

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES^{1/2}**

GATS 2000: Telecommunications

The attached communication³ has been received from the delegation of the European Communities and their Member States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. **Telecommunications are a key infrastructure needed for overall development:** they are required for all economic and trade activities. A competitive telecommunications market reduces communications costs for industry and individual users, and new investments in this sector stimulate the development of electronic commerce, which spurs growth in almost all services sectors. The benefits of a competitive telecommunications market can be witnessed now in Europe: for instance, the average price of international calls decreased by 15.1% for business users and 13.5% for residential users during the past year, and the price of leased lines used in particular for both national and international Internet traffic (2Mbit/s) fell by around 30% over the period 1997 to 2000. Such a performing underlying communications market is one of the most significant factors in the context of the overall domestic and trade growth enjoyed in Europe in the past few years. Also, and some would say most importantly, a competitive telecommunications market is the prerequisite for the emergence of the information society in Europe. This can happen in other markets as well.

2. **Negotiations have led 79 WTO Members to open their telecommunications market and make commitments on at least one telecom sub-sector.** At the international level, market openings for telecommunications services became a more widely accepted objective at the end of **the Uruguay Round**. Convinced that opening their respective markets under WTO rules would be even more beneficial than doing it only internally, a number of countries committed themselves to open their markets for some telecommunications services at the end of the Round. They also agreed to continue more ambitious negotiations in this field starting in 1994, including in particular public voice services. These negotiations were successfully concluded in February 1997, and **the protocol on "basic telecommunications services"** went into force one year later in February 1998. Including those who have made commitments afterwards, 79 WTO Members have made commitments on at least one

¹ Hereinafter "The EC".

² The EC reserve their right to modify this proposal at any time. This proposal does not prejudice EC's position on other services sectors, nor any possible future offer on this or other sectors. This proposal has to be read together with the general approach of the EC to the services negotiations.

³ This document should be read in conjunction with S/CSS/W/32.

telecom sub-sector. And, since then, more countries have liberalised their market on an autonomous basis.

3. **The EC market is fully open to competition** as shown by the EC's commitments: all but two sub-sector⁴ (l and n) have been committed with very few restrictions that will soon have almost all elapsed. The few restrictions that remain are always limited to one or two member states. The result of such openness has been thriving competition: in the fixed market for instance, an aggregate of 467 operators are actually in the market offering public voice telephony for long-distance calls, up 90% on 1999, 475 for international calls, up around 70%, and 401 for local calls, up around 80%; in the market for mobile services, penetration has gone up over the last year from 36% to 55%, there are now 194 million subscribers to mobile services in the EU and there are 61 operators licensed for the provision of digital mobile services, up from 52 in 1999. Many of these fixed and mobile operators are owned partially or wholly by foreign operators.

II. SCOPE OF THIS PROPOSAL⁵:

4. This proposal includes the following 14 sub-sectors (a.-n.) and an "other" category (o), based on the W/120 classification.:

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

5. These 15 sub-sectors have been divided historically into "basic telecommunications" (BT) (a-g) and "value added services" (VAS) (h-n). Commitments on BT have been mainly made in the negotiations that ended in February 1997, commitments on VAS have been mainly made during the Uruguay Round.

6. There is little disagreement so far on the global coverage of the sector, but classification within the sector is not always done on the W/120 model. There are variations among members, not only because of the flexibility of the model schedule adopted for BT, which authorises distinction between local/long distance/international, wire or radio-based, public or non-public, resale or

⁴ These two subsectors, in terms of the W120 classification are :enhanced/value-added facsimile services, incl. store and forward, store and retrieve and code and protocol conversion. They are opened to all in the EC.

⁵ The coverage of this proposal is without prejudice to EC's final positions on classification issues and to EC's classification of their existing commitments. CPCs mentioned refer to Provisional CPC classification.

facilities-based services, but also because some countries have introduced technological distinctions (satellite/non-satellite, mobile/fixed) and because some definitions rely on internal legislation not yet adopted or non-explicit internal definitions. All this reduces clarity of the commitments.

7. As per the definition set out in the existing schedule of the EC, this proposal covers the following scope :

“Telecommunications services are the transport of electro-magnetic signals - sound, data image and any combinations thereof, excluding broadcasting⁶. Therefore, commitments in this schedule do not cover the economic activity consisting of content provision which require telecommunications services for its transport. The provision of that content, transported via a telecommunications service, is subject to the specific commitments undertaken by the European Communities and their Member States in other relevant sectors.”

III. PROPOSAL

8. The Council for Trade in Services in Special Session should initiate a debate, whether in the Council or in a subsidiary body established for the purpose, on broad aims for negotiations in the telecommunications services sector.

9. Overall, the EC believe that WTO Members should reduce restrictions to the minimum necessary to ensure quality of service, including universal service and to address the issue of scarce resources.

10. However, most WTO members have undertaken only partial commitments: indeed, some sub-sectors and modes were not included although all services are converging on the same networks and although networks are increasingly ignoring borders to address the needs of their consumers. Additionally, limitations were registered regarding market access, mainly through the limitation of the number of operators (which hampers competition unless justified when there are scarce resources), the limitation on the type of legal entity (for which we believe there should be complete freedom), or the limitation on the level of direct and indirect foreign ownership allowed, which diminishes the potential for competition. Limitations were also registered (or sometimes even no commitments were made) regarding national treatment, notably in terms of residence, of ownership of property or land, and in particular limitations on nationality of certain categories of personnel. Finally, some commitments were also phased-in over long periods which is not understandable in this sector which is asked to provide very quickly to the rest of the economy cheap, high-quality and fast-evolving services.

11. In addition to market access commitments, domestic regulation that promotes competition is needed in this sector in order to ensure in particular that new entrants can compete effectively with major suppliers. To that end, a Reference Paper was negotiated in the Group on Basic Telecommunications. This reference paper imposes pro-competitive disciplines on horizontal issues such as: competitive safeguards, interconnection guaranties (including transparency and availability of an arbitration procedure), neutrality of universal service requirements, transparency on licensing procedures, establishment of independent regulators, and guidelines for the allocation of scarce resources. This reference paper was included in the schedules as additional commitments by 66 countries, although in some instances with changes that cannot be justified under the objective of ensuring a competitive market. The EC have adopted the entire reference paper, and its present regulatory framework is fully compatible with the obligations of the reference paper (see document

⁶ Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of tv and radio programme signals to the general public, but does not cover contribution links between operators.

S/C/W/110/Add.5). Furthermore, the EC are now in the process of revising its internal legal framework in order to further facilitate the establishment of a fully competitive market for all communications services.

12. Thus the EC propose that all WTO members:

- Commit for Modes 1, 2 and 3 all sub-sectors and all modes without restrictions (i.e. schedules should read “none” for market access and national treatment), and include as additional commitments the whole reference paper on BT.

13. For Mode 4: The EC schedule includes, *inter alia*, temporary movement of intra-corporate transferees as well as contractual service suppliers (i.e. the service is supplied, on the basis of a contract, by an employee of a company not established in the Member's territory). The EC propose that, on this basis, further discussions are held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services.

MFN Exemptions

14. A number of WTO members have registered exemptions to the Most Favoured Nation treatment principle on the Telecommunications sector: there are a number of exemptions in particular as regards satellite services, and on accounting rates. It may be argued that the first ones are not only allowing unfair discrimination, but that they actually prevent the most efficient development of cross-border telecommunications. As regards accounting rates, which rely on a lack of competition, full liberalisation of telecommunications markets should solve this issue. Members should at least consider the elimination of their MFN exemptions related to satellites services and accounting rates (the latter in relation with liberalisation). Other MFN exemptions should also be considered following the review that took place this year.
