

WORLD TRADE ORGANIZATION

RESTRICTED

S/GBT/W/1/Add.10

29 January 1997

(97-0357)

Group on Basic Telecommunications

Original: English

COMMUNICATION FROM AUSTRALIA

Conditional Offer on Basic Telecommunications

Revision

The attached communication is circulated at the request of Australia to members of the Group on Basic Telecommunications.

Australia hereby submits a revision of its offer submitted on 30 April 1996 (S/NGBT/W/12/Add.6/Rev.2).

Australia reserves the right to modify or withdraw partly or in their entirety the commitments made conditionally in this offer.

This offer is conditional upon agreement by a critical mass of participants to provide market access and national treatment for basic telecommunications services.

Australia is committed to further liberalization of its basic telecommunications sector and has introduced legislation for Parliamentary consideration of liberalization post 1 July 1997. Some elements of this offer therefore are conditional upon parliamentary approval of this legislation. Commitments so conditioned are: unlimited licence numbers from 1 July 1997 and no sector specific foreign equity limits on new carriers from 1 July 1997.

All commitments made in this offer are subject to horizontal commitments on investment as contained in Australia GATS schedule.

AUSTRALIA - CONDITIONAL REVISED OFFER

Modes of supply:				
1)	2)	3)	4)	
Cross-border supply	Consumption abroad	Commercial presence	Presence of natural persons	
Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments	
2. COMMUNICATION SERVICES				
C. <u>Telecommunications services</u>				
Covers the following sub-sectors from the Services Sectoral Classification List				
(a) Voice telephone services (7521)	(1) None	(1) None	The attached reference paper on regulatory principles is incorporated as additional commitments by Australia. A reserve power will be maintained to prevent the misuse of market power by an operator (service consumer or supplier) in a territory outside Australia to the harm of consumers or competition in Australia.	
(b) Packet-switched data transmission services (7523**)	(2) None	(2) None		
(c) Circuit-switched data transmission services (7523**)	(3) Primary supply of satellite services limited to two service providers (licensed general carriers) until 30 June 1997.	(3) None		
(d) Telex services (7523**)	Primary supply of public mobile cellular telecommunications services limited to three service providers (licensed mobile carriers) until 30 June 1997.			
(e) Telegraph services (7522)	The Government has introduced legislation aimed at implementing an unlimited number of basic telecommunications carrier licences from 1 July 1997 and no sector specific foreign equity limits for new carriers. Australia binds itself to the outcome of this parliamentary process in terms of numbers of carrier licences and foreign equity applying to new carrier licences. An entity holding a new carrier licence must be a public body or a constitutional corporation under Australian law.			

Modes of supply:				
1)	2)	3)	4)	
Cross-border supply	Consumption abroad	Commercial presence	Presence of natural persons	
Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments	
(f) Facsimile services (7521** + 7529**)	<p>The first licensed general carrier, Telstra, is government owned. There is a requirement for majority Australian ownership of the second licensed general carrier, Optus. There is a requirement for majority Australian ownership of Vodafone (holder of a mobile carrier licence). Measures shall be maintained to ensure that these arrangements continue to apply after 30 June 1997.</p> <p>Where appropriate, the Broadcasting Services Act 1992 applies to service providers.</p> <p>(4) Unbound except as indicated in horizontal section.</p>	(4) Unbound except as indicated in the horizontal section.		
(g) Private leased circuit services (7522**+ 7523)				
(o) <u>Other</u>				
Digital Cellular services (75213*)				
Paging services (75291)				
Personal Communications Services (75213*)				
Trunked Radio System services (7523**, 75213*)				
Mobile Data Services (7523**)				

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 ensured¹

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 affiliates²;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates³ 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; and
- (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.

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.

1 The interconnection regime to apply in Australia from 1 July 1997 (Subject to Parliamentary passage of the necessary legislation) will provide access on terms and conditions which are fair and reasonable to all parties and which do not unfairly discriminate between users. Access rights will be guaranteed by legislation and the terms and conditions of access will be established primarily through processes of commercial negotiation or by reference to access undertakings given by access providers which may draw upon an industry code of practice. Any code of practice and each access provider's undertaking will be subject to approval by the independent regulator.

2 Non-discrimination is taken to mean on an MFN and National Treatment basis. In the fully competitive market in Australia, the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to an independent arbitrator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

3 The independent arbitrator may resolve any dispute on what costs are relevant in determining rates (see footnote ²).

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, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

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.