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COMMUNICATION FROM AUSTRALIA

Negotiating Proposal for Telecommunication Services

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

1. Australia proposes that Members agree to the following five points as the basis for future liberalisation of telecommunication services. Australia has raised these issues consistently since the 1998 Information Exchange Program.

- All Members should adopt in full the provisions of the Reference Paper on Basic Telecommunications; and the Reference Paper should be strengthened through clarification.
- All international telecommunication services should be recognised as traded services, and international settlements arising from such services should be subject to GATS principles. The moratorium on accounting rates disputes should be recognised as having expired with the onset of negotiations.
- Where there are dominant players or *de facto* monopolies, Members must play a role in promoting fair competition with regard to international Internet charging arrangements.
- Limitations on market access should be removed.
- Rules on domestic regulation should be developed under Article VI.

I. All Members should Adopt in Full the Provisions of the Reference Paper on Basic Telecommunications. The Reference Paper should be Strengthened through Clarification, e.g., of its Provisions on Competitive Safeguards (Article 1); Interconnection (Article 2); Transparency (Articles 2 and 4); the Independence of Regulators (Article 5); and the Allocation of Scarce Resources (Article 6).

2. The Reference Paper on Basic Telecommunications was a significant outcome of the 1998 Basic Telecommunications Agreement (BTA). Australia wants to build on the Reference Paper to ensure that all Members implement its principles on the basis of a common understanding, which could be achieved by further discussion of the issues. Our aim is to promote a more comprehensive

and precise application of existing principles. We do not consider it appropriate to renegotiate the Reference Paper at this stage.

3. Stronger competition principles would facilitate the growth of telecommunication services. There is a need for further clarification of the **procompetitive principles** (Article 1) of the Reference Paper in the manner indicated above.

4. The **interconnection principles** (Article 2) of the Reference Paper should also be strengthened through clarification. Australia has provided detailed comments on interconnection principles in S/C/W/110/Add.9. Significant work has also been undertaken in the context of APEC to develop the APEC Principles of Interconnection (Annex C to the Cancun Declaration of APEC Telecommunications Ministers), agreed by all APEC members in May 2000. The APEC Principles on Interconnection are being used by APEC Members to clarify the application of interconnection principles of the Reference Paper.

5. The **independence of regulators** is essential for the effective implementation of all the provisions of the Reference Paper. Australia believes that the current text of Article 5 is unclear regarding the key criteria necessary to ensure the independence of regulators, and that there is a need for further clarification in the manner indicated above.

6. Many Members are not fully implementing **transparency** obligations with respect to making both interconnection arrangements (Article 2.4) and licensing requirements (Article 4) publicly available.

7. Australia also seeks to promote the transparent and nondiscriminatory **allocation of scarce resources**. While Article 6 of the Reference Paper provides the basis for this approach, we consider that market access could be improved if it were clearer how existing provisions applied to specific issues. For example, the basic requirement for non-discrimination should be that foreign ownership should not result in discriminatory treatment of a company that is appropriately licensed and subject to domestic laws, with regard to that company's access to spectrum. Members should agree that any company subject to domestic laws should be given national treatment, without regard to ownership. Australia also considers that 'technology neutrality' in the provision of telecommunications services should be upheld as far as possible. Technical requirements or standards on the use of spectrum should not be imposed beyond what is essential, and should be applied equally to all users of the same category of spectrum resources.

II. All International Telecommunication Services should be Recognised as Traded Services, and International Settlements Arising from such Services should be Subject to the GATS Principles of Transparency and Non-Discrimination. The Moratorium on Accounting Rates Disputes should be Recognised as having Expired with the Onset of Negotiations.

8. Australia considers that the termination of a telephone call or similar service that originates in another Member is an exported service. As telephone call completions and other telecommunication termination services can be imported and exported, we believe that international termination services are traded services. We do not consider that there is anything special or unique about telecommunications services that justifies different treatment from other services under the GATS. Australia has provided detailed comments on termination services and the moratorium on disputes relating to accounting rates in S/C/W/153.

9. The February 1997 Report of the Group on Basic Telecommunications (S/GBT/4) states that the application of MFN-inconsistent measures with respect to accounting rates would not give rise to action by Members under dispute settlement under the WTO. The Report contains a clear sunset

clause, however, indicating that this understanding would be 'reviewed' no later than 1 January 2000. Australia considers that the understanding not to initiate dispute settlement action expired on 1 January 2000. The purpose of the review should be to determine whether a new understanding on dispute settlement action should be agreed. It is therefore incumbent upon those Members who seek to reach a new understanding on dispute settlement action to explain why such an understanding is necessary.

10. The ITU has made some progress in reforming the accounting rates system. Australia considers that further WTO agreement is needed towards achieving nondiscriminatory trading arrangements, building on the progress made in the ITU.

III. Australia Proposes that where there are Dominant Players or *de facto* Monopolies, WTO Members must Play a Role in Promoting Fair Competition with Regard to International Internet Charging Arrangements.

11. Small and medium-sized enterprises, including in developing countries, may have the potential to secure the greatest improvements in global market access through the use of electronic commerce (e-commerce). E-commerce will deliver the expected trade benefits only with widespread, equitable, cost-effective access to the infrastructure supporting electronic transactions.

12. Australia proposes that Members recognise that Internet **delivery** services are a basic telecommunication service ('packet-switched data transmission services') and that the Basic Telecommunications Reference Paper should apply to Internet delivery services.

13. Australia believes that Members need not intervene in private business agreements on international charging agreements for Internet services achieved in a competitive environment, but where there are dominant players or *de facto* monopolies, Members must play a role in promoting fair competition. Internet charging arrangements between providers of network services should be commercially negotiated and, among other issues, reflect: (a) the contribution of each network to the communication; (b) the use by each party of the interconnected network resources; and (c) the end to end costs of international transport link capacity. This formulation was adopted in the Asia-Pacific Economic Cooperation (APEC) 'Principles on International Charging Arrangements for Internet Services' (Annex B to the Cancun Declaration of APEC Telecommunications Ministers), agreed by all APEC economies in May 2000.

IV. Limitations on Market Access, such as those which Restrict the Legal Form Commercial Presence may take or which Privilege some Satellite Operators, should be Removed.

14. A large number of Members have scheduled limitations on the legal form which commercial presence may take, for example, requiring joint ventures with local partners. In Australia's experience, such limitations on market access inhibit the development of an efficient telecommunications industry. Australia proposes that these limitations be removed from schedules of commitments.

15. As a separate market access issue, many Members impose restrictions on the type of technology used to provide telecommunications services, including the delivery of services via satellite. Australia opposes limitations being placed on satellite operators in a competitive market. For example, Australia does not support measures which provide privileged access for particular satellite companies. Australia seeks the removal of these limitations on market access from Members' schedules of commitments.

V. Rules should be Developed on Domestic Regulation such as Licensing Requirements and Technical Standards Affecting Trade in Telecommunication Services.

16. Australia considers that technical standards and licensing requirements can constitute a significant barrier to the provision of telecommunication services. We are exploring how to ensure that domestic regulation of telecommunications services is the most transparent and least trade-restrictive possible. This is part of Australia's integrated approach to domestic regulation, set out in S/WPDR/W/8, in which we have proposed the creation of the 'necessity test' mandated in Article VI, and the adoption of more effective transparency provisions. Work on disciplines for domestic regulation regarding licensing requirements could also draw upon the Reference Paper provisions on the public availability of licensing criteria (Article 4).
