

# WORLD TRADE ORGANIZATION

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Council for Trade in Services

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## COMMUNICATION FROM THE EUROPEAN COMMUNITIES

### China's Transitional Review Mechanism

The following communication has been received from the delegation of the European Communities with the request that it be circulated to Members of the Council for Trade in Services.

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1. The EC is transmitting comments and questions well in advance of the meeting of the December meeting of the Council for Trade in Services, in order for the Chinese authorities to have sufficient time to provide complete replies.
  2. Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.3 (a) of Annex 1A of its accession protocol has been received, the EC might come back with additional questions.
  3. The EC's comments and questions relate to the following priority items: construction, architectural and engineering services; financial services; telecommunications; mergers and acquisitions. They also cover some issues related to express delivery services; legal services; tourism; and to the Closer Economic Partnership Arrangement between Hong Kong, China and China.

#### **I. CONSTRUCTION, ARCHITECTURAL AND ENGINEERING SERVICES**

4. The EC understands that the Rules on the Establishment of Foreign-Invested Construction Enterprises entered into force on 1<sup>st</sup> October 2003 and abolished the status of "foreign contractor" as stated in the Tentative Measures on Administration of Foreign Enterprises Skill Qualifications for Contracting Construction Works (Ministry of Construction decree 32 of 22 March 1994).
5. The EC seeks China's views on how the new regulations are not making the conditions of operation, notably as regards qualification requirements, and the scope of activities of foreign construction companies more restrictive than previously.
6. The EC would also like China to specify the reasons for residence requirements (> six months every year) imposed on all architects and engineers to be accounted for in the attribution of a certificate, and qualifications imposed to part of them, in Decree N° 114 for foreign-investment construction and engineering design companies, in particular in view of the fact that these limitations to National Treatment have not been inscribed by China in its GATS Schedule of commitments.

## II. EXPRESS DELIVERY SERVICES

### 7. A. ENTRUSTMENT PROCEDURE

- (a) What are the relevant texts on this procedure? Have any of the preceding texts (notably notices 64 of the State Post Bureau and 629 of MOFTEC-MII-State Post Bureau) been repealed?
- (b) What is the step-by-step procedure to get entrustment?
- (c) Is the entrustment procedure a one-time only action or does it have to be repeated several times? If so, what is the duration of entrustment?
- (d) Is the entrustment procedure centralised or is there any procedure to fulfil at a Sub-State (provincial, municipal, other) level?
- (e) What are the obligations imposed on the entrusted operators?
- (f) How many operators did apply for entrustment? How many did obtain entrustment?
- (g) Are all Chinese operators performing express delivery services submitted to the entrustment procedure in the same way as foreign operators?

### B. REGULATOR

- (a) What are the relevant texts defining the regulator and its powers?
- (b) To which extent (if any) are the following bodies granted regulatory powers over express delivery operators? In particular, do any of these bodies have the power to conduct on-site inspections in facilities owned by express delivery operators, and if so in which conditions:
  - (i) Central Post Office;
  - (ii) Local (provincial, municipal, others) Post offices;
  - (iii) MOFTEC;
  - (iv) MII.

### C. DRAFT LAW ON POSTAL SERVICES

8. The EC has been informed that the PRC intended to modify its law on postal services. In particular, and without prejudice of further discussions, the EC will follow with attention three aspects of this reform:

- (a) the definition of the scope of the postal monopoly (or “reserved area”): in the interest of all operators, a clear definition of the scope of the postal monopoly is desirable. However, this definition should also take into account the PRC’s current WTO commitments in postal and courier services and therefore should not be used to expand the scope of the postal monopoly;
- (b) the definition of the scope of universal service would also be welcome, while taking into account that it should not be confused with the definition of the reserved area;

- (c) the independence of the regulator from operators, which appears desirable in order to assure fair competition on the segments of the market which are liberalised.

9. Can the PRC give information about the current postal reform and notably on the three points mentioned above?

### **III. FINANCIAL SERVICES**

10. Please refer to the comments and questions sent on insurance, banking and securities services to the Committee on Trade in Financial Services.

### **IV. LEGAL SERVICES**

11. The EC thanks the PRC for the information already provided in answering its previous questions on legal services. However, some complementary information is needed to shed further light on a number of issues relating to the PRC's commitment to remove geographic and quantitative limitations and to allow the provision of information on the impact of the Chinese legal environment. In this regard, the EC is looking forward to a detailed answer to the following questions:

12. According to the Regulations and their Implementation Rules, the conditions for applying to establish a representative office (possession of the need to start legal services operations), the examination approval period up to nine months (three months at the local level, six months at the national level) and the conditions for the establishment of additional offices (three years of consecutive practice by the most recently established office) seem to introduce an ENT and quantitative restrictions that are not listed in the PRC schedule of commitments. The PRC has indicated that those conditions are only set for verification of qualifications and translate a prudential principle. Could the PRC further elaborate on why such conditions did not have to be listed in the schedule in accordance with Article XVI of GATS? Could the PRC also provide information on the conditions applying for the opening of first and additional offices by Chinese lawyers?

13. When defining practice of Chinese law (excluded from the PRC's commitments), the Regulations and their Implementation Rules have adopted a very broad definition of "Chinese legal affairs". At the same time, they seem to give a very restrictive interpretation of "provision of information on the impact of the Chinese legal environment" (specific opinions or determinations on the application of PRC law may not be provided) allowed under PRC's commitments. The PRC has provided further information on the activities in which representative offices of foreign lawyers cannot engage (negative list). Could the PRC provide information on the specific activities in which those offices can engage when providing information on the impact of the Chinese legal environment (positive list)?

### **V. TELECOMMUNICATIONS**

14. The EC acknowledges receipt of answers to a number of its previous questions on telecom services. While some answers have provided sufficient information at this stage, the EC remains unclear on a number of issues, in particular:

15. China explained that the management of the State participation in existing companies is mainly done by the Ministry of finance. The EC asked for a copy of the relevant text but has not received it.

16. The Regulation on the Administration of Foreign Invested Telecommunications Companies (21 December 2001) imposes many conditions on the Chinese partners: they need to have "specialised professionals appropriate for the relevant business operations" (i.e. telecom), a minimum

share of 30%, etc. When discussing accession China had clearly committed, as confirmed in the report of the Working Party, that there would not be such conditions, including that the partners could come from another sector. The sectoral conditions should be imposed on the Joint-venture as such and foreign operators should be free to choose their partners in other sectors. When will the regulation be changed to allow foreign operators to choose their partners in other sectors?

17. Also the regulation on foreign-invested enterprises imposes conditions on foreign investors that do not exist for national investors pursuant to the State order 291 that applies to all operators: in particular, foreign invested companies need to have a specific minimum capital, foreign investors need to have an experience in exactly the same services as the ones that intend to provide. The EC does not understand the rationale for such requirements: e.g. how would Chinese companies have in the beginning launched new services, such as internet access services, under the same conditions? Can China explain the rationale for such requirements and explain why they are different from those for an operator owned only by Chinese nationals?

18. How are existing operators (China Mobile, China Unicom and China Telecom which have already listed a proportion of their assets overseas) treated under the regulation on foreign-invested enterprises?

19. The regulation on foreign-invested enterprises states that *“the geographical scope in which foreign-invested telecommunication enterprises may operate shall be determined by the supervisory department for the information industry under the State Council in accordance with the relevant provisions”* (Article 4). When and which governmental organisation will issue the detailed measures in that respect?

20. The regulation on foreign-invested enterprises refers in many ways to additional prudential and special requirements set by the administrative department for information industry of the State Council. What are these requirements?

21. China committed to make terms and conditions of individual licences public, where licences are required. Where are the licensing terms of existing operators published?

22. Pursuant to “The Administrative Measures on Telecommunications Business Operation Licenses”, a licensed telecommunication operator can “entrust” other entities or individuals to act as its “agents” to provide telecommunications services directly to customers in the areas of sales and marketing, technical services. In addition, the services must be provided in the name of the license holder under an agency agreement and the operator assumes civil and administrative liability for non-compliance with services standards and pricing policy. Are there any requirements applicable to the agent and whether an entity (Chinese or foreign) with no license could directly or indirectly (for instance, through a joint venture incorporated in China), act as such an agent.

23. The new “Telecom Catalogue of Businesses Categories” (“the Catalogue”) included new concepts and definitions such as Class 1 and Class 2 of Basic Telecom Services (“BTS”) and Value Added Services (“VAS”). The new Catalogue also includes new terms and definitions not found in previous telecom regulations. According to the new Catalogue, certain BTSs will be managed as VASs. What does that mean in practice?

24. Is the resale of a service regulated like the corresponding service or under a separate framework?

25. China mentioned that a regulation regarding the public bidding for licences of basic telecom would be issued? Has it been the case already?

26. China committed that "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." What are the procedures for granting frequencies?

27. On the identification of "leading telecom operators" pursuant to order 291, China indicated that China Telecom (in 21 regions) and China Netcom (in 10 regions) have been identified as "leading telecom operators". China explained that they are subject to interconnection obligations and promised more details. Can China provide such details?

## VI. TOURISM

28. Our understanding is that the Regulations on Administration of Travel Agencies dated 11 December 2001 establish an economic needs test (ENT) on new travel agencies in the Article 11. Such limitation to Market Access has not been listed by China in its Schedule of GATS commitments.

29. Could China please inform us how it plans to align the regulation of travel agencies with China's GATS commitments?

## VII. CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT BETWEEN HONG KONG, CHINA AND CHINA (CEPA)

30. The EC expects the Arrangement to be duly notified to the Council for Trade in Services, and would like to hear China's views on the compatibility of this Arrangement with the conditions set out in GATS Article V.

31. The EC would appreciate information on the services part of the Arrangement, including its sectoral coverage, and on the rules of origin of services including criteria to be identified as "Hong Kong companies".

## VIII. MERGERS AND ACQUISITIONS

32. The Commission is aware of the draft *Anti-Monopoly Law of the People's Republic of China* and the *Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors* prepared by MOFTEC. What is the relationship between these two measures? Will foreign investment have to comply with two overlapping sets of regulations when conducted through mergers or acquisitions, or only one?

33. What is the scope of these measures: the (MOFTEC) *Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors* appears to establish a system of merger and acquisition controls applicable exclusively to foreign investment. Can China confirm this?

34. What is the purpose of the (MOFTEC) *Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors*? More specifically, on what grounds have MOFTEC felt the need to develop a system of merger controls specifically for investment by foreign undertakings?

35. What will be the effect in practice of the (MOFTEC) *Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors*? Will foreign investment through mergers and acquisitions be subject to stricter requirements than those applicable to domestic mergers and acquisition activity?

36. How many proposed foreign investment operations have been examined under the *Interim Measures on Equity Participation in or Purchase of Assets of Domestic Enterprises by Foreign Investors* so far? How many of these are still pending? Have any proposals been rejected? If so, how many have been rejected and on what grounds?

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