

WORLD TRADE ORGANIZATION

S/CSS/W/30
18 December 2000

(00-5571)

Council for Trade in Services
Special Session

Original: English

COMMUNICATION FROM THE UNITED STATES

Market Access in Telecommunications and Complementary Services: the WTO's Role in Accelerating the Development of a Globally Networked Economy

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. SUMMARY

1. WTO Members seeking to benefit from the growth opportunities provided by an increasingly "networked" global economy will need to attract extensive private investment to build infrastructure of telecommunications and computer facilities. The WTO and its Member States can play a key role in stimulating such investment by:

- ensuring market access and national treatment for providers both of network infrastructure and key service sectors that use this infrastructure;
- implementing Basic Telecom Reference Paper commitments that promotes competition in basic telecommunications; and,
- consistent with Article VI of the GATS, avoiding unnecessary restrictions on services offered by competitive suppliers.

2. To achieve this goal the United States proposes, in conjunction with sector-specific negotiations, a negotiating framework that elicits commitments both in basic and value-added telecommunications services, as well as complementary services which could be integrated into network transactions such as distribution services, express delivery services, computer services, advertising services, and certain financial services.

II. INTRODUCTION

3. The emergence of electronic networks as a locus of economic transactions provides one of the most promising sources of growth and efficiency for the global economy. The new economy is spreading the benefits of technological innovation and price declines to all participants and facilitating trading opportunities that were once available only to specialized firms. Given the power of "network effects" - i.e., the more members the network has, the more valuable it is to each member - a multilateral institution such as the WTO can play an instrumental role in increasing global welfare by

setting trade rules that encourage increased investment in, and development and utilization of these networks. The key challenge for the WTO is advancing rules and principles that strengthen the global trading system, thereby bringing increased opportunities and benefits to all.

4. Three trends are making globally linked electronic networks a key feature of the world economy: the declining cost of computing power, the increasing growth of communications capacity ("bandwidth"), and the continuing expansion of Internet-based data networks. As a result of these converging trends, globally linked networks are emerging as a primary medium of economic activity - both as a place to transact business and as a vehicle for distributing electronic information and other digitized products. The annual value of global electronic commerce is now estimated to be approaching one trillion dollars and is expected to continue to grow rapidly. The WTO can help this trend continue upward and outward, through further liberalization of all activities which are relevant to electronic commerce. In order to do so, it must foster a liberalized and competitive trade environment in WTO economies that is conducive to expanding the networks both locally and globally.

III. ENCOURAGING INVESTMENT IN AND USE OF ELECTRONIC NETWORKS

5. While technological advances are bringing costs down, growth in users and introduction of new applications puts constant demands on the capacity of networks. As a result, there is a long-term need for enormous investment in building networks with the capacity and versatility to respond to market demand. One of the central roles the WTO can provide is encouraging an environment conducive to investment in and use of such networks.

6. Two important ways in which Members can help foster investment in the development of advanced networks is by removing barriers to investment and competition. One way to promote a more favorable investment climate is reducing monopoly power in the telecommunications sector, typically characterized by government ownership of the operator. In the past, governments ensured investment in networks by building telecommunications infrastructure from government resources, and recovering capital needs through high prices in an environment of restricted competition. Mounting evidence¹ indicates that this model is not optimal to the needs of a modern economy. Often the capital needs of managing a network efficiently have exceeded governments' own resources, thereby reducing the ability to operate an efficient network. In an increasingly networked world economy, the resulting high prices and inefficiencies can have a negative impact on various other sectors of the economy.

7. Some Members have undertaken measures to corporatize and privatize their telecommunications operator, which has helped operators tap global capital markets and has generally improved the overall investment climate. This trend should be continued, but must be pursued in parallel with measures to introduce and then promote competition. Restrictions on competition and ongoing protection of incumbent operators have led to inefficiencies that are similar to those prevalent in a government controlled environment. Specifically, demand has outpaced what incumbent suppliers have been able to provide, impeding the development of innovative technologies and services such as the Internet and the services that depend on them. The predictable world of voice telephony that formerly lent itself to long-term planning by a government or monopoly is being overturned by surging demand for Internet-based services that have proven to flourish best in a competitive, rather than in a monopoly environment. Therefore, while privatization is an important first step toward a liberalized market, it must be combined with viable competition for full benefits of increased growth and innovation to be realized. As reflected in the 1997 Basic Telecommunications

¹E.g. the following World Bank study:
<http://wbln0018.worldbank.org/Research/workpapers.nsf/5ade973899c8608685256731006834d5/8357b3dc2e8f4778852567e000537048?OpenDocument>

Reference Paper, this requires effective oversight through an independent regulator, because privatized operators generally occupy a dominant position in the market and have resources and incentives to engage in anticompetitive conduct to maintain such dominance.

IV. THE ROLE OF THE WTO

8. Increased market access, particularly in modes 1 and 3, bound by WTO disciplines, is one of the most important steps a government can take to create an environment conducive to private investment. Full basic and value-added telecommunications commitments are the first step.

V. MARKET ACCESS FOR BASIC TELECOMMUNICATIONS

A. NEW COMMITMENTS TO LIBERALIZE BASIC TELECOMMUNICATIONS

9. The growth and development of the modern networked economy relies upon continued investment and build-out of the basic telecommunications infrastructure. In evaluating the value of liberalization, and its effect on attracting investment, Members must take into account the changing nature of telecommunications networks: increasingly, firms investing in networks seek to provide a broad range of integrated services, often involving voice, data, and video, through a variety of narrowband or broadband technologies using wireless (fixed, mobile, terrestrial, and satellite) and wireline platforms. Evolving networks can use all these services and technologies in a seamless, technology neutral manner. Omission of any one of these services or technologies undermines an investment environment, thereby denying a Member's users the variety of transmission means that are increasingly linked into a seamless network, each optimized for particular needs.

10. Many Members have not yet taken basic telecom commitments; others have taken commitments that are partial or phased-in over an extensive time period, and include limitations on market access (*e.g.* number of service suppliers and foreign investment limits). Given the pace of change in these markets, and the constant need for investment in new technologies and services, limited commitments have the effect of holding back a members' potential growth and development. Some Members (*e.g.* Singapore, Korea, India) recognized this, and as a result, have unilaterally liberalized beyond their original basic telecom commitments. This is a positive sign. Indeed, binding further liberalization and the requisite commitments in the WTO is a key goal all members should work towards.

B. REGULATION OF BASIC TELECOMMUNICATION SERVICES

11. In addition to market access in basic telecommunications, meaningful WTO commitments require full adherence to pro-competitive regulatory principles (the Reference Paper). This adherence creates a degree of regulatory certainty that investors seek. Without this adherence, implemented by an independent, impartial regulator, investors in alternative networks have little guarantee that they can build their networks in competition with incumbents—putting their investments, and the growth of a competitive market, at risk. Without means to ensure competition, users of networks will not enjoy the price reductions and innovative service and technology offerings that determine an economy's ability to fully participate in global networks. This is particularly true for new entrants offering high-speed (broadband) connections to the Internet, which requires guaranteed access to telephone networks subject to "bottleneck" control by incumbents, particularly at the local level, on timely, unbundled, non-discriminatory and cost-oriented terms, as guaranteed by the Reference Paper.

VI. MARKET ACCESS FOR VALUE-ADDED SERVICES

12. Another key factor determining the viability of infrastructure investments is the environment for services whose growth and development is based on use of networks. Where Members limit or fail

to guarantee market access for such services, the attractiveness of investing in infrastructure is diminished; conversely, market access commitments for services enhanced through use of networks stimulate growth both of the underlying networks and the services that “ride” over them. This is most obvious in value-added telecommunications services such as Internet-based services, which provide a layer of functionality above basic telecom services, and which in turn are the vehicle for delivering other services. Lack of market access for these services undermines one of the key growth opportunities for telecommunications infrastructure providers, and hence the viability of investment. Members who have not made commitments to open their market to the full range of value-added services should do so, to further stimulate investment in the value-added sector, in underlying networks, and in the broader networked economy, where growth opportunities are interdependent.

A. ABSENCE OF REGULATION ON VALUE-ADDED SERVICES

13. As explained above, the need for regulating traditional incumbent basic services is derived from the long history of operators of legacy telephone networks using their control over essential facilities to the disadvantage of new entrants. On the other hand, new entrants and the services that ride over these basic networks, when afforded reasonable access (as guaranteed by the Telecommunications Annex), have demonstrated remarkable competitive resiliency and little need for economic regulation. For example, the general non-regulatory approach to the Internet and other value-added services in most countries has been a boon to their responsiveness and growth, thereby freeing operators from unnecessarily burdensome requirements in providing these services. This points to the value of drawing as clear as possible a distinction between basic and value-added services, and focusing regulatory constraints on the former. While many countries are struggling to determine where to draw that line, networks have flourished most where the line is drawn as narrowly as possible, freeing the broadest possible range of services to develop based on competitive market forces. One issue to address, however, is the impact of major suppliers of telephone services expanding into value-added sectors that rely on network facilities and services, specifically those facilities and services at the local level. This may raise the danger of operators extending market power from those telephone networks into new competitive networks.

B. CLASSIFICATION FLEXIBILITY

14. Companies building networks need to know that trade commitments will ensure that their networks can develop apace with technology, and will not be limited by categories that, interpreted narrowly, could be soon rendered obsolete. The commitments for basic telecom services and value-added network services are broad enough to incorporate such change, but Members may find it useful to explore ways to ensure that commitments remain relevant to future developments. For example, for value-added service commitments to be meaningful, they must be able to incorporate technological developments such as the shift towards Internet-based services. Given the broad functional descriptions of these services as currently embodied in commitments, and the Telecommunications Annex guarantee that service suppliers can employ the protocol of their choice (Article 5 (b) (3)), the United States sees current categories as adequately capturing Internet-based services². This obviates the need for Members to constantly update the nomenclature to take into account the rapid evolution of services that appear new, which would diminish the predictability and value of the commitments. The goal of the WTO should be to maximize trade liberalization and competition, and reducing the burden of constant updating of services nomenclature serves this goal.

²See the October 14, 1999 United States submission to the Committee on Trade in Services, on how existing services commitments relate to use and further development of the Internet on Internet Services.

VII. MARKET ACCESS FOR COMPLEMENTARY SERVICES

15. In addition to basic and value-added services, other key services are likely to be integrated into electronic networks in the near future. As a result, the market access commitments in telecommunications infrastructure could be substantially enhanced by market access commitments with regard to complementary services that could be negotiated on a sectoral basis. These include distribution services; computer and related services; advertising services; express delivery services; and certain financial services. Such services are some of the most obvious beneficiaries of efficiency gains and global reach provided by electronic networks, and Members have a deep self-interest in using market access commitments to promote their growth, which again drives demand for - and economic viability of - underlying infrastructure. These issues are also addressed in relevant sector-specific proposals.

A. DISTRIBUTION SERVICES

16. Distribution services are one of the early adopters of efficiency gains inherent in electronic networks. Whether retail distribution of consumer goods, wholesale distribution between businesses, or the establishment of electronic exchanges for either consumers or producers, the growth prospects for all countries based on better use of information and the ability to quickly reach a broader range of participants is strong.

B. ADVERTISING SERVICES

17. Advertising services are becoming a key element in the business model of many network services. The ability to integrate advertising services into these networks is an important element in their sustainability. In addition, these services are critical in effectively informing consumers.

C. EXPRESS DELIVERY SERVICES

18. Express delivery services are both a user and driver of electronic networks – using networks to ensure efficient movement and tracking of freight, and driving broader use of the networks by being seamlessly integrated into many commercial sites, whose inability to deliver physical products quickly would undermine one of their key advantages – timeliness.

D. COMPUTER AND RELATED SERVICES

19. As computers become increasingly integrated into seamless networks, computer and related services are increasingly network-oriented. Growth of such services thus parallels growth of networks, and, likewise, network growth is enhanced by broad-based availability of the computer and related services which support an economy's computer infrastructure.

E. FINANCIAL SERVICES

20. Financial services have long been pioneers in the use of electronic networks, and will continue to drive much of the demand for network services. In addition, like express delivery services, some financial services are increasingly being integrated into network-based services of commercial suppliers, providing a new level of convenience and efficiency for retail and wholesale customers alike. For example, innovative payment systems play an important role in the functioning of business-to-business networks.

F. MARKET ACCESS FOR OTHER SERVICES THAT CAN BE DELIVERED ELECTRONICALLY

21. The demand for users of networks is much broader than the sectors identified above, and market access for any service that can be supplied electronically - i.e., most services - will have the same effect of stimulating infrastructure investment. Opening the frontier for the supply of services on a cross-border basis, where once economically not viable, will provide long-term growth opportunities across a broad range of sub-sectors, from training, health care, professional services, and all services related to the supply of digitized content.

VIII. SUMMARY

22. A trade environment conducive to building and using networks should include:

- Full basic telecommunications commitments
- Full adherence to the Reference Paper on Regulatory Principles for Basic Telecommunications with a focus on application to major suppliers of those services
- Goal of full privatization of telecommunications operators and networks
- Full value-added service commitments, and focus on ensuring least burdensome economic regulation for competitive providers of these services
- Full commitments in complementary services that are increasingly integrated into network-based transactions including distribution, computer services, express delivery, advertising, and certain financial services critical to completing electronic commerce transactions.
- Maximum commitments in all services that can be delivered electronically.

23. Such a package will ensure that the opportunity to build and fully utilize networks is supported by WTO disciplines, encouraging investment and the broadest possible development of services that are flourishing through the efficiencies of networked transactions. The United States looks forward to working with other WTO members to develop an integrated approach to obtaining greater market access in these sectors.
