etc. affect the regulation of network industries as well.

B. Implications for developing regulatory disciplines

Although countries may share common regulatory objectives, the value attached to each will differ. Some objectives may be more important than others depending on the stage of economic development or the state of infrastructure development. For example, some countries value expanding consumer choice and/or promoting service innovation whereas for others, infrastructure build-up would be more critical and the attainment of universal access to basic service is of primary concern. Even when the objective is the same, capabilities and/or endowments may vary thus affecting the extent to which regulatory requirements can be successfully enforced. These differences limit the scope for developing regulatory disciplines that can be applied multilaterally for the regulation of tradeable network-based services. However, given that similarities can be found across markets, for example with respect to the industry structure, then a common set of rules or *code of conduct* can be prescribed to ensure fair trade in network-based services.

Rules to govern business to business conduct

As previously discussed, it is more efficient for firms in network industries to share common inputs or facilities. Creating a level playing field for the competitive supply of services provided over the network infrastructure requires fair and non-discriminatory access to essential facilities. Imposing high access charges or denying, restricting, and delaying access hurt competitors and constitute abuse of one's dominant position as being both infrastructure owner and service provider. The assurance of access to essential facilities (a form of interconnection) at reasonable cost, of standard quality, and in a timely manner is a crucial pro-competitive safeguard. This would apply in cases involving access to port and airport facilities to deliver, for example, maintenance and ground services while for electricity this may involve access over transmission lines to "wheel" power. Another form of interconnection which is more applicable to telecommunications allows users of different service suppliers to communicate with one another.

Related to the physical interconnection of services and facilities is the need to make available the necessary technical information to effect such interconnection. Firms must be

required to provide without delay all such information needed by requesting parties wishing to supply a service over their network infrastructure.

Rules to govern government to business conduct

The need for transparency on technical aspects and/or requirements on technical standards, which are particularly important in the infrastructure sectors, especially applies to the government. Whereas in the past technical knowledge would be concentrated in one private firm or government agency, the fair and efficient functioning of the new market structure requires that the government make available to everyone complete information on industry-wide technical standards. Sharing of such information between firms as mentioned above and by the appropriate government body is crucial in order to ensure efficient functioning of network industries where reliable supply of services depends on a high degree (and even minute by minute, in the case of electricity) coordination between network components.

As pointed out earlier, regulation is not only concerned about ensuring efficiency but in promoting investment in the sector as well. In order for governments to encourage suppliers to enter the market and make necessary investments to deliver the service, guarantees against expropriation may be introduced or compensation for unrealized returns on investment attributable to policy reversals or changes in regulation (e.g. rate-setting) may be offered.

Finally, there are social and other objectives that governments impose on firms to fulfill. When administering universal service programs either directly or through private service providers, governments must do so in a competitively neutral manner so that no supplier is unduly favored nor burdened. The same principle should be observed in satisfying other objectives (e.g., health, safety, etc). Competitive neutrality must govern requirements to fulfill such objectives whether it is to be administered using market-based incentives (e.g. taxes, subsidies, etc.) or command and control mechanisms.

4. Possible Model Schedule on Domestic Regulations

The Telecom Reference paper is deemed as a great success in introducing sectoral regulatory disciplines in the GATS. Many experts in this area has recommended extending similar model schedule to other network based services such as transportation, water and electricity, which typically contain monopoly elements and social dimension that require government intervention to protect consumers and ensure availability of these essential services.

Sectoral regulatory disciplines among network industries often include provisions to i) protection of consumers' interests ii) ensure fair and equal access to public network iii) ensure fair competition among large and small competitors in the market and iv) guarantee availability of basic essential services. The Reference Paper covers most of these elements. Therefore, the authors would draft a model schedule for network services based on the content of the reference paper, while adding additional provisions that we deem essential. These additional provisions are drawn mostly from regulatory disciplines embedded in the various articles of the GATS and the Telecommunications Annex as discussed in section 1. By importing these disciplines into the model schedule, members may choose to commit to a regulatory discipline without having to make market access commitment. This is consistent with our belief that **a good regulatory regime is a prerequisite to market liberalization.**

It should also be noted that the authors believe that, like the telecom reference paper, the content of a model schedule should prescribe general core principles rather than detailed legal commitments. Overly prescriptive schedules would represent an unjustified invasion of sovereign rights of national governments to design domestic regulatory regimes that consistent with domestic legal traditions, institutional structures and social and economic policies. While it is recognized that non-prescriptive regulatory guidelines may undermine the effectiveness of regulatory disciplines, we believe that the availability of recourse to the DSU will ensure compliance efforts as is the case of the Reference Paper discussed in section 1.

As the authors are not of the legal profession, we do not aspire to draft the wording of the provisions. Rather, we intend merely to spell put the substantive elements that should be incorporated for further consideration in a possible model schedule of a sectoral regulatory discipline. The following (A) - (E) entries are the proposed additional provisions that may

incorporated into the network-services regulatory template drawn from the telecom reference paper. These are highlighted in the proposed "Model Schedule for Network Services" that appear in the appendix

A) Regulatory objectives shall be clearly specified in order to promote transparency in the administration and implementation.

The objective of a domestic regulation is not always available, which may pose a problem when two conflicting goals may arise in the course of implementation. Some regulatory regimes are concerned mainly about efficiency and consumer welfare -- i.e., how to achieve a variety of best-quality services at the lowest price, while others may have a strong emphasis on equity or even the growth of the industry. It is therefore important for any regulatory regime to have a clear objective specified for greater transparency of its administration as the GATS Article VI.1 stipulates that "*each member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner*".

(B) use of dominant position in a market to foreclose competition in a related market.

The anti-competitive practices listed in the section on Competition Safeguard in the Telecom Reference Paper do not include abuse of dominance, which tend to be a major problem in network services. Article VIII.2 of the GATS stipulates that "*when a monopoly supplier outside the scope of its monopoly rights, ..., members must ensure that it does not abuse its monopoly position ...*" This article addresses concerns regarding the potential abuse of monopoly or dominance in one market in a related market. For example, a national airline that holds a dominant position in the air transport market may extend its dominance into the catering and aircraft maintenance businesses. Similarly, large international shipping companies may discriminate between own freight forwarders operator and those that are independent. In this case, it would be inappropriate to classify aircraft or ships as "essential facilities" access to which would be guaranteed on a non-discriminatory basis by the Reference Paper . Thus, we recommend a provision addressing this particular concern that is prevalent among network industries.

C. Standard setting (technical, environmental and safety): Any member has the right to define its own standard as long as these standards are reasonable and administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary.

One of the main objectives of regulation is to protect consumers and the interests of the public. In the transportation sector, this involved safety and environmental regulations. However, such standards, if too restrictive, can pose barriers to entry or may favor one service provider against the other. It is thus necessary to have a provision that, -- while allowing member to define its own standards -- will ensure that standards are reasonable and administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary. GATS Article VI.4 requires members to ensure that "*... qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, ...*".

. D. Licensing requirements should be limited in scope -- i.e., to the sub-sectors that are not contestable or are involved with public safety and environmental concerns.

Over-regulation is one of the major problems in any regulatory regime. While the GATS Article VI.4 stipulates that licensing procedures should not restrict the supply of services, it may be the case that licensing -- or any other kind of state regulation -- is unjustified. For example, it is not necessary to regulate very small-scale electricity generation (below 5 MW, for example) for own consumption. It is therefore important to have a provision that will ensure that the industry as a whole is not overly regulated.

E. Cross-border anti-competitive or restrictive business practices: appropriate measures shall be maintained to prevent national companies to pursue anti-competitive practices overseas that lead to restriction of services trade.

Thanks to globalisation and advancement in technology, services are increasingly being supplied from providers overseas. It is thus important to have provisions concerning cross-border anti-competitive business practices that may be beyond the reach of domestic regulations or competition laws. Article IX of the GATS addresses concerns about restrictive business practices and requires that members enter into consultations with the requesting party in view to eliminate such practices. While we agree that restrictive business practices, such as collusive practices and abuse of dominance, that occur and take effect within a

jurisdiction should be subject to a soft discipline, we believe that those that affect cross-border flows of services need to be subject to a stronger discipline in the WTO. We believe that access to service markets requires not only the regulatory discipline, but also private sector's -- in particular multinationals' -- discipline. In this regard, we propose that members have at its disposition appropriate measures that can help prevent national companies to pursue anti-competitive practices overseas that lead to restriction of service trade.

5. Compliance Mechanism

As earlier discussed, the differences across countries limit the scope for developing regulatory disciplines that can be applied multilaterally for the regulation of tradable network-based services. At best, general core principles may be prescribed as specified in the previous chapter.

Although members have recourse to the WTO dispute settlement mechanism for violations of commitments, it may not be the most effective way of ensuring compliance, especially in the absence of other supporting mechanisms. If experiences at the national level are any indication, one can expect that issues involving networks, say with respect to interconnection, would be most difficult to resolve. Indeed, the most credible sanction of a regulator against erring network operators is the revocation of a franchise or the non renewal of a license to operate, but this is not within the purview of the WTO thus reducing its ability to pose as a threat to non compliance. Additionally, the interlocking nature of network industries implies that a mechanism that encourages cooperation would be superior to an adversarial approach. In view of these concerns, this final section will look at additional mechanisms that may be adopted to strengthen compliance of sectoral regulatory frameworks.

Regulating business to business conduct: The use of standards and code

The establishment of codes of conduct is an effort to instill good practice in a number of aspects of firm behavior. Standards-setting allows firms to benchmark against industry or world best practice. Standards and codes can cover a wide array of a firm's domestic or cross-border activities such as business practices, environmental protection, health and safety standard, labor practices, etc. Codes of corporate conduct have been developed in many OECD countries which take into account concerns by different stakeholders, including

consumers. Another example is the code of conduct for liner conferences which was formulated to help facilitate the orderly expansion of world sea-borne trade; stimulate the development of regular and efficient liner services, and to ensure a balance of interests between suppliers and users of liner shipping services. A key principle of the code is that conference practices should not involve any discrimination against the ship owners, shippers or the foreign trade of any country.

There is a wide agreement on the value of the use of codes and standards especially as a mechanism for self regulation. Although voluntary, adherence to established codes and standards signals good behavior and is rewarding in its own right as it can influence investment and lending decisions by other parties. However, there are also risks involved. For one, there is the usual tension between country specificity and the use of uniform standards. Such concern is not trivial and needs to be acknowledged as willingness and ability to meet rules and regulation are necessary conditions for regulatory compliance. One way to address this is to open the standard-setting process to inputs from different countries. Another way is to arrange standards by tiers so that industry norms and practices can be compared across similar groups. The same can be done for benchmarking at the country level. A participatory process should also be adopted in formulating codes of conduct so that it responds to the concerns of various stakeholders and not the industry alone. Otherwise, there is a danger that it may be used as an instrument for collusion in business practices (e.g. price fixing, market sharing arrangements, etc).

Regulating government to business conduct: The use of peer reviews

A peer review is described as “a systematic examination and assessment of the performance of State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles.”⁶ One form of peer review undertaken by the OECD is the country reviews on regulatory reform to improve regulatory practices in all member countries. The exercise is aimed at helping governments identify best practice regulatory methods, set priorities for regulatory reform across a broad range of policy areas, and to strengthen their capacities for

⁶ Fabrizio Pagani “Peer Review: A Tool for Co-operation and Change, An analysis of an OECD Working Method” OECD SG/LEG(2002)1

self assessment. The reviews also help reduce the risks of transition and are useful in informing public debate on the importance and implications of sustained regulatory reform. Weaknesses in the policy and regulatory environment are also revealed in the review process and thus provide direction for capacity building or technical assistance.

Currently, WTO conducts trade policy reviews for each country and it may be worth exploring if a regulatory review for specific sectors may be a useful exercise for the reasons mentioned above. From the standpoint of negotiating modalities, conducting comprehensive reviews has its merits as well. Feketekuty⁷ argues that item by item negotiation of national commitments through request/offer process is not the best method for achieving systemic changes in a country's regulations as this approach does not lend itself to a thoughtful review of regulatory reform objectives, including evaluation of less trade-distorting regulatory approaches and the associated benefits. A comprehensive review is much more likely to lead to a search for systemic reforms than a process of haggling over individual provisions.

In conclusion, peer reviews and the use of codes and standards are complementary, mutually reinforcing mechanisms that can be used to strengthen compliance of regulatory disciplines covering government to business and business to business conduct. Although the dispute settlement mechanism of the WTO can be invoked for the "basic regulatory requirement" as a final recourse for non-compliance, voluntary and cooperative mechanisms would be more effective in influencing behavior and in raising the general quality of regulation across countries.

⁷ Geza Feketekuty "Deepening Sectoral Disciplines for Services Regulation: How to move forward in the GATS" paper prepared for the Workshop on "Towards Improving Regulation in the Services Sector" of the Menu of Options Phase III, APEC Group on Services, 18 May 2002.

APPENDIX

Model Schedule for Network Services

Reference paper

Scope

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

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public 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 the specified network services as a result of:

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

(A) Objectives: regulatory objectives shall be clearly specified in order to promote transparency in the administration and implementation.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in the network service

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
- (a) 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.

(B) using dominant position in a market to foreclose competition in a related market.

2. Access to Essential Facilities

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 Access to essential facilities to be ensured

Access to essential facilities controlled by a major supplier will be ensured at any technically feasible point in the network. Such access 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 access to essential facilities negotiations

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

2.4 Transparency of access arrangements

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

2.5 Access: dispute settlement

A service supplier requesting access 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 access charges within a reasonable period of time, to the extent that these have not been established previously.

3. 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.

C. Standard setting (technical, environmental and safety): Any member has the right to define its own standard as long as these standards are reasonable and administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary.

3. Public availability of licensing criteria

D. Licensing requirements should be limited in scope -- i.e., to the sub-sectors that are not contestable or are involved with public safety and environmental concerns.

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 the regulated network service. 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 (rights of way for electricity grid and road transport, parking slots at air terminals) will be carried out in an objective, timely, transparent and non-discriminatory manner.

