

Annex 4

Commission assessment of
implementation of the GATS by certain
third countries

ANNEX III TO THE JULY 2000 COMMUNICATION TO THE 133 COMMITTEE ON THE PREPARATION OF GATS 2000

STATUS OF THE IMPLEMENTATION OF THE WTO/GATS COMMITMENTS AND REVIEW OF THE SITUATION IN THIRD COUNTRIES' TELECOMMUNICATIONS MARKETS

INTRODUCTION

The GATS agreement on basic telecommunications services took effect on 15 February 1998. For almost all OECD countries commitments started to take effect from that date, but for many other countries commitments only take effect at a later date, typically from year 2000 onwards. For additional information regarding specific WTO member countries' commitments see <http://gats-info.eu.int/gats-info/gatscomm.pl/>.

1. EU MEMBER STATES

The European Community and its Member States included virtually all telecom services in its schedule. The Community's telecommunications regulatory package provides a comprehensive framework covering and complying with all the WTO commitments of the European Community and its Member States. The package has been extensively transposed by Member States and Member States complying with the package also fulfil their WTO obligations, which have been in force since February 1998 (except for Greece, Ireland and Portugal which have phase-in periods for their commitments).

Information about the implementation of the European framework is available through a series of Implementation Reports established by the Commission. The latest of these, the Fifth Report, is available on the Commission's server at <http://www.ispo.cec.be/>.

2. OECD COUNTRIES

It is worth noting, however, that the individual commitments contained in the GATS telecommunications agreement represent a significant step towards an international harmonised system of telecommunications legislation now bound under international law.

Given the size and significance of their markets, the United States and Japan are profiled in the following sections.

1.1. United States

The US undertook commitments on virtually all telecommunications services but nevertheless retained a number of restrictions involving investment, conditions for market access, reciprocity-based procedures, and access to certain satellite sectors.

Foreign direct investment in common carrier radio licences is limited to 20% (indirect investment being allowed up to 100%), and there remains a market access restriction on satellite-based services, namely the monopoly of Comsat to link up with Intelsat and Inmarsat.

As regards indirect investment, market access still remains conditioned on the FCC's public interest review for the purpose of granting waivers of Section 310 restrictions on foreign indirect investment. These are linked to two 1997 FCC rulings (a general ruling on foreign participation in the US market, and a specific one on the satellite services market) to implement the commitments of the US in the GATS, involving a presumption that entry by carriers from WTO countries and by satellites licensed by WTO countries is pro-competitive, but including the retention of a 'public interest' criteria which can still be invoked to deny a licence to a foreign operator, such as "trade concerns", "foreign policy" and "very high risk to competition".

The US also took an exemption to the MFN principle for one-way satellite transmission of Direct to Home (DTH), Direct Broadcast Satellite (DBS) and digital audio services. The EU reserved its right to challenge this exemption as it applies to services which are part of the audio-visual commitments undertaken by the US in 1994 as a result of the Uruguay Round. Furthermore, market access for satellite based service providers remains an issue of EU concern. The FCC procedures for authorising foreign satellite systems to serve the US market are found to be time-consuming, burdensome, possibly discriminatory and, in any case, they do not create certainty of access for foreign service providers. European companies have complained about these problems.

The US telecommunications market is currently undergoing a heavy restructuring through mergers and acquisitions with Internet and media companies. This development also affect the European telecommunications market due to the heavy presence of US owned companies on this market. The results of this ongoing market concentration on competition and market developments remains to be seen. Nevertheless, it may expected that the US telecommunications market will remain highly competitive in view of the existing and also new market players. For example, the market share of AT&T, measured in total toll service revenues, continues to decrease, from 47.9 percent in 1996 to 44.5 percent in 1997. The market share of the providers such as MCI, Sprint and WorldCom have gradually increased to 19.4, 9.7 and 6.7 percent respectively, but growth has slowed or stagnated. Smaller carriers such as Pacific Gateway Exchange, Inc and Communications TeleSystems International continue to enter the market increasing market share from 17.0 to 19.8 percent between 1996 and 1997. Facilities-based services by new providers is apparently increasing, as competitive access providers 1.8 million fibre miles, an increase of 39% in 1997. Total telecommunications revenue increased by 20 percent in 1997 to \$231 billion, the three most profitable sectors being local service (\$108 billion), wireless service (\$33 billion) and toll service (\$89 billion).

1.2. Japan

Improvement of the situation regarding the granting of Type I and Type II licenses to foreign carriers has taken place during the last two years. Furthermore, Japan has introduced price cap regulation, liberalised international simple resale and allows the participation of EU carriers in the capital stock of Japanese carriers. As a result, Japan finds its GATS / WTO commitments to have been fully implemented.

However, while it is clear that the process of liberalisation has started in Japan, the Japanese market is still highly concentrated with only a few incumbent Japanese carriers. There are also important bottlenecks which should be removed such as interconnection – in particular on the cost orientation of interconnection rates -, rights of way and conditions related to universal service. These aspects continue to hinder competition in Japan and therefore prevent both consumers and service suppliers in Japan from the advantage of cheaper and better communications services.

The MPT has undertaken number of studies, some are still under way and are due to reach conclusion and implementation around 2000¹. These studies cover universal service funding; LRIC (long range incremental cost for interconnection); number portability and carrier pre-selection. EU industry is therefore concerned that a truly effective regulatory system might not be in place until after two or more years after full competition in principle was introduced (with the WTO telecommunications agreement entry into force on 5 February 1998). All these elements confirm that the pace of adoption of pro-competitive regulatory measures by Japan remains far too slow.

Moreover, a clear re-balancing between the current over-regulation of non-designated carrier business in Japan and the enactment of a framework regarding the statutory duties for the Regulator where the promotion of competition should be clearly expressed, is still missing . For example, such over-regulation includes notification for MPT approval for all terms and conditions of new services and various changes. On the other hand, it would be necessary to see a the review of the “*designated carrier rules*”, the imposition of efficient pro-competitive safeguards on designated carriers (high NTT interconnection rates, and transparent rules on access to NTT ducts and poles in order to do away with current unfair conditions and exorbitant charges for NTT's competitors),.

To a large extent, some of these priority issues have been also identified by some other trading partners and by the OECD during the Peer Review on regulatory reform in Japan held in March 1999 in Paris.

1.3. Other OECD-countries

In addition to EU Member States all other OECD countries made a commitment on basic telecommunications – virtually all of them full commitments entering into force during 1998 - and most have made

¹ MPT is due to submit a law on LRIC to the Diet in early March 2000.

commitments on value added services. Further to the EU Member States mentioned earlier, six European OECD countries' commitments include a phase-in date for some or all voice services (for Canada, the Czech Republic, Hungary and Korea the date is 2000, Poland gave a date of 2003, and Turkey a date of 2005, but in its new law has proposed to maintain the monopoly only until the end of 2003). The main type of limitation involves ownership restrictions (Canada, Japan, Korea, Mexico). Canada, for example, maintained its current limit on foreign carrier ownership of 46.7%, including a limit of 20% for direct ownership, in facilities-based suppliers. In some cases, such as Korea, the schedule included a degree of liberalisation, which exceeded that which had been announced domestically. But Korea continues to maintain a limit of 49% foreign ownership restriction and allows foreign participation in its flag carrier KT to an even more limited extent. Mexico maintains a duopoly for local and mobile services and does only permit 49% foreign ownership except for mobile services where no foreign ownership restrictions are applied.

2. NON-OECD COUNTRIES²

2.1. Overview

It has been estimated that in less than 15 years, developing countries have added more telephone lines than the world's industrialised countries (excluding the US) installed during the first 100 years after the telephone's invention (circa 1876).³ Thus, although the situation is very varied from country to country, as a whole development remains very progressive.

63 non-OECD countries made commitments in telecom, although only 49 of these indicated that services could be supplied by at least two suppliers. Of these, 35 offered some form of voice telephony.

2.2. Central and East European Countries⁴

Nine of the Central and East European Countries (CEECs) (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland and Romania, Slovakia and Slovenia) made commitments on telecom, although that of Slovenia does not allow for access by more than two suppliers. Lithuania is in the process of accession. Implementation by some of the countries which did make commitments is currently regarded by industry as not yet meeting the requirements of the Reference Paper.

Nevertheless, all the CEECs have embraced a programme of institutional reform as well as infrastructure modernisation as part of their efforts to become an integrated part of Europe and its institutions and progress made thus far has been considerable. The establishment of regulatory policy in the CEECs is

² This section looks at a limited group of countries - Latin America, Central and East European countries, Asia and ACP countries - although there is obviously some overlap between the groups, as well as with the OECD.

³ Telegeography, 1999, p11.

⁴ Defined, for the purposes of this paper as Estonia, Latvia, Lithuania, Slovenia, Slovakia, Romania, Bulgaria, Czech Republic, Poland, Hungary.

guided by the GATS framework as well as by the EU telecommunications acquis. Although commitments will be phased-in over a one- to four-year period, Latvia, Slovakia, Romania, Poland, Hungary, Czech Republic and Bulgaria commit to liberalisation in local, long distance and international services for public and non-public uses on a facilities- and resale-basis. Latvia, Bulgaria, Czech Republic, Romania and Slovakia place no limitations on foreign ownership in their commitments and Hungary and Poland set a 49% threshold. These countries further commit to the Reference Paper on regulatory principles.

Infrastructure investments are already strongly apparent the Central and East European Countries. Teledensity⁵ tends to be above that of most developing countries averaging 30.5, a low of 17.4 in Romania and a high of 38.1 in Slovenia. Increases in the number of main lines since 1993 range from 4.0 percent in Latvia to 17.4 percent in the Czech Republic, with digitalisation at 62.2% in Poland, 83% in Slovenia and 38.3% in Latvia. Ministries estimate an average of 6.4 years to reach teledensity of 50, but again present achievement and growth rates vary widely between the CEECs. The number of mobile telephones is also increasing, standing at an average of 9.16 per one hundred, and accounting for 18 percent of lines.⁶

In addition to their WTO commitments, ten CEECs have ratified an Association Agreement with the European Union and the agreements of Latvia and Estonia are accompanied by a joint declaration on telecommunications. While these agreements are in various stages of implementation and new telecommunications laws are pending, doubts remain as to whether all associated countries comply with their commitments to uphold the principles of Article 90 of the EC Treaty by a specific date.⁷

Most problems relate to the extension or scope of the extension of monopoly rights, the lack of or questionable status of the independent regulator, the transparency of licensing mechanisms, the prevention of anti-competitive pricing policies and the existence of effective enforcement of competition decisions.

The telecommunications market itself tends to be dominated by an incumbent, partly state-owned provider. As mentioned above, these providers have been granted monopoly rights in some sectors or sub-sectors for a given period of time. In most cases CEECs see these monopoly rights as necessary to ease the move to a full market economy and the need for investment in unprofitable areas. Investment and growth in telecommunications have indeed been significant, yet are often contingent on economic growth and investment climate and therefore lack consistency. Mobile markets are more fully liberalised than fixed-line markets, with at least two and in most cases three services providers in each country.

⁵ Defined, for the purposes of this paper as mainlines per 100

⁶ All figures based on data collected by the European Commission from public sources.

⁷ Although the joint declarations exempt Estonia and Latvia from the Article 90 commitments, the prerequisites for this exemptions are perhaps not being met.

In many areas of infrastructure modernisation and regulation the Central and East European Countries have made impressive progress. Of the many GATS telecom commitments, those of the CEECs stand out as ambitious and consistent. Nevertheless, the true test of any such commitments will be in their implementation. Further, although infrastructure improvements are a positive development, many of the less developed CEECs will require considerable investment to approach the level of development in EU member states.

2.3. Mediterranean, Middle Eastern countries

Of the Mediterranean and Middle Eastern countries (a number of which, it should be borne in mind, are not WTO Members – Oman, Jordan, Saudi Arabia and Algeria are engaged in the process of accession) only four made telecom commitments (Cyprus, Israel, Morocco and Tunisia).

Cyprus only committed to review its regulatory framework in view of prospective liberalisation in the future. Morocco made very limited commitments, including its own version of regulatory principles, and reserved its monopoly for fixed services until 2002, mentioning that new legislation would be enacted in the meantime. Tunisia committed to open its mobile market in 2000 and its fixed local market in 2003.

Israel made commitments to open its international market to two additional operators in 1998 and to open its local market in 2001. The mobile market in Israel has been gradually opened for competition since 1998 with four competing operators since 1999. Additional liberalisation is not foreseen until 2002, although recent information indicates that the Government of Israel is considering to grant further licenses in the communications sector.

2.4. Former USSR republics and Mongolia

Of the former republics of the Soviet union and the former Eastern bloc countries, only one, the Kyrgys Republic, has made a commitment on telecom involving supply by two or more suppliers. More than ten of these countries are in the process of acceding to the WTO. When acceding, Mongolia included a reference to telecom in its schedule.

2.5. ACP countries and Sub-Saharan Africa (see also Annex III)

Of the 71 ACP countries 17 have made commitments on telecom involving the participation of at least two suppliers, while a further eight included telecom in their schedules in some other way. Of the 17 countries where a real commitment can be said to have been made, 11 have included some form of provision of voice telephony, although usually on a phased basis. This group of countries also included some of the longer term phase-ins.

Thirteen African countries have made a commitment of some kind in telecom, and all but two of these have incorporated the Reference Paper on regulatory principles with few, if any, modifications.

Development of regulatory policies and regimes are at various stages. In southern Africa, only three out of fourteen African countries have not separated

posts from telecommunications, and regulatory policies are in various stages of review. South Africa, for example, has made a phased commitment for a number of telecom services, including all forms of voice telephony. The regulator, SATRA, was established in 1996. Its objectives include the establishment of universal access, followed by universal service, overcoming the imbalance of service provision between different sections of society, providing a wide range of services, and effective use of telecom for social and economic development. At the same time that the regulatory authority was set up, the exclusive rights of the monopoly operator, Telkom, were extended for five years, and it was given a mandate to achieve the goals set. In this context concern has been expressed about the independence of the regulator from both government and the monopoly operator.

The level of development of the African telecommunications infrastructure is the lowest of all developing countries if taken as a whole. Teledensity in Africa has reached an average of a mere 1.85, with .5 in east Africa, 2 in central and west Africa, but as high as 16.21 in Mauritius and 11 in South Africa.⁸ \$2.8 million were invested in 1996 in telecommunications and the number of mainlines increased by 9.6 percent. Cellular mobile growth was 54.2 percent in the same period with .1 per one hundred inhabitants, concentrated in urban areas. The ITU predicts that tele-density will increase to 2.19 by 2000.⁹

The telecommunications markets themselves are dominated by incumbent, state-owned carriers. Eleven carriers in mostly smaller African countries of Madagascar, Central African Republic, Cape Verde, Ghana, Guinea, Guinea-Bissau, Sao Tome and Principe, Senegal and South Africa have been partially privatised, with the private partner holding between 30 and 60 percent of the shares. Fourteen countries have announced their intentions to privatise, and Ghana, Uganda and Seychelles have issued second licenses. Fifty-five mobile operators offer services in Africa, of which 25 are private and 11 partially private.¹⁰ At present, few African telecommunications carriers, private or public, have the resources to expand or modernise existing networks.

2.6. Pacific Islands

Of the Pacific island countries, only Papua New Guinea has made a commitment to WTO Basic Telecommunications. The commitment made by Papua New Guinea is fairly weak, including the Reference Paper on regulatory principles but committing to merely review policies in all relevant sectors by 2000. The regulatory authority in the Pacific island countries tends to be the Ministry for Communications or a unit thereof, although Papua New Guinea has established an independent authority.¹¹

8 Marcelino, Tayob. Presentation "Regional Perspectives Telecommunications Workshop" Botswana, May 3, 1999. <http://www.itu.int/treg/Events/Seminars/1999/Botswana/Docs22-50.asp>

9 International Telecommunications Union *World Telecommunications Development Report 1998: Universal Access* Geneva, 1998.

10 Edwards, W. Kent. Presentation "Competition & Interconnection" Botswana, May 4, 1999. <http://www.itu.int/treg/Events/Seminars/1999/Botswana/Docs22-50.asp>

11 ITU Country Profiles http://www7.itu.int/bdt_cds/IDC/Countries.idc

The level of telecommunications infrastructure development in the Pacific countries lies between that of the African and Caribbean countries, and one does not see such great disparities in development as in the other two regions. Teledensity in the eight Pacific island countries is on average 3.21, with a high of 9.19 in Fiji and a low of 1.06 in the Solomon Islands. The overall growth rate between 1996 and 1997 reached 8 percent. Only Fiji and Papua New Guinea are served by submarine cables and cellular services are provided in Fiji, Papua New Guinea, Solomon Islands and Tonga, where penetration is on average .2 per 100.¹²¹³

Like the Caribbean countries, Pacific telecommunications markets tend to be dominated by a single service provider, although in a few cases international or cellular services are provided by a second or third operator.¹⁴ Similarly, Cable and Wireless has retained interests in several international carriers in the Pacific including Fiji, Tonga, the Solomon Islands and Vanuatu, and Vodaphone provides cellular services in Fiji

2.7. South and Southeast Asia

Most ASEAN¹⁵ countries plus India, Pakistan and Sri Lanka made GATS telecom commitments. All of these countries typically maintain an exclusive public operator or a duopoly for international services, whereas full competition for local and mobile services has been introduced. Most Asian countries maintain foreign ownership restrictions, typically allowing less than 30 to 40% foreign ownership of local telecommunications operators.

State ownership of the main operator also remains a typical situation of the region, although full privatisation and liberalisation of all services have taken place in the Philippines and the state only maintains a minority share of the main operator in Malaysia. Indonesia only made very limited commitments and maintains exclusivity for international services until 2005, although it commits fully to the Reference Paper. Sri Lanka maintains restrictions regarding mobile services (number of licenses), but starts to open up its international fixed services market in 2000. It made full commitment to the Reference Paper. Pakistan only offered to open its market for local, domestic and international services in 2004. Like India it committed to its own version of the Reference Paper. India has liberalised the local and long-distance telephony. In 17 of its 19 circles telephony is offered in a duopoly. The Telecom Regulatory Authority of India and the Department of Telecommunications had their disparities in the past. The new telecommunication law of 1999 foresees in the creation of a third body that should act as a court to settle problems between the TRAI and the DoT.

12 Ibid.

13 Data for Tuvala not available.

14 Ibid.

15 The Association of Southeast Asian Nations or ASEAN consists of the following Member Countries: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Laos, Myanmar and Cambodia.

In accordance with its GATS commitments, Singapore recently moved the date for full liberalisation forward by two years to 1 April 2000 and also eased its foreign ownership restriction to 49% at that occasion. Singapore is also committed to the regulatory principles of the full Reference Paper.

2.8. Latin America and Caribbean

Most Latin American countries, with a few exceptions like Uruguay (this country maintains its monopoly for telecommunications services), made GATS commitments in telecommunications services. Some countries like Argentina and Bolivia made phased commitments for market access which become effective in 2000 and 2001, respectively. Brazil maintained important restrictions on public telecommunications services, allowing only full market access for services to closed user groups. In practise Brazil has adopted a duopoly market approach for all telecommunications services.

Overall market access and national treatment remains restricted in various ways in most countries, with a few exceptions like Chile and Colombia. Independent regulators and regulatory regimes are developing, but only a few countries have fully adopted the GATS regulatory principles. However, it is worth noting that efforts to promote liberalisation are also progressing within regional co-operation organisations such as Mercosur, the Andes Pact, the Central-American Common Market and the Caribbean countries. Such co-operation also includes the implementation of the regulatory principles of the GATS Reference Paper.

Of the 15 Caribbean countries, all but Haiti, St. Lucia, and St. Vincent and the Grenadines, and Barbados made GATS telecom commitments for basic telecom of some kind. Most of the committed countries maintain an exclusive public operator or duopoly, committing to open their market after a given phase-in period. All of these commitments include the Reference Paper on regulatory principles with few, if any modifications.

The telecommunications market in the Caribbean tends to be dominated by Cable & Wireless, where it provides national and international communications largely through controlled local operating companies. Since then, pressure from some governments and potential competitors seeking to enter the market has increased.