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Council for Trade in Services

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NOTIFICATION OF THE REPUBLIC OF SOUTH AFRICA OF PREFERENTIAL TREATMENT TO SERVICES AND SERVICE SUPPLIERS OF LEAST-DEVELOPED COUNTRIES

The following notification from the delegation of the Republic of South Africa, dated 2 December 2015, is being circulated to the Members of the Council for Trade in Services.

1. The Permanent Mission of the Republic of South Africa to the World Trade Organization in Geneva has the honour to notify to the World Trade Organization Council for Trade in Services the preferential treatment which the Republic of South Africa has extended to least-developed countries in accordance with the decision at the WTO's Eighth Ministerial Conference on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries (WT/L/847), and the decision by Ministers at the WTO's Ninth Ministerial Conference on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries (WT/L/918), with effect from 1 July 2015.

2. The preferential treatment is made in sectors and modes of supply in areas of interest to least-developed countries, as set out in The Collective Request Pursuant to the Bali Decision on the Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least Developed Countries (S/C/W/356). The preferential treatment is set out in a schedule that for ease of reference comprises of GATS plus (preferential) treatment. The Republic of South Africa intends to maintain these preferences for the period of the Waiver.

The classification of services sectors in this offer is based on the 1991 Provisional Central Product Classification (CPC) of the United Nations Statistical Office where specified. The ordering is based on the Services Sectoral Classification list contained in the document MTN.GNS/W/120 dated 10 July 1991.

- **BOLD** – New text
- ~~STRIKE-OUT~~ – Deleted text
- *ITALICS* – Where any new or deleted text constitutes merely a technical refinement that does not alter the scope or substance of an existing commitment.

SOUTH AFRICA – SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>4) Unbound, except for the temporary presence for a period of up to three years, unless otherwise specified, without requiring compliance with an economic needs test, of the following categories of natural persons providing services:</p> <p>A. Services Salespersons - natural persons not based in South Africa and acquiring no remuneration from a source located within South Africa, who are engaged in activities related to representing a services provider for the purpose of negotiating for the sale of the services of that provider, without engaging in making direct sales to the general public or supplying services. Temporary presence for Services Salespersons is limited to a ninety-day period.</p>	4) Unbound, except for measures concerning the categories of natural persons referred to in the market access column	

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

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
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II. SECTOR SPECIFIC COMMITMENTS

	<p>B. Intra-corporate Transferees – natural persons of the following categories who have been employed by a juridical person that provides services within South Africa through a branch, subsidiary, or affiliate established in South Africa and who have been in the prior employ of the juridical person outside South Africa for a period of not less than one year immediately preceding the date of application for admission:</p> <p>Executives - natural persons within the organization who primarily direct the management of the organization or establish goals and policies for the organization or a major component or function of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business.</p> <p>Managers - natural persons within an organization who primarily direct the organization, or a department or subdivision of the organization, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions and exercise discretionary authority over day-to-day operations at a senior level.</p> <p>Specialists - natural persons within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's product, service, research equipment, techniques, or management.</p>		
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Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>Professionals - natural persons who are engaged, as part of a services contract negotiated by a juridical person of another Member in the activity at a professional level in a profession set out in Part II, provided such persons possess the necessary academic credentials and professional qualifications, which have been duly recognised, where appropriate, by the professional association in South Africa.</p> <p>C. Personnel Engaged in Establishment - natural persons who have been employed by a juridical person for a period of longer than one year immediately preceding the date of application for admission and who occupy a managerial or executive position and are entering South Africa for the purpose of establishing a commercial presence on behalf of the juridical person.</p>		

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2. COMMUNICATION SERVICES			
Telecommunications Services	1) None Only through the network of Telkom monopoly or subsequent duopoly on international traffic. Telkom monopoly to terminate not later than 31.12.2003, thereafter duopoly.	1) None	South Africa undertakes the attached additional commitments on regulatory principles.
Facilities based and public-switched telecommunications services:	2) None	2) None	
(a) Voice services, except over value-added network	3) None, except that Telkom monopoly to terminate not later than 31.12.2003, thereafter duopoly.	3) None	<i>Authorities to consider by 31/12/2003 the feasibility of suppliers additional to the duopoly.</i>
(b) Packet-switched data transmission services	foreign investment in suppliers permitted up to a cumulative maximum of 30 per cent		
(c) Circuit-switched data transmission services	4) Unbound, except as indicated in the horizontal section.	4) Unbound, except as indicated in the horizontal section.	<i>Liberalization of resale services to take place between 2000 and 2003 with authorities to define terms and conditions as well as the maximum limit for foreign investment</i>
(d) Telex services			
(f) Facsimile services			
(g) Private leased circuit services			
(h) Electronic mail (CPC 7523)	1), 2),	1) None	
(i) Voice mail (CPC 7523)	3) None General limitations:-	2) None	
(j) On-line information and data base retrieval (CPC 7523)	There are limitations on the bypass of South African facilities for routing of domestic and international traffic. Telkom is currently acting as a de facto regulator by means of agreements entered into with VANS providers in South Africa. VANS providers can only provide international services with the consent of Telkom SA Ltd. Legislation is currently being proposed to introduce a Regulator who might take over the licensing function. No formal policy exists and applications from international VANS are dealt with on an informal ad hoc basis. This situation may be addressed with the anticipated introduction of a new regulatory regime.	3) None	
(k) Electronic data interchange (EDI) (CPC 7523)			
(l) Enhanced/value-added facsimile services, including store and forward, store and retrieve (CPC 7523)			
(m) Code and protocol conversion			
(n) On-line information and/or data processing (including transaction processing) (CPC 843)	4) Unbound except as indicated in the horizontal section	4) Unbound except as indicated in the horizontal section	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(o) Other - Paging services - Personal radio communication services - Trunked radio system services	1) None Only through the network of Telkom monopoly or subsequent duopoly on international traffic. Telkom monopoly to terminate not later than 31.12.2003; thereafter duopoly. 2) None 3) None except that foreign investment in suppliers permitted up to a cumulative maximum of 30 per cent. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
- Mobile Cellular, including mobile data	1) None Only through the network of Telkom monopoly or subsequent duopoly on international traffic. Telkom monopoly to terminate not later than 31.12.2003; thereafter duopoly. 2) None 3) None, except that Services supplied on a duopoly basis. One additional mobile cellular licence will be granted within two years. foreign investment in suppliers permitted up to a cumulative maximum of 30 per cent. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	<i>Authorities to examine feasibility of additional suppliers by 31/12/1998.</i>
- Satellite-based services	1) None Only through the network of Telkom monopoly or subsequent duopoly on international traffic. Telkom monopoly to terminate not later than 31.12.2003; thereafter duopoly. 2) None 3) None, Supplied only by Telkom monopoly until 31.12.2003; thereafter duopoly. Foreign investment in suppliers permitted up to a cumulative maximum of 30 per cent. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section	<i>Authorities to examine feasibility of additional suppliers by 31/12/1998</i>

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7. Financial Services			
A. <u>All Insurance and Insurance Related Services</u>			
Headnote			
Mode 3			
<ul style="list-style-type: none"> - The acquisition of shares or any other interest (by a resident or non-resident) in a registered South African insurer resulting in the holding of 25% or more of all the shares or other interest in that business, requires the written approval of the Regulatory Authority. - The executive chairman, public officer and the majority of directors must be resident in South Africa. - Life insurance actuaries The statutory actuary¹ of a life insurer must be resident in South Africa. 			
(a) Direct life insurance (CPC 8121 +)	1) Unbound 2) None	1) Unbound 2) None	
(b) Direct non-life insurance (CPC 8129 +)	3) All insurers/ reinsurers (and insurers on whose behalf policies are sold) need to be incorporated as a public company in South Africa and registered with the supervisory authority to carry on insurance business in South Africa.	3) None	
(d) Insurance intermediation and auxiliary services (CPC 8140)	4) Unbound, except as indicated in the horizontal section	4) Unbound, except as indicated in the horizontal section.	
(c) Reinsurance (CPC 81299 +)	1) None 2) None 3) None, except that re-insurers must be locally incorporated and registered with the supervisory authority to carry on insurance business in South Africa. 4) Unbound, except as indicated in the horizontal section.	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	

¹ The statutory actuary of a life insurer is an individual appointed by the insurer and approved by the regulator. The statutory actuary is assigned specific duties in legislation.

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<p>B. <u>Banking and Other Financial Services</u></p> <p>(a) Accepting of deposits and other repayable funds from the public (CPC 81115 to 81119)</p> <p>(b) Lending of all types, including, <i>inter alia</i>, consumer credit, mortgage credit, factoring and financing of commercial transactions (CPC 8113)</p> <p>(c) Financial Leasing (CPC 8112)</p> <p>(d) All payments and money transmission services, including credit, charge and debit cards, travellers cheques and bank drafts (CPC 81339 +)</p> <p>(e) Guarantees and commitments (CPC 81199 +)</p> <p>(f) Trading for own account or for account of customers the following:</p> <p>(i) Money markets instruments (CPC 81339+)</p> <p>(ii) Foreign exchange (CPC 81333)</p> <p>(iii) Derivative products (CPC 81339 +)</p> <p>(iv) Exchange rate and interest rate instruments (CPC 81339 +)</p>	<p>1) Unbound, except for companies involved in asset management, collective investment schemes and advisory services. These companies need to register with the local supervisory authority.</p> <p>2) Unbound, except for asset management, collective investment schemes, advisory services, provision and transfer of financial information and financial data processing.</p> <p>3) None, except that dealings in foreign exchange in South Africa must be carried out through a dealer authorised by the SA Reserve Bank. Only banks registered to operate in South Africa with the required minimum capital base are eligible to seek authorization as a foreign exchange dealer. Companies involved in asset management, collective investment schemes and custodial services for securities and financial instruments (including equities and bonds) need to be incorporated as public companies in South Africa. and registered with the local supervisory authority to carry on business in South Africa. Trading for the account of customers on a licensed exchange requires separately capitalised incorporation in South Africa as a public or private company. and registration with the relevant supervising authority.</p> <p>4) Unbound except as indicated in the horizontal section</p>	<p>1) Unbound</p> <p>2) Unbound</p> <p>3) None Branches of banks not incorporated in South Africa must maintain a minimum balance of R 1 million on the deposit accounts of natural persons.</p> <p>4) Unbound except as indicated in the horizontal section</p>	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>(v) Transferable securities (CPC 81321 +)</p> <p>(vi) Other negotiable instruments (CPC 81339 +)</p> <p>(g) Participation in issues of all kinds of securities, including underwriting and placement as an agent (CPC 8132 +)</p> <p>(h) Money broking (CPC 81339 +)</p> <p>(i) Asset management, such as cash or portfolio management, all forms of collective investment management, custodial depository and trust services (CPC 8119+ and 81323+)</p> <p>(j) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments</p> <p>(k) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services (CPC 8131+)</p> <p>(l) Advisory and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv) of paragraph 5.(a) of the Annex on Financial Services. (CPC 8131+ and 8133+)</p>			

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9. TOURISM AND TRAVEL RELATED SERVICES			
A. <u>Hotels and Restaurants</u> (including catering) (CPC 641)	1) Unbound except for catering. None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	
C. <u>Tourist Guide Services</u> (CPC 7472)	1) Unbound* None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* None 2) None 3) None 4) Unbound except as indicated in the horizontal section	
11. TRANSPORT SERVICES			
C. <u>Air Transport Services</u>			
(c) <u>Rental of aircraft with crew</u> (CPC 734)	1) None 2) None 3) None: subject to equity limitations of 49% for operations in SA and 25% for operations from SA to third parties. 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
(d) <u>Maintenance and repair of aircraft</u> (CPC 8868**)	1) None 2) None 3) None: subject to equity limitations of 49% for operations in SA and 25% for operations from SA to third parties. 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
(e) <u>Supporting services for air transport</u> (CPC 746)	1) Unbound 2) None 3) Unbound 4) Unbound	1) Unbound 2) None 3) Unbound 4) Unbound	

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(f) Selling and marketing of air transport services	1) Unbound 2) Unbound 3) None: subject to equity limitations of 49% for operations in SA and 25% for operations from SA to third parties. 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) Unbound 3) None 4) Unbound	
(g) Computer reservation services	1) Unbound 2) Unbound 3) None 4) Unbound	1) Unbound 2) Unbound 3) None 4) Unbound	
F. <u>Road Transport Services</u>			
(c) Rental of commercial vehicles with operator (CPC 7124)	1) Unbound 2) None 3) None 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) None 3) None 4) Unbound except as indicated in the horizontal section.	
(d) Maintenance and repair of road transport equipment (CPC 6112)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section.	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section.	

Coding: Numbers indicated in each sectoral commitment are references to the Services Sectoral Classification List (MTN.GNS/W/120) – W120 and the UN Provisional Central Product Classification of 1991 (CPC).

+ Part of item

* Unbound due to lack of technical feasibility

ADDITIONAL COMMITMENTS BY SOUTH AFRICA

REFERENCE PAPER

Scope

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

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

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

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided;
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities; and

2.3 Public availability of the procedures for interconnection negotiations

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

2.4 Transparency of interconnection arrangements

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

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, all the licensing criteria and the terms and conditions of individual licences will be made publicly available.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
