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COMMUNICATION FROM AUSTRALIA

Transitional Review Mechanism in connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China

The following communication, dated 14 September 2005, from the delegation of Australia is being circulated to the Members of the Council for Trade in Services.

Questions and Comments of Australia on the Implementation by China of its Commitments on Trade in Services

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I. TELECOMMUNICATIONS

1. A modern telecommunications structure can be an important driver of economic growth. As noted in the recent statement by a number of Members interested in the liberalisation of telecommunications services (TN/S/W/50), open markets for telecoms services encourage investment, promote economic development and stimulate innovation and the availability of telecoms services at competitive prices. Australia acknowledges and welcomes the reforms China is undertaking in this sector, and takes a keen interest in China's steps toward a pro-competitive regulatory environment for telecommunications.

2. Australia notes that the Telecommunications Reference Paper, which forms part of China's Schedule of Specific Commitments, underpins market access commitments in the telecommunications sector through agreed pro-competitive regulatory principles. Accordingly, Australia would appreciate China addressing the following questions (at paragraphs 3 to 6) relating to implementation of the Reference Paper. Australia would also welcome clarification of issues relating to the provision of value added telecommunications services (VAS), as outlined in paragraph 7 below.

3. How does China ensure uniformity in the application of the measures and principles contained in the Reference Paper across the People's Republic of China?

4. In the context of further implementation of the specific principles and measures set forth in the Reference Paper, will China please indicate whether, and to what extent, China's draft telecommunications law will specifically introduce detailed measures and guidelines:

(i) to implement paragraph 2.2 of the Reference Paper (in order to ensure that interconnection rates are genuinely related to cost, including specific guidance on issues such as the costing methodology for interconnection rates, and also to ensure access by competitors to essential facilities without disadvantage);

(ii) to implement paragraph 2.5 of the Reference Paper (in order to ensure (1) the independence of the domestic body responsible for dispute resolution related to interconnection issues, (2) that benchmarks for timeliness of dispute resolution are reasonable and are readily understood by the industry and potential entrants, and (3) that criteria for approval, rationale for decisions made, and actions taken by the regulator are transparent); and

(iii) to implement paragraph 4 of the Reference Paper (in order to ensure that licensing conditions are fair and transparent, and that rights and obligations are clearly established and reasonable)?

5. In implementing the requirements of paragraph 2.2 of the Reference Paper, can China indicate specifically each of the interconnection services that it presently requires incumbent carriers to offer? Will the draft telecommunications law alter these arrangements?

6. Australia notes that pursuant to paragraph 2.4 of the Reference Paper, major suppliers should make interconnection agreements or reference interconnection offers (RIO) publicly available. Will China please provide the RIO or standard terms and conditions of interconnection, or otherwise indicate how these might be obtained from the relevant Chinese providers?

7. Will China please indicate (i) how many new domestic operators and (ii) how many foreign invested operators have been licensed to provide VAS since the last Transitional Review Mechanism? Can China please clarify whether there are differences in the VAS that domestic operators may be authorised to provide compared with the VAS (as listed in China's Schedule of Specific Commitments) that foreign-invested operators may provide?

II. LEGAL

8. Australia welcomes China's endeavours in liberalising the legal services sector and acknowledges that, as agreed upon accession, China has removed the quantitative and geographic limitations on the establishment of representative offices of foreign law firms in China. Australia further notes that China's revised GATS offer reflects this positive development. However, Australia is concerned that these restrictions have been replaced by the introduction of new restrictive measures that include an economic needs test (ENT) which could act as de-facto quantitative or geographic limitations. The particular provisions that concern Australia are Clauses 1 and 2 of Article 4 of the *Provisions on the Execution of the 'Regulation of Foreign Law Firms Representative offices in China' (Ministry of Justice Order No. 73 promulgated on 4 July 2002)*, which identify criteria for the establishment of a representative office, including *inter alia*, (i) status of social and economic development of the location where such representative office is proposed to be established and (ii) development need for legal services of the location where such representative office is proposed to be established. Will China please indicate whether any applications for the establishment of representative offices of foreign law firms have been rejected as a result of failure to satisfy the above criteria since July 2002?

III. CONSTRUCTION, ARCHITECTURAL AND ENGINEERING SERVICES

9. In December 2004, the Ministry of Construction (MOC) issued the *Provisional Measures on Construction Project Management*, known as Circular 200. Australia understands that Circular 200 requires *inter alia* that entities wishing to provide project management services in China must be qualified in one of six construction-related regimes including, among others, "design". Australian architects and engineers wishing to provide project management

services in China are therefore required to qualify under Circular 200 in one of these six disciplines – which, in effect, requires them to be licensed in China as a "construction" company pursuant to MOC Decree 113. Australia is concerned that such a requirement, which imposes a range of specific conditions including high capitalisation and assets requirements, undermines China's GATS commitments relating to the provision of architectural and engineering services by foreign service suppliers. For example, engineers or architects may find it very difficult to qualify as "construction" companies – even though they may be well qualified to provide the relevant project management services in their area of expertise. Does China have any plans to allow for design and engineering project management services to be provided by professionals that are not "construction" companies within the scope of MOC Decree 113? If so, will they be regulated separately?