

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 19 November 2003, 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 Telecommunications Services

1. Australia understands that foreign participation in China's domestic telecommunications services market is governed by the *Regulations on the Administration of Foreign-Invested Telecommunications Enterprises*, promulgated under State Council Order No. 333 of 11 December 2001 ("FITE Regulations"). Articles 11 to 17 of the FITE Regulations set out the application process in order to establish a Foreign-Invested Telecommunications Enterprise ("FITE"). The major Chinese investor participating in the FITE is required to apply to the Ministry of Information Industry ("MII") (or the provincial telecommunications administration authority in the case of an intra-provincial service) and submit various documents in support of its application. Australia wishes to understand the extent to which the FITE Regulations have been successful in facilitating foreign participation in China's domestic telecommunications services market. China's responses to the following questions would be helpful in this regard:

- (a) How many FITE applications have been lodged since the FITE Regulations came into force?
- (b) Of the FITE applications lodged, how many have been approved (by receiving a Certificate of Approval for a Foreign-Invested Enterprise)?
- (c) How many FITEs have been issued with a Telecommunications Business Operational Permit?
- (d) If any FITE applications have been unsuccessful, please outline the grounds upon which FITE applications are falling short of requirements.

2. Australia notes that a newly revised edition of the *Telecommunications Service Classification Catalogue* ("Classification Catalogue") has been issued by the MII and came into force on 1 April 2003. The Classification Catalogue includes a table explaining which services listed in the Classification Catalogue correspond to the specific Value-added Telecommunication Services ("VAS") examples enumerated in Sub-sector 2.C of the *Schedule of Specific Commitments* lodged by

China (GATS/SC/135 dated 14 February 2002). For ease of reference this table can be described as the “translation table”. Please would China comment on whether FITEs can only be licensed to supply those services listed in the ‘translation table’, or whether FITEs are permitted to supply all services listed as VAS in the Classification Catalogue (i.e. all those listed under VAS Categories 1 and 2 of the Classification Catalogue)?

3. Australia understands that China is currently finalising the drafting of its Telecommunications Law, and that the drafters of the new law are consulting with leading domestic Chinese operators in order to obtain their comments and suggestions. While Australia regards these consultations as very positive, we suggest that the process would benefit from inclusion of interested foreign parties who wish to participate in the domestic Chinese telecommunications market. Foreign operators would be able to draw on their experience in other jurisdictions, in commenting on the draft law. Accordingly, we ask whether China intends to hold consultations on the new law with interested foreign parties.

4. Australia is interested in the detail of China’s implementation of the Telecommunications Reference Paper. The Reference Paper underpins and gives meaning to market access commitments through agreed pro-competitive regulatory principles. Australia would appreciate China explaining whether and how it intends to ensure that:

- (a) subject to geographic phasing of market access commitments, regulatory arrangements (including with respect to licensing, interconnection and competitive safeguards) will apply consistently across china (will, for instance, a single regulatory entity have responsibility for telecommunications across china?);
 - (b) interconnection rates are genuinely related to cost and that access, by competitors, to essential facilities is possible without competitive disadvantage (for instance, will interconnection pricing be based on the incremental cost that interconnection would in the long run impose on an efficient supplier of telecommunications?); and
 - (c) the domestic body responsible for interconnection dispute is independent and impartial with respect to all market participants (does, for instance, china intend to establish structural independence between the regulator and agencies responsible for promoting growth of the domestic industry?)
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