

# SECTION G

## Future Issues for Intelligent Networks and Electronic Trading

The creation of intelligent networks, the growth of the Internet and the beginning of electronic trading introduce a range of new considerations that policymakers and regulators will have to address. These relate to the changing nature of interactive electronic communication and the information content being communicated. This Section examines these developments and the new policy issues arising, as well as the new requirements for consumer protection in this new environment. It then assesses probable future trends in the US and the UK, the early starters in the telecom liberalisation movement.

Anders Henten examines the increasing trade in telecom-based services and the changing relations between the telecom sector reform movement and the liberalisation of trade initiatives now being pursued at the World Trade Organization (WTO). He notes that the WTO has marked the telecom sector as a target for more rapid liberalisation than many countries are prepared to follow. Rohan Samarajiva describes how the nature of communication relationships change as the capabilities of intelligent networks are applied to both corporate and personal communication, affecting not only privacy, security and the use of personal data, but also such important dimensions of communication relationships as authentication, credibility and trust. Jeremy Mitchell assesses consumer needs and requirements for consumer protection in the more diversified telecom and information industry structures of the future and the possibility of fragmented regulation.

Perhaps the most significant change in national telecom legislation in many years was the US *Telecommunications Act of 1996* which attempts to liberalise all US telecom markets, including local telephone service, but retains a labyrinth of strengthened federal and state regulation. The new Act could have major implications for the sector both in the US and internationally. Walter Bolter examines the new legislation, and particularly the competition issues – interconnection, cost standards, and other matters affecting entry opportunities. Richard Collins and Christina Murrone consider future directions in telecom policy and regulation in the UK, especially if a labour government is returned to power in the near future. The new US Act begins its third wave of liberalisation reforms, following the FCC competition policies of the early 1970s and the AT&T divestiture in 1984. The first wave of UK reforms has pretty much run its course and the political parties and major players are preparing themselves for a second. These experiences may be instructive for countries now at earlier stages in their telecom reform process.



# Chapter 27

## Trade in Telecom-based Services

Anders Henten

### 1.0 Introduction

The topic of this chapter is the encroachment of a trade regime into the sphere of telecom services and the ensuing implications for the regulation of telecom. Since the beginning of the deregulation of telecom services movement, there has been strong resistance to the application of several trade relations principles in the telecom services area based on the argument that the general trade regime is not applicable to telecom. Historically, there is some evidence to substantiate this view. The delivery of telecom services has traditionally been organised as nationally confined monopoly markets. However, it is argued here that there is nothing inherent to telecom that necessarily hinders trade relations, but it is a political decision whether and to what extent competitive market relations should have primacy.

More specifically, this chapter deals with the negotiations and decisions taken in GATT, WTO (General Agreement on Tariffs and Trade; World Trade Organization) with regard to telecom services. The creation of competitive telecom services markets is also an objective of ongoing liberalisation nationally and internationally in, e.g., the European Union (EU) and the North American Free Trade Agreement (NAFTA). However, the reason for focusing on the WTO is because WTO discourse is more explicitly trade-related, while the debate in the EU, for example, is more concerned with the abolishment of national telecom monopolies and the deregulation of national markets. The crux of the matter is the same. Although decisions of WTO do not directly influence negotiations in either EU or NAFTA – it is rather the other way round – WTO decisions affect a far greater number of countries. Furthermore, the trade discourse in WTO has fuelled academic and political discussions which indirectly have influenced decisions in EU and NAFTA, and WTO will become increasingly influential on these issues in the future.

### 2.0 A Significant Growing Economic Sector

In all national economies, services are increasingly important. This is reflected, e.g., in the share of services in GDP. From 1970 to 1987, services in developed economies grew from 55 percent to 63 percent of GDP, and in developing economies from 45 percent to 49 percent.<sup>1</sup> The kinds of services that have grown mostly in developed economies, apart from non-market services, are financial services and business services.

In the international arena, services are also increasingly significant. Trade in both goods and services is growing faster than total world output, which means that traded

goods and services constitute an increasing share of world output. In 1995, world trade in services amounted to 1080 billion USD.<sup>2</sup> Trade in goods is growing at a similar pace to services, reflecting in part the facts that services not only facilitate trade in goods, but also producers of goods are the major consumers of services. The share of services trade in total world trade has been relatively constant at 20 percent.<sup>3</sup>

The world market for telecom services is growing very quickly. In 1992, the total world telecom revenue was 413 billion USD.<sup>4</sup> In 1994, it has increased to 513 billion USD<sup>5</sup> representing 2.2 percent of global GDP. International telecom traffic is roughly estimated to be 10 percent of total revenue, i.e. approximately 51 billion USD.<sup>6</sup>

### **3.0 General Agreement on Tariffs and Trade (GATT)**

The first General Agreement on Tariffs and Trade was adopted in 1947. The purpose was to initiate liberalisation of international trade after a period of setbacks in the 1930s (the world economic crisis) and 1940s (World War II). Over the years, eight rounds of GATT negotiations have taken place of which the last one, the Uruguay Round, started in 1986 and was concluded in 1993 and signed in 1994.

Far from all countries have participated in the GATT rounds. In the first five rounds, only 13-38 countries took part. However, from the sixth round, the Kennedy Round in 1964-67, decolonisation began making an impact on the number of participants and by the establishment of WTO in January 1995, GATT had 125 member states.<sup>7</sup>

The principles applied in the history of GATT have developed. However, three of the most fundamental principles relevant to telecom are the following:

- Market access;
- National treatment; and
- Most Favoured Nations (MFN).

Market access means that foreign suppliers are allowed to market their products on the domestic markets in question. National treatment means that foreign suppliers receive treatment equal to domestic producers. Most Favoured Nations means that all parties to the Agreement receive equal treatment. If a party (country) to a GATT treaty concedes market access and national treatment to another party, a similar right must be conceded to all other parties to the Agreement.

A GATT treaty consists of a main text, possibly including a number of annexes, and so-called schedules of commitments of individual participants. In these schedules, countries have possibilities to put forward commitments and to adduce exemptions from the provisions in the main text.

### **4.0 Introduction of Services Issues**

The growing importance of GATT negotiations is not only reflected in the number of participating countries but also in the industrial sectors covered by the treaties. Until the GATT treaty of 1994, textiles and agricultural products, for instance, were only partly covered and services were not covered at all.

However, since the conclusion of the Tokyo Round in 1979 there was pressure to include services in GATT. In 1982, it was decided by a GATT ministerial meeting that countries should consider their interests in including services in GATT. This very soft

formulation shrouded the fact that there were many different positions concerning the desirability and/or extent to which services should be included. The United States was a strong proponent of the inclusion of services. They were convinced that it had clear comparative advantages in the services area. Most other developed countries were rather reluctant and most developing countries were in direct opposition to the proposal. But a process had started, encompassing both a power and a learning game,<sup>8</sup> in which the former consisted of pressuring of unwilling countries; and the latter consisted of investigations into the actual interests of countries in a liberalisation of services. Most countries had, in reality, not considered these matters in an in-depth manner.

The process ended by including services in the Uruguay Round in a special track of negotiations, the Group of Negotiations on Services (GNS). Formerly, GATT negotiations only dealt with goods. Now, a whole new area was taken in, creating a range of new problems to be dealt with. The special problems that arise are related both to the differences in the modes of internationalisation of goods and services respectively and to the fact that a number of services in most national economies have been heavily regulated. This applies, first and foremost, to those services that often have been considered as having an infrastructural character as, for instance, transportation, telecom and financial services.

#### 4.1 *Modes of Delivery*

Concerning the first problem regarding the different modes of internationalisation – in a GATT, WTO context called modes of delivery – services, to a far greater extent than goods, rely on foreign establishment. Most services are consumed where and when they are produced because of a necessity of simultaneity in production and consumption and they are, therefore, not as easily tradable as goods. While in developed economies, services contribute on average more than 60 percent to GDP and in developing countries, the comparable figure is approximately 50 percent, only 20 percent of total world trade comes from services.<sup>9</sup> However, approximately 50 percent of the total stock of foreign direct investments are constituted by service investments<sup>10</sup> which illustrates the dependency on foreign establishment in the internationalisation of services. GATT negotiations, therefore, had to consider new modes of delivery to supplement trade if services were to be comprehensively treated. Cross-border trade has been the traditional purview of GATT while foreign establishment has been outside its scope. To deal with the services area, four modes of delivery were conceptualised:

- Cross-border supply;
- Consumption abroad;
- Commercial presence; and
- Presence of natural persons.

*Cross-border supply* is the traditional form of trade where a product (merchandise or service) is taken from one country to another. *Consumption abroad* takes place when a person goes to another country and buys a product. The most known example is tourism. *Commercial presence* is the foreign establishment mode of delivery where production is set up in foreign countries. *Presence of natural persons* takes place when a producer for a limited period of time goes to a foreign country in order to deliver a product. A prevalent

example is consulting. From a formal national accounting point of view, the first two and the fourth modes of delivery are all considered as trade while the third category is not counted as trade.

The point here is not that foreign establishment has no role to play in the case of manufactured goods. Indeed, it has. However, foreign establishment is relatively more important for services than for goods. Further depending in part on where the definitional boundaries are drawn between goods and services, consumption abroad and presence of natural persons play only a minor role dealing with manufactured goods but are much more significant for services.

#### *4.2 Regulations*

A second problem is that traditionally a number of service areas have been heavily regulated in most countries. Telecom services have until recently most often been held in monopoly by the national states. It is, therefore, not sufficient for a country simply to decide that it will open its borders to imports from foreign countries. The whole regulatory structure of different service areas must also be changed.

This has led some observers to conclude that there is a special relationship between international and national regulations in the field of services delivery. In fact, this is true, but not for the reason often provided i.e. because of the nature of services themselves which often require direct contact between producer and consumer. In reality there is no definite difference in this respect between goods and services. By way of example, before liberalisation of terminal equipment, users were allowed to buy their own telephone handsets (also foreign ones), yet, they were not allowed to attach them to the telephone networks. The reason was regulatory restrictions. The same applies to services that traditionally have been heavily regulated. The reason for the special relationship between changes in international and national regulations in the field of services is, consequently, the strict national regulations of many service areas.

#### *4.3 Service Negotiations*

Major difficulties in the services negotiations during the Uruguay Round were related to the application of the two fundamental GATT principles, market access and national treatment. As a result negotiations did not come all that far in this new field. Provisions for market access and national treatment did not come into the main text of the General Agreement on Trade in Services (GATS), but were included in national schedules of commitments. However, this weakens the multilateral character of the agreement. If a country includes commitments concerning market access and national treatment in its schedule it must concede equal rights in this respect to all parties to the agreement, unless exemptions from the Most Favoured Nations (MFN) clause are submitted, even though other parties may not offer reciprocal rights. This may induce countries not to make any concessions of real importance or to submit MFN exemptions.

This is exactly what happened. In the beginning of the services negotiations in the Uruguay Round, the United States emphatically advocated extensive liberalisation in the services area. However, when it became clear that most other countries did not want to go as far as the US, the US withdrew its initial offers. As most other countries did not want to open their markets to the extent proposed by the US, there could be no general MFN rights.

Despite the fact that the theory of comparative advantages asserts that there will be welfare gains in the countries opening their markets even though trading partners do not open their markets to a comparable degree, business interests in the US told the US Trade Representative otherwise. There were clear and detectable business interests to defend.

## **5.0 Internationalisation of Telecom Services**

All four modes of product delivery apply to telecom services. Cross-border supply and commercial presence are by far the most important. Even though telecom services do not fit the traditional picture of a traded product, cross-border supply of telecom services has taken place from the inception of telecom. Commercial presence in foreign countries also developed in the beginning of telecom, yet, the supply of telecom services quickly became state monopolies and foreign investments were excluded. However, present liberalisation of telecom around the world is opening countries to foreign telecom investors.

Consumption abroad is also becoming still more widespread. This type of service delivery has, in reality, taken place always when a person travels to a foreign country and uses the telecom network there. However, it has become both more extensive and detectable with the uses of mobile telephones where customers go abroad and use their own terminals. Presence of natural persons is not a significant mode of delivery in the case of telecom services. There are, of course, telecom consultants that deliver their services abroad and if employed by telecom operators, revenues from their services will be counted as trade in telecom services. However, these are not really telecom services but consulting services. Nevertheless, one can imagine employees of foreign companies going abroad to set up telecom facilities for a shorter duration of time, for instance, in relation to large international conferences<sup>11</sup>.

### *5.1 Cross-border Supply*

The mode of delivery of telecom services that is the most difficult for many people to understand is cross-border supply, even though if it is the most significant in size. Normally, when speaking of trade, a product will be crossing a border. But, what is taken across a border in the case of telecom services? For most telecom services, the answer is that it is the access to the network in a foreign country which is imported. From a formal point of view, it is the operator in the country in which the call is initiated that collects the fee for an international call from the calling party. This fee is then shared with operators both in transit countries and in the country in which the call is terminated.

However, this is only one type of trade in telecom services – the traditional type. It might be called the *incoming* type of trade because nothing is really being moved outside the borders of the exporting country. The importing party uses the facilities of the exporting party in the exporting country – as in the case of tourism. If speaking the jargon of today, one might say that it is a case of “virtual consumption abroad”.

The other type of trade in telecom services resembles traditional trade to a greater extent; it might be termed outgoing trade. In this case, services are delivered in the importing countries. This applies, for instance, to information services where customers receive on-line information services from foreign computerised data bases.

Concerning the ingoing type of trade, the US has had large trade deficits on its balance of trade for many years. In 1994, the telecom deficit was approximately 4 billion USD<sup>12</sup> (see also Stanley chapter, this volume). These deficits were one of the reasons why the US was a strong proponent of an inclusion of telecom services in multilateral trade negotiations. The US is convinced that too high tariffs in other countries prevent subscribers in these countries from calling the US, and that a liberalisation of telecom will lead to lower tariffs. Deficits in trade in telecom services are created by larger amounts of outgoing than ingoing minutes of international telecom traffic. Operators that have more outgoing than ingoing minutes will have to pay out a larger sum of money than they receive for getting access to networks in foreign countries.

The ingoing mode of trade thus creates balance of payments deficits in the more developed countries where subscribers can afford to make international calls, while the outgoing mode of trade creates surpluses in such countries because these countries will be the ones where new telecom services are produced. In 1994, there was a surplus on the US balance of trade in the area of database and information services.<sup>13</sup> Conversely in developing countries, the building of national telecom networks may constitute not only an important contribution to internal communications but also a stimulus for exports, as there will, in all probability, be more ingoing than outgoing calls and, therefore, increased income in hard currencies from the richer countries.

## 5.2 *Commercial Presence*

Commercial presence in foreign countries can take many different forms – from loose partnerships between national operators to full scale ownership of foreign subsidiaries. The whole spectrum of possibilities traditionally has not been applied in telecom where only a few firms, such as Cable & Wireless have been genuinely international. In the early days of telecom, there were firms with international aspirations. However, telecom developed into a nation based industry with correspondent relationships between national operators. In recent years, this situation has changed and the telecom services industry has started utilising the same modes of internationalisation as many other industries.

Consortia, alliances, joint ventures, strategic investments and subsidiaries are the types of commercial presence that are being used in the telecom area. Consortia have existed for decades. They have been the most common type of organisation of joint international activities in the period of national monopolies, such as submarine cable and satellite consortia. Alliances are newer types of cooperation in the telecom services area. Alliances do not necessarily imply foreign investments, but they are often consolidated by mutual investments in the participating companies. Joint ventures and strategic investments concerning greenfield investments and investments in existing firms are also a relatively new phenomena, as is the establishment of subsidiaries in foreign countries.

With the liberalisation in the telecom services area there is an increasing internationalisation of the industry now taking place. However, the telecom services industry is still not very internationalised compared to many other industries. In a list of the world's largest transnational corporations, ranked by foreign assets, the first telecom operator to appear on the list is Cable & Wireless at number 84.<sup>14</sup> In the US, foreign investment figures show that foreign investments in telecom services delivery are relatively low compared to overall investments. In 1994, US foreign direct investments in telephone and telegraph communications constituted 1.11 percent of total foreign direct

investments,<sup>15</sup> while public telecom revenue amounted to 2.66 percent of US GDP.<sup>16</sup> This illustrates that telecom services, to a large extent, remains a nationally based industry although there is a strong new internationalisation drive now underway. Between 1990 and 1994, US income from foreign telecom investments rose from 0.19 percent to 0.70 percent of total income from foreign investments.<sup>17</sup>

## **6.0 Telecom Trade Negotiations**

The multilateral trade negotiations concerning telecom services related to the Uruguay Round can be subdivided in two parts. First, the negotiations under the auspices of the Group of Negotiations on Services (GNS) from 1986 to 1993 resulting in GATS where telecom services are included. Second, the negotiations in the special Negotiating Group on Basic Telecommunications (NGBT) that started in 1994 and were scheduled to be finalised by April 1996, but have been postponed till February 1997.

The telecom negotiations under the GNS resulted in an agreement which mainly covers enhanced or value-added services. At that point in time, it was not possible to reach a general agreement that would encompass basic services. This was the reason for starting a new round of telecom negotiations in continuation of the Uruguay Round. However, the prolongation of the process after the April 1996 deadline indicates that this is still a very difficult area.

### *6.1 General Agreement on Trade in Services (GATS)*

An important and explicitly stated reason for including telecom services in multilateral trade negotiations is the special relationship between telecom services and trade in other areas. Telecom services have a dual character, in the sense that they are both services in their own right and also a means of transportation for information intensive services and enablers of trade in all other areas. This duality has been a significant argument for liberalisation of telecom services because a more liberal regime in the area of telecom will make trade in other areas easier. Furthermore, it played an important role in the design of the telecom agreement in GATS.

There are two elements in the GATS that specifically address telecom services, one dealing with telecom services as a means of transportation (“Annex on Telecommunications”) and another concerning the initiation of a new round of negotiations in NGBT (“Annex on Negotiations on Basic Telecommunications” and “Decision on Negotiations on Basic Telecommunications”). Whereas trade agreements traditionally deal with provision and supply, i.e. that products can be provided and supplied to foreign markets, the Annex on Telecommunications deals with access and use. It deals with the rights of users to “access and use public telecom transport networks and services”, i.e. to attach equipment, to interconnect private networks with public networks and services, and to use communication protocols of their own choice. It does not deal with the rights to provide and supply “telecommunications transport networks and services”.

The focus on users and not on providers would not matter in most cases as the right to use a product would require the right to provide. However, the right to access and use public telecom transport networks and services does not require a right to provide such networks and services, no more than the right to use a merchandise transported by means of railways requires a right to provide rail transport services. The Annex on

Telecommunications deals with “the movement of information within and across borders”, i.e. the value added services provided on top of the basic telecom transport services. The supply dealt with in the Annex is only the supply of services provided over the telecom transport networks and services.

The provision and supply of telecom transport networks and services are “relegated” to the national schedules of commitments. And, most countries that filed national schedules in relation to GATS only included enhanced or value-added telecom services. A number of countries, however, also made commitments in the area of basic telecom services. But, these commitments were scattered, and the largest and most important players in these negotiations, the US, the European Community and Japan, were not among them. Telecom services were included in 48 schedules of commitments (counting the EU and its member states as one); 22 of these included some commitments on basic telecom, however, only six included voice telephony.<sup>18</sup>

## 6.2 *Negotiating Group on Basic Telecommunications (NGBT)*

The fact that the telecom part of GATS primarily covers enhanced or value-added services rather than basic services did not come as a surprising disappointment at the end of negotiations. The results of the services negotiations, including telecom, were basically known already in 1991. The main purpose was to obtain an agreement that would allow for a flexible use of telecom facilities. The telecom part of GATS, in fact, provides such a flexible framework as it includes all services listed in national schedules. This also applies to the services that are included in national schedules in future agreements. However, basic telecom services remained an unsolved issue.

This was the basis for the decision to continue telecom negotiations in a Negotiating Group on Basic Telecommunications dealing with provision and supply of basic telecom services. At first, 20 member states plus the European Union (EU) joined the negotiations, and by the end of negotiations, 37 members plus the EU (i.e. 52 countries) participated. The EU and 33 members finally made offers to liberalise their basic telecom services sectors. About 30 additional countries were observers of these negotiations.

To commence negotiations, a model schedule of commitments was drafted and circulated among participants. Each country was asked to assess the conditions in that country on the issues summarised in Table 1, as a means of judging the extent of market liberalisation that existed.

Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Voice telephone services Packet-switched data transmission services Etc.			

1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

**Table 1 – Model schedule of commitments on basic telecom services**

Under sector or sub-sector are listed the different services on which members make commitments. For services listed, limitations on market access and national treatment are dealt with relating to all four modes of delivery (1-4), while the category additional commitments provides a window for commitments on national regulatory limitations to competition, including interconnection rules, universal service obligations, etc.

Negotiations have had the purpose of advancing and improving offers (note the power and learning process mentioned earlier on) and of clarifying a number of issues that may not be resolved by applying the model schedule. These include limitations on market access for technical reasons relating to the availability of radio frequencies, categorisations of specific services in relation to the four modes of delivery, and inclusion of measures related to international agreements, particularly the accounting rate system.

Furthermore, negotiations have dealt with the question of national regulation of telecom. It is obvious that national regulatory frameworks may impede new competitors from entering the national markets if there are insufficient rights of interconnection, lack of availability of limited resources, such as radio frequencies, numbers, rights of way, etc. The importance of such regulatory frameworks is an expression of the close relationship between international and national regulations in areas where strong national regulations exist. The negotiations on basic telecom services represent the first instance where telecom competition issues have been dealt with in a GATT, WTO context. It is considered to be a major achievement and will be expanded further to other business areas, extending the scope of WTO negotiations.

The negotiations on basic telecom services should have been finalised by the end of April 1996. However, finalisation was postponed till mid February 1997. This does not mean that the date of entry of the agreement (1 January 1998) will be delayed. The immediate reason for the non-conclusion of an agreement was that the US, at the last minute, declared that there was not a “critical mass of quality offers”<sup>19</sup> on the table. There were offers from 33 member countries plus the EU (i.e. 48 countries). These countries cover more than 90 percent of total world telecom revenues. The US, the European Union and Japan had made very similar offers including market access and national treatment in relation to all basic telecom facilities and services except for an investment limit of 20 percent in the Japanese operators NTT and KDD, and investment limits and phase-in periods concerning market access in some of the countries in the EU. However, the US administration estimated that 40 percent of world telecom revenues and over 34 percent of global international traffic were not covered by “acceptable offers”.<sup>20</sup> The US administration was specifically dissatisfied with offers from a number of Asian countries.

This not only applies to countries participating in the NGBT that did not file schedules of commitments (Indonesia and Malaysia), but also to India, Singapore, South Korea, and others.

There are three major areas of US criticism: investment limitations, international traffic and satellite services. Limitations on investment have been a continuous point of contention for the NGBT, but in the end, this question was presumably not as important as were international traffic and satellite services. For these, US negotiators were exposed to considerable industry pressure both from traditional international carriers (AT&T, MCI and Sprint) and from the prospective operators of global mobile services using Low Earth Orbit (LEO) satellites, such as Iridium.

The US administration wanted to put maximum pressure on their negotiating partners and/or opponents and gained the additional benefit of not entering a new trade agreement in a presidential election year, taking the present isolationist trends in the US into consideration. The US administration is very blunt concerning the heavier requirements for reciprocity in relation to the Asian countries after the down-fall of socialism in Russia and Eastern Europe.<sup>21</sup>

## **7.0 Implications for National Regulations**

That there are implications for national regulations in the negotiations on basic telecom is evident. Implications for national regulations are included in the additional commitments in the national schedules. But the GATS rules also have some implications for national regulations; although these are much less clear. In both cases, GATS and NGBT, the number of countries involved is much smaller than the total number of GATT, WTO member states. Compared to the total membership of GATT and WTO of approximately 125+ countries, 59 countries (including EU countries) filed commitments on telecom in connection to GATS, and 48 countries (including EU countries) filed commitments in connection to NGBT.

Thus, a large number of countries are not covered by the agreements. However, trends in these agreements influence the non-involved countries just as they have influenced the participating countries. The nature of agreements in WTO is that countries cannot formally be forced to take part. In principle, countries only sign agreements that are in their best interest. However, the give-and-take and the learning-and-pressure processes force countries to enter agreements that they would otherwise not have signed. The simultaneity of these processes is well illustrated by the fact that the US adopted a new telecom bill in 1996 and that the EU has set the dead-line for the opening of national markets to January 1, 1998, the same date as the date of entry of an agreement on basic telecom in WTO.

The most important articles for telecom services in the “General Obligations and Disciplines” part of GATS are VI, VIII and IX. Article VI deals with domestic regulation, article VIII with monopolies and exclusive service suppliers, and article IX with business practices.<sup>22</sup> The Annex on Telecommunications is, in reality, an elaboration of these articles in relation to telecom, as it was felt that the general agreement was not sufficiently precise for application to telecom. In the “Specific Commitments” part of GATS, the general provisions for market access and national treatment are outlined.<sup>23</sup>

The two most important paragraphs regarding regulations in the Annex on Telecommunications deal with transparency, access to and use of public telecom

transport networks and services. Public availability of information on conditions affecting access and use are essential for all operators in a market, and especially for new operators. Access and use are defined as the right to attach terminal equipment, to interconnect private networks with public networks, and to use operating protocols of the users own choice (with some limitations) and the right to move information within and across borders.<sup>24</sup>

For countries that already have liberalised the provision of value-added services, these paragraphs are not path-breaking. However, in a number of countries, these rights are not secured, and they constitute a necessary foundation for contemporary business practices both in service areas and in manufacturing.

The regulatory provisions negotiated regarding basic telecom services are much more precise, though still in the form of a general framework for national regulations. In order to facilitate an elaboration of comparable commitments on regulatory matters, a reference paper was produced in the NGBT process. This reference paper is adopted in the additional commitments by most of the countries filing commitments on basic telecom services. It includes provisions on the following regulatory issues:

- Competitive safeguards regarding the prevention of anti-competitive practices concerning, e.g., cross-subsidisation;
- Interconnection rules allowing for interconnection of public networks in a non-discriminatory timely fashion upon request, including public availability of the procedures for interconnection agreements, transparency of interconnection agreements, and an independent dispute settlement mechanism;
- Universal service, where members have the right to define the kinds of universal service they wish, provided they are administered in a transparent, non-discriminatory and competitively neutral manner;
- Public availability of licensing criteria;
- Independent regulation, where regulatory bodies are separate from and not accountable to any supplier of telecom networks or services;
- Allocation and use of scarce resources, including radio frequencies, numbers and rights of way.<sup>25</sup>

These provisions are in line with the regulatory reforms presently taking place in a large number of countries. They touch upon the important areas of regulation that have to be settled in the process of creating competition in national markets. It is not sufficient in a national market to declare that competition is allowed. It is also necessary to provide an appropriate framework for really establishing a competitive market situation. This also applies in an international context. As noted above, only allowing market access and national treatment is an insufficient approach, potential foreign competitors must be provided opportunities for entering the new markets, as well.

## **8.0 Conclusions and Open Issues**

The developments and negotiations described in this chapter point to some conclusions and a larger number of open issues. In the introduction to this chapter, two issues were

raised: whether a trade regime fits telecom; and what the implications are of an international agreement regarding telecom services for national regulation of telecom. This chapter has documented that telecom can be and, in fact, has been dealt with in a trade context, but that a number of problems have to be resolved. One of these is the close relationship between changes in international and national regulations of telecom, as in other areas where strong national regulation exists.

Another problem is that an internationalisation of the provision of telecom services, to a large extent, is based on commercial presence in foreign countries. This has given emphasis to the problem of the degree of foreign ownership allowed. Traditionally, GATT negotiations have only dealt with cross-border trade.

However, these two problems have not been the major obstacles for an agreement on basic telecom services. The more traditional contradictions between the overall welfare gains of international trade and particular industry interests have dominated, notably the pressure of AT&T, MCI and Sprint and Motorola on the positions adopted by the US administration.

One of the important issues here is the international accounting rate system. If a country allows interconnection at cost-based prices, its operators will, in the long run, be forced to terminate international calls at termination rates equal to domestic interconnection rates instead of the international accounting rates now being applied. If other countries do not make equal commitments, an unstable situation is created. In the NGBT, this problem was not solved.

In the longer term, a trade regime in the telecom services area cannot avoid bringing down the international accounting rate system. This system is built on a situation with national monopolies entering cartel like agreements and keeping international tariffs high.

The transition from a situation with national monopolies to a situation with competition both in international and domestic markets puts pressure both on national modes of organising the provision of telecom services, and on international organisations dealing with telecom. The International Telecommunication Union (ITU) is adapting to a new situation where telecom becomes a trade issue and where WTO plays a central role.

The first area where the multilateral trade system dealt with telecom related to telecom as a means of transportation for other services (GATS). This area is of great importance to the increasing internationalisation of the world economy as such.

When dealing with telecom services in their own right (NGBT), it has been necessary to recognise national regulations. The negotiations on basic telecom are the first instance in the history of GATT, WTO where national regulatory competition rules that define the nature of competition that will be permitted have been a subject for negotiation. But, the expectation is that this example will be transferred to other areas.

WTO, thus, incorporates a growing spectrum of issues. GATS was the first instance of services being included in multilateral trade agreements. This made it necessary also to include other modes of internationalisation than cross-border trade. Now, competition rules will be included. The question is whether the relatively weak WTO framework can carry all these responsibilities. There is a need to consider a more stable division of assignments among international organisations in the area of telecom, that reflects the changing structure of telecom markets.

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Endnotes

- <sup>1</sup> GATT: "International Trade 88-89", vol. 1., pp. 23-24.
- <sup>2</sup> WTO: "Focus" Newsletter no. 10, May 1996, p. 8.
- <sup>3</sup> Ibid. p. 2.
- <sup>4</sup> ITU: "World Telecommunication Development Report", Geneva, ITU, 1994, p. A-48.
- <sup>5</sup> WTO in [http://www.unice.org/wto/Whats\\_new/ta3.tlf.html](http://www.unice.org/wto/Whats_new/ta3.tlf.html), p. 1.
- <sup>6</sup> Estimation by Russel Pipe in "Data on Telecommunications Markets of Participants in the WTO Negotiations on Basic Telecommunications", mimeo, 24 April, 1996, p. 1.
- <sup>7</sup> "Focus" GATT Newsletter, no. 113, December 1994, page 3.
- <sup>8</sup> See Kalypso Nicolaïdes: "Learning While Negotiating – How Services Got on the Uruguay Round Agenda" in Albert Bressand and Kalypso Nicolaïdes (ed.): "Strategic Trends in Services", Harper & Row, New York, 1989, pp.161-179.
- <sup>9</sup> "Focus" WTO Newsletter, no. 19, May 1996, page 2.
- <sup>10</sup> UNCTAD: "World Investment Report 1993", UN, New York, 1994, page 62.
- <sup>11</sup> There are additional services emerging that take advantage of loop holes in regulation rather than liberalisation per se, e.g., 'call-back and 'long-distance reselling services.
- <sup>12</sup> U.S. Department of Commerce: Survey of Current Business, September 1995, volume 75, number 9, page 76.
- <sup>13</sup> Ibid. page 76.
- <sup>14</sup> UNCTAD: "World Investment Report 1995", Geneva, United Nations, 1995, page 22.
- <sup>15</sup> U.S. Department of Commerce: Survey of Current Business, volume 75, number 8, August 1995, pp. 115-116.
- <sup>16</sup> OECD: "Communications Outlook 1995", Paris, OECD, 1995, page 25.
- <sup>17</sup> U.S. Department of Commerce: Survey of Current Business, volume 75, number 8, August 1995, pp. 115-116.
- <sup>18</sup> Sources: WTO: "Background Note on the WTO Negotiations on Basic Telecommunications", 22 February 1996, [http://www.inicc.org/wto/Whats\\_new/ta3-tlf.html](http://www.inicc.org/wto/Whats_new/ta3-tlf.html), page 2 and Russell Pipe: "Uruguay Round Trade Agreement Provisions Affecting Telecommunications", Geneva, ITU, 1994, page 20.
- <sup>19</sup> "Statement of Ambassador Charlene Barshefsky, Basic Telecom Negotiations, April 30 1996", Office of the United States Trade Representative, 30 April 1996.
- <sup>20</sup> Ibid.
- <sup>21</sup> "Testemony for Ambassador Jeffrey M. Lang Before the House Subcommittee on Commerce, Trade & Hazardous Materials", May 9, 1996, page 9.
- <sup>22</sup> MTN/FA II-A1B pp. 8-11.
- <sup>23</sup> Ibid. pp. 17-18.
- <sup>24</sup> Ibid. page 34.
- <sup>25</sup> "Reference paper", WTO, 1996.

