

**COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
PENGHU, KINMEN AND MATSU**

Transparency Disciplines on Domestic Regulation in the
Telecommunications Sector

The following communication, dated 5 September 2005, from the delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is being circulated to the Members of the Working Party on Domestic Regulation.

I. OBJECTIVES

1. This document from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is submitted to the Working Party on Domestic Regulation (WPDR) for Members' consideration. It aims to facilitate the discussion on possible elements of transparency disciplines in the telecommunications sector. We reserve the right to revise, supplement or withdraw this proposal according to the results of further examinations.

2. The mandate of the WPDR under paragraphs 3-4 of the document Decision on Domestic Regulation (S/L/70) calls on the WPDR to develop generally applicable disciplines and allows it to develop disciplines as appropriate for individual sectors or groups thereof. The WPDR has made significant progress recently towards a deeper understanding of the coverage of these disciplines. The intention of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in this paper is to complement contributions made by other Members to the Working Party and to present a comprehensive set of disciplines for the telecommunications sector, mindful of the fact that it contains common elements with disciplines that are, or will be, developed for licensing requirements and procedures, qualification requirements and procedures, as well as technical standards.

3. Given the progress made in the WPDR, this communication also has the objective of going beyond the general consideration of domestic regulation and to engage in focused discussions on the telecommunications sector. As already mentioned, we recognize the very useful contributions made by other Members on disciplines for domestic regulation. We would now like to underscore the need for Members to continue the task of understanding the coverage of regulatory measures, and we also believe that this submission will provide an additional basis for further negotiations as mandated under Article VI:4 of the GATS.

II. SCOPE & APPLICATION

4. Telecommunications liberalization becomes a conduit for growth because it fosters increased competition resulting in advanced technology, better services and greater infrastructures. It leads to a number of economic benefits through the development of services, infrastructure and technology, and

fosters the growth and expansion of other industries, all of which results in greater economic development overall. However, lack of transparency is seen to be a major barrier to trade in telecommunications services. Given the special particularities of the telecommunications services sector, we are of the opinion that more detailed sectoral regulatory disciplines are required, and should be developed, especially beyond those of Article III of the GATS.

5. While the liberalization of telecommunications markets has yielded substantial benefits, the removal of barriers to entry, in itself, will rarely be sufficient to ensure that such benefits can be reaped. To a large extent, this is because the telecommunications market exhibits a number of specific features that require a higher degree of transparency disciplines to ensure the benefits of the access granted. In other words, for the telecoms sector, market access commitments must be accompanied by commitments to provide competition safeguards on dominant carriers. Therefore, before the complete liberalization of the telecoms markets is set to occur, the new trade rules necessary to regulate the market have to be in place. Transparency rules should be made in order to further deepen the liberalization. In addition to the cross-cutting transparency issues, it is better to develop tailored transparency disciplines which are dependent upon sectoral specificities.

6. These disciplines apply to measures affecting trade in telecommunications services, including those relating to licensing requirements and procedures, qualification requirements and procedures, as well as technical standards. However, these disciplines are not meant to supersede Members' existing transparency commitments under the GATS and their individual schedules. At present, transparency is required in existing GATS obligations under GATS Articles III & VI, the WTO Reference Paper on Basic Telecommunications Services, and the Annex on Telecommunications (see Appendix). Building upon the principles contained in all the GATS obligations mentioned above, we hereby propose the following elements to supplement GATS Articles III and VI, and to address specific transparency requirements in this sector.

III. PRIOR CONSULTATION & PUBLIC COMMENT PROCEDURES

7. Members shall, to the extent possible, publish in advance measures which affect trade in telecommunications services, when introducing, formulating, amending or repealing them.

8. Members shall provide the opportunity for comments or consultations, and give consideration to such comments, before adopting such proposed measures.

IV. ESTABLISHMENT OF MECHANISMS TO RESPOND TO INQUIRES

9. Members shall make publicly available, including through the inquiry points established under GATS III:4 and contact points established under GATS IV:2, the names and addresses of the competent authorities, including all relevant governmental or non-governmental entities responsible for telecommunications regulations.

10. Members shall establish appropriate mechanisms to provide, upon request by any interested person, information with respect to laws, regulations and other measures of general application affecting its specific commitments in the telecommunications sector.

11. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the telecommunications sector.

12. In addition to the inquiry or contact points in the trade ministry, Members shall endeavour to provide sector-specific inquiry points for the telecommunications sector to facilitate timely response to sector-specific inquiries. Members may nominate persons in each of the relevant agencies at the

domestic level who can provide information on particular problems relating to the telecommunications sector.

13. Responses to inquiries for information, which significantly affect trade in services covered in the specific commitments under this Agreement shall normally be provided within 30 calendar days after receipt of a request. In exceptional cases, responses may be provided within 45 calendar days after receipt of a request.

V. NOTIFICATION & PUBLICATION

14. Members shall ensure that measures which pertain to or affect telecommunications sectors are published or otherwise made publicly available no later than 90 calendar days after their enactment or issuance, or as otherwise required by applicable law. Such publicly available information may include, but not be limited to, terms and conditions of the provision of services, specifications of technical interfaces with the networks and services, information on bodies responsible for the preparation and adoption of standards affecting the access and use; conditions applying to attachment of terminal or other equipment, and notifications, registration or licensing requirements, if any.

15. Any exception or derogation granted to services suppliers in or from the laws and regulations shall also be made publicly available in the same manner as specified above.

VI. INTERCONNECTION ARRANGEMENTS

16. Each Member shall ensure that:

- (a) a major supplier¹ has an obligation to provide interconnection under transparent terms and conditions, including technical standards and specifications;
- (b) the procedures for interconnection negotiations applicable to interconnection to a major supplier will be made publicly available;
- (c) a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

VII. ADMINISTRATIVE DECISIONS

17. Members shall ensure that where a licence is required, the following will be made publicly available and the reasons for the denial of a licence will be made known to the applicant upon request.

- (a) a list of telecommunications services subject to licensing requirement, and the name and address of the competent authorities;
- (b) all the licensing criteria and the period of time expected to reach a decision concerning an application for a licence; and
- (c) the terms and conditions of individual licences, the requirements and procedures to obtain, renew or retain such licences, the competent authorities' monitoring arrangements for ensuring compliance, and information on technical standards to be fulfilled by the licensee.

¹ A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as result of: (a) control over essential facilities; or use of its position in the market.

18. Procedures for the review of administrative decisions, as provided for by GATS VI:2, shall be made public. Members shall ensure that the procedures in fact provide for an objective and impartial review.

VIII. OTHER OBLIGATIONS.

19. Each Member has the obligations to administer in transparent manner the kind of universal service obligation it wishes to maintain. Furthermore, the implementation plans or adjustment plan of universal service shall be published .

20. Any procedure for the allocation and use of scarce resources, including frequencies, numbers, and rights of way, shall be carried out in a transparent manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

APPENDIX:

Coverage of (Selected) Existing and Proposed Services Transparency Disciplines

Transparency Disciplines	GATS III, VI	GATS Reference Paper on Telecom ²	EU Proposal on Licensing Procedures	Japan Proposal on DR Annex	US Proposal on Horizontal Transparency Disciplines	GATS Accountancy Disciplines	Chinese Taipei Proposal on Telecom Transparency Disciplines
Public Comment Procedures			√	Δ ³	√	√	√
To make publicly available the competent authorities	√		√	√	√	√	√
To provide information to <u>any interested person</u>	Δ ⁴		√	√	√	√	√
To provide sector-specific inquiry points							√
Strict Timeframe for inquiry point							√
Strict Timeframe for publication							√
Prompt notification							√
Additional transparency requirement for major supplier		√					√
Transparency on Universal Services and Scarce Resources		√					√
Transparency of Administrative Decisions	√	√	√	√	√	√	√
Review of Administrative Decisions	√		√	√	√	√	√

² It should be noted that only less than 30% of the WTO membership has adopted the Reference Paper in full.

³ In sectors where specific commitments are undertaken.

⁴ Governmental level only.