

WORLD TRADE ORGANIZATION

RESTRICTED

S/NGBT/W/3/Add.36

16 January 1996

(96-0152)

Negotiating Group on Basic Telecommunications

Original: English

COMMUNICATION FROM THE PHILIPPINES

Response to the Questionnaire on Basic Telecommunications

The following communication is circulated at the request of the Philippines to members of the Negotiating Group on Basic Telecommunications.

PART I

Definition and Market Structure

Definition

1. There is no definition of basic telecommunications under Philippine law. All telecommunications services offered to the public for compensation are classified under the term "public telecommunications services". As a general concept however, basic telecommunication service refers to local telephone switched services.
2. None.
3. None.

Market Structure

4. All basic telecommunication services are to be provided by duly enfranchised and certificated carriers/operators.
5. The geographic area, type or classification of activities, and rates are specified in a carrier's franchise (secured from the Philippine Congress) and certificate of public convenience and necessity (CPCN) issued by the National Telecommunications Commission (NTC).

The Philippine telecommunications sector has long been characterized by a high degree of private sector ownership. All government-owned facilities are being privatized pursuant to Republic Act 7925.

6. No franchise or CPCN for the operation/supply of basic telecommunications services shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60 per cent of whose capital is owned by such citizens.
7. The Philippines operates under regulated competition. However, competition is predicated on the basic compliance of an applicant of the franchise and citizenship requirements.
8. The Philippines is a Member of the International Telecommunications Union (ITU) and a signatory of some World Administrative Regulations that govern operations of international telecommunications.

PART II

Competition

A. Subsectors

(i) Overview

Enfranchised and certificated public telecommunications carriers can compete in the provision of basic telecommunications services. Foreign investors can participate in the competitive environment through a domestic telecommunications company where they hold minority equity participation.

(ii) Modes of supply

Telecommunications services can be supplied by and through enfranchised and certificated carriers.

(iii) Market access

Provision of services is subject to securing of franchise and CPCN. Aggregate foreign shareholding is limited to a maximum of forty per cent.

(iv) National Treatment

Other than the limitations on foreign shareholding, the following also apply:

- The number of non-Filipino citizens in the Board of Directors of an entity shall be proportionate to the aggregate share of foreign capital of that entity.
- All executives and managers must be citizens of the Philippines.
- Only citizens of the Philippines or corporations or associations at least 60 per cent of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease. Foreign investors may lease only private-owned lands.

(v) Licensing

Franchises and CPCNs are issued through an open and transparent procedure. Due emphasis is given to technical, legal, economic, and financial considerations.

B. Categories

1&2. Republic Act 7925 provides for the following categories of telecommunications entities:

Local Exchange Operator - an entity providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice service, in a geographic area anywhere in the Philippines.

Inter-Exchange Carrier - an entity, sometimes referred to as a carrier's carrier or national backbone network operator, authorized to install, own and operate facilities which connect local-exchanges within the Philippines and to engage in the business of inter-exchange national long distance services.

International Carrier - an entity primarily engaged in the business of providing transmission and switching of any telecommunications service between the Philippines and any other point of the world to which it has an existing correspondent or prospective interconnection agreements.

Value-added Service Provider (VAS) - an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.

Mobile Radio Services - a wide area mobile radio telephone system with its own switch, base stations and transmission facilities capable of providing high capacity mobile telecommunications by utilizing radio frequencies.

Resale Basis

3&4. Private leased circuit capacities are offered for a fee by enfranchised and certificated operators. No entity except for a VAS supplier can offer a telecommunications service for a fee without securing a franchise and a CPCN.

Facilities-based

5. Enfranchised and certificated basic telecommunications providers can (provided the requirements on Filipino ownership, control and management have been met) construct and operate their own networks or invest in consortia to construct and operate such facilities.

Public/Non-Public Supply

6. A duly enfranchised and certificated carrier is not prohibited from offering such services.
7. All services authorized by the NTC to be offered must be made available to the public.
8. Answers to items 6 & 7 apply.
9. A public telecommunications entity must comply with all Philippine telecommunications law; the terms and conditions of its franchise and CPCN; universal service obligations (e.g., authorized international gateway and cellular telephone operators are required by law to install a set number of local exchange lines); and competition safeguards (e.g., interconnection requirements).
10. Subject to securing of a franchise and CPCN.
11. Only enfranchised and certificated carriers can offer the service.

PART III

Regulatory Issues

Relationship Between Regulatory and Operational Functions

1. The industry, the academe, suppliers, users, etc. are involved in the policy and regulatory formulation and enforcement. The sector has a Federation that coordinates and cooperates with the government in these aspects.
2. Yes. The NTC is primarily responsible for formulating and enforcing standards.
3. Government agencies responsible for the formulation of policies and enforcement of laws/regulations in the telecommunications sector:

Franchising - The Philippine Congress

Policy - The Philippine Congress (legislative branch)

- The Department of Transportation and Communications (executive branch)
- Regulatory -** The National Telecommunications Commission (attached to the Department of Transportation and Communications)

Frequency Allotment or Assignment

4. The NTC allots and assigns the required frequencies needed for the operation of telecommunications services.

As provided by RA 7925, the NTC shall establish a Radio Frequency Consultative Committee (with representatives from all service categories) which shall recommend to the NTC guidelines on the efficient and fair allocation of frequencies including a bidding process in case demand exceeds availability.

5. Only Filipino companies are allowed to offer telecommunications services in the Philippines.

Standards, Type Approval and Equipment Attachment

8. Standards enforced include the National Service Performance and Technical Standards for Telecommunications Service and relevant international standards including those established under ITU.

9. Yes. Standards are developed and reviewed by NTC through its established working committee composed of representatives from the industry, the users, suppliers, etc. A public hearing is held prior to final promulgation by NTC.

10-13. Type approval is undertaken by NTC pursuant to the established Rules and Regulations governing equipment provided by Customers/Subscribers of Public Networks.

Interconnection

14-16. Mandatory interconnection has been legislated. All inter-exchange carriers (IXCs) and international gateway facilities shall interconnect with all local exchange carriers to provide freedom of choice for access of toll facilities.

Guidelines have been issued (including on access charges, infrastructure and revenue sharing arrangements) to ensure that interconnection arrangements are fair and reasonable.

17. Interconnection charges are commercially negotiated taking into account the established guidelines. All interconnect agreements (technical aspects and tariffs) are submitted to the NTC for approval.

Competitive Safeguards

18. The Philippine Constitution prohibits acts in restraint of trade or fair competition. As a general rule, the government promotes competition. RA 7925 and E.O. 59 mandates interconnection and non-discriminatory pricing.

19. Under Philippine law, there is no definition of a dominant carrier. However, since the Philippine Long Distance Telephone Co. (PLDT) has the biggest operation in the country, it is sometimes referred to as the dominant carrier.

20. There are pending bills in the Philippine Congress aimed at establishing a broad anti-trust policy mechanism.

On mergers and acquisitions - NTC approval is required where the merger would constitute the transfer in excess of 40% of voting shares to one entity. Where there is a "transfer of control of ownership" of a public carrier, approval from the Philippine Congress is required.

21. A franchise limits the scope of an entity's activities and what it can apply before the NTC.

Pricing Related Measures

22. NTC approves all rates and charges applied for by authorized carriers. The rates must be just, fair and reasonable.

23. A proposed rate schedule is submitted to the NTC for its approval. The rate setting undergoes a quasi-judicial process of public notice and hearing.

24. Rates must be fair, just and reasonable and must be applied without discrimination to the public.

25. Yes, during public hearings in setting of rates.

26. The NTC, in establishing fair and reasonable rates and tariffs, takes into account factors such as the economic viability of telecommunications entities and a fair return on their investment considering the prevailing cost of capital in the domestic and international markets.

27. New service rates are applied for and approved by NTC.

Rights of Way for the Construction of Infrastructure

28. The franchise of authorized telecommunications carriers gives them the privilege to build the necessary infrastructure support for the supply of telecommunication services approved by NTC. They must, however, apply for the necessary local or national construction permits.

29. Foreign investors can only exercise these privileges through the domestic telecommunications company where they hold minority equity participation.

30-31. Except for VAS, all services to be offered by a duly enfranchised telecommunications carrier must be approved by the NTC, after due process of public notice and hearing.