



# The WTO deal on basic telecommunications

## Big bang or little whimper?

**William J Drake and Eli M Noam**

**It has been widely asserted that the Group on Basic Telecommunications (GBT) agreement reached in February 1997 is a significant step forward for the cause of global telecommunications liberalization. This article brings together two authors on different sides of the needed debate about the potential impact of the GBT deal. Following a brief introduction, William Drake argues that the GBT deal could, depending on its implementation, have a substantial liberalizing effect not only on specific markets, but also on the broader institutional arrangements of the global telecommunications policy environment. In response, Eli Noam argues that the GBT is useful, but that its significance is being greatly exaggerated, that most policy changes were taking place anyway, and that it could in some cases have the negative effect of slowing down the process of global liberalization. © 1997 Published by Elsevier Science Ltd. All rights reserved.**

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On 15 February 1997, the Group on Basic Telecommunications (GBT) organized under the auspices of the World Trade Organization (WTO) completed negotiations on the world's first multilateral deal liberalizing international trade in basic telecommunications services. The deal that was struck comprises 55 schedules, covering 69 governments (the European Commission negotiates on behalf of European Union member governments and submitted one schedule for all of them, hence the numerical discrepancy), of legally binding commitments to open some or all of the participating countries' basic telecommunications markets to foreign competition.<sup>1</sup>

The successful conclusion of the basic telecommunications negotiations, which lasted from 1994 to 1997,<sup>2</sup> was greeted with great enthusiasm by the WTO secretariat, the international trade policy community, and many governments and private firms. Washington in particular was full of undisguised elation as top policy-makers hit the conference circuit and talked up the agreement to the press and the Congress.<sup>3</sup> President Clinton weighed in by issuing a press release stating that "the American-led negotiations in Geneva have resulted in a landmark agreement...expected to grow (the world market) to more than \$1 trillion over the next ten years.... Today's agreement will bring clear benefits to American workers, businesses, and consumers alike-new jobs, new markets and lower prices-and will spread the benefits of a technology revolution to citizens around the world."<sup>4</sup> In parallel, major corporations that stood to benefit directly from the deal immediately released a slew of congratulatory pronouncements, while those that are less certain to benefit from the prospect of enhanced foreign competition in their markets went along with the party line, albeit with more muted praise.

The exuberance is certainly understandable, especially on the part of the negotiators who spent almost three painstaking years running back

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A longer version of this paper will appear in Hufbauer, G. and Wada, E., eds, *Unfinished Business: Telecommunications After the Uruguay Round*. Institute for International Economics, Washington, DC, 1997.

<sup>1</sup>The 55 schedules (covering 69 governments) annexed to the Fourth Protocol of the General Agreement on Trade in Services covered the following countries: Antigua & Barbados, Argentina, Australia, Bangladesh, Belize, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, Columbia, Cote d'Ivoire, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, European Communities and its Members States, Ghana, Grenada, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Israel, Jamaica, Japan, Korea, Malaysia, Mauritius, Mexico, Morocco, New Zealand, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Romania, Senegal, Singapore, Sri Lanka, Switzerland, Slovak Republic, South Africa, Thailand, Trinidad & Tobago, Tunisia, Turkey, United States of America, and Venezuela. Two other countries—St Vincent and the Grenadines, and the Bahamas—also devised schedules, but were unable to do so by February 15 1997; hence, these were not attached to the Protocol.

<sup>2</sup>The process began in April 1994 in a Negotiating Group on Basic Telecommunications (NGBT). The NGBT met fifteen times between May 1994 and April 1996, during which time intensive bilateral consultations were conducted among countries over the shaping of their national schedules of commitments. While the NGBT made a great deal of progress on difficult conceptual and political issues, by its agreed ending date of April 1996, US-based companies were not satisfied that sufficient liberalization obligations had been undertaken by key countries to warrant sealing the deal. The United States walked out and the negotiations did not conclude with an agreement. Hence, in July 1996 a new group was launched—the GBT—to carry on the work, which resulted in the deal being assessed here.

<sup>3</sup>For example, see the prepared remarks of US Trade Representative Charlene Barshefsky and Federal Communications Commission Chairman Reed Hundt at the hearing, 'WTO Telecom Agreement: Results and Next Steps', Subcommittee on Telecommunications, Trade, and

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and forth to the WTO and a multiplicity of bilateral meetings in an effort to reach an agreement. But is the elation justified? Will the GBT deal unleash a cosmic 'big bang' of competition, deregulation and dynamism in national and international markets, as its proponents suggest? In the United States at least, the affirmative answer seems to be an article of faith among many observers, even though there has been precious little public debate about precisely what the deal entails. Indeed, the GBT process (like the WTO more generally) was not quite a model of open and transparent decision making, so a full understanding of what it produced may not be widespread beyond the circle of international trade policy insiders.

With these considerations in mind, this paper assesses the GBT deal. Our objective is not to analyze the details of the negotiation process and explain the precise shape of the outcome in terms of the bargaining dynamics and who won or lost on particular issues; that is for another time. Instead, our goal is more modest—to consider, in the absence of real public debate on the matter, whether or not the deal is as significant as is widely assumed. To do so, the paper adopts the somewhat unusual strategy of bringing together two authors with divergent views on the issue.

The first part of the paper is written by William Drake, who argues that the GBT deal could, depending on its implementation, have a substantial liberalizing effect not only on specific markets, but also on the broader institutional arrangements of the global telecommunications policy environment. The second part of the paper is written by Eli Noam, who argues that the GBT is useful, but that its significance is being greatly exaggerated, that most policy changes were taking place anyway, and that it could in some cases have the negative effect of slowing down the process of global liberalization. On neither score are the arguments presented intended to be exhaustive; rather, they merely are intended to be suggestive and to help to stimulate further discussion.

### **Potential significance of the GBT deal**

Will the GBT deal make a major difference in the global telecommunications industry? Certainly, participating governments' commitments contain various types of exceptions, many of the developing countries' concessions are to be phased in over the next decade or so, and some important countries were not parties to the negotiating process. Yet to focus on these limitations is to see the trees but not the forest. Even though the GBT deal does not require immediate, total liberalization of all market segments everywhere in the world (hardly a realistic prospect, and arguably not a desirable one either), 69 countries accounting for more than 90% of the global market nevertheless undertook important liberalization obligations under a coherent multilateral framework. In many (but admittedly not all) cases these commitments represent significant departures that should expand competition beyond previous liberalization programs. Failure to implement the commitments could result in contentious consultations with trade partners and, if these fail, binding dispute resolution. Moreover, they cannot easily be withdrawn or modified, and there will be strong pressures to extend their scope in future rounds of trade talks—'progressive liberalization' in WTO-speak.

But while they are obviously of great interest to potential entrants, these short-to-medium-term changes in market access conditions in

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Consumer Protection, US House of Representatives, March 19 1997, available on the World Wide Web at <http://www.house.gov/commerce/telecom/hearings/031997/witness.htm>.

<sup>4</sup>Statement by the President, 'WTO Telecommunications Service Agreement', The White House, 15 February 1997

<sup>5</sup>The Uruguay Round multilateral trade negotiation was launched at Punta del Este in September 1986 and concluded in December 1993. The agreements formally signed at a ministerial meeting at Marrakesh in April 1994 comprised a series of interrelated negotiations among the 125 member governments of what was then the General Agreement on Tariffs and Trade (GATT). These produced a number of major outcomes, two of which are relevant here. First, the GATT's intergovernmental organization was replaced by the WTO—which, among other things has a broadened mandate and a strengthened dispute resolution system—while the GATT's multilateral trade rules and related arrangements became part of a larger set of agreements administered by the WTO. Second, the GATS regime was created, which for the first time applied multilateral trade disciplines to services industries, including telecommunications. The GATS regime comprises three major components: the Framework Agreement containing General Obligations and Disciplines (GODs) and negotiated Specific Commitments on market access, national treatment, and additional commitments; eight Annexes clarifying or modifying how the GODs pertain to some issue in particular sectors, one of which—the Telecommunications Annex—requires that governments provide suppliers of scheduled services with reasonable access to and use of public telecommunications transport services and networks; and the National Schedules in which governments inscribe their Specific Commitments for each service sector or sub-sector on which they are making offers. The NGBT and GBT process were conducted in conformity with a mandate established in the GATS' Annex on Basic Telecommunications Negotiations. The resulting GBT deal simply involves additions to the GATS' National Schedules; it is not a new free-standing regime with its own elaborate treaty text. On the evolution of trade in services thinking before and during the Uruguay Round and its impact on the GATS negotiations, see, Drake, WJ and Nicolaidis, K 'Ideas, interests and institutionalization: "trade in services" and the Uruguay round' in Haas, P (ed) *Knowledge, Power and International Policy Coordination* a special issue of *International Organization*, (1992), 45, 37–100. On the nature of the GATS agreement and its implications for the networked global information economy, see Nicolaidis, K 'International trade in

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various countries are really only half the story. For in a broader sense, the GBT deal represents a significant deepening of the institutional reorganization of telecommunications governance. At the national and multilateral levels alike, governments will have to redefine their policy apparatuses and conceptual frameworks in ways that will matter in many more instances beyond the immediate market access concessions. Moreover, in government and in the private sector as well, free trade coalitions will be strengthened and may become permanent features of the policy making landscape. With these factors in mind, the GBT deal should be seen more as the start of a film than a one-off snapshot. And if the results of the negotiations cannot be adequately assessed in static terms, neither should they be viewed in isolation: they will take on even greater weight as they interact with other changes underway in the technological, economic and political environments in ways we may not be able to foresee today. Hence, if we focus not only who opened up what markets how much in this particular negotiation, but also on the larger implications for how telecommunications policy will be conducted in the future, it becomes clear that the GBT deal could indeed represent a sort of 'big bang', albeit a slowly building one. What follows are some arguments about why this is so.

#### *Wide range of services covered*

During the Uruguay Round negotiations,<sup>5</sup> the definition and classification of the telecommunications services to be made subject to the disciplines of the General Agreement on Trade in Services (GATS) regime engendered complex discussions and some disagreements. In the end, two interrelated approaches to these issues were adopted. First, for the purpose of defining the telecommunications services to which suppliers must have rights of reasonable access and use in delivering other scheduled services, the GATS Telecommunications Annex specifies that, "Public telecommunications transport service' means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information."<sup>6</sup> This broadly framed language is, in effect, a conventional (if perhaps technologically dated) definition of basic telecommunications.

Second, for the purpose of scheduling national commitments, negotiators agreed to use the following classification of telecommunications services:

- (a) Voice telephone services
- (b) Packet-switched data transmission services
- (c) Circuit-switched data transmission services
- (d) Telex services
- (e) Telegraph services
- (f) Facsimile services
- (g) Private leased circuit services
- (h) Electronic mail
- (i) Voice mail
- (j) On-line information and database retrieval
- (k) Electronic data interchange

- (l) Enhanced facsimile services (including store & forward, store & retrieve)
- (m) Code and protocol conversion
- (n) On-line information and/or data processing (including transaction processing)
- (o) Other (eg trunked radio, mobile cellular telephone, paging, fixed and mobile satellite services, teleconferencing)

Categories (a) through (g) were agreed to be examples of basic services, and only 19 of the 48 national schedules submitted included some highly selective commitments in them. In contrast, categories (h) through (n) were deemed to be value-added services, and most of the schedules included multiple commitments in them. Category (o) was sort of a grab bag, with most of the services given as examples thought to be basic and hence not the focus of extensive commitments. However, there was some variation in how governments classified such services at the domestic level and listed commitments in their schedules, which complicated the process at times.

In the post-Uruguay Round negotiations, governments wanted to sidestep such discrepancies and also to avoid locking in a detailed, singular and potentially exclusionary definition of basic telecommunications services. Moreover, they sought to establish a technologically neutral deal that did not equate *a priori* particular services only with specific network delivery options (although of course governments could choose to delimit their offers by, for example, listing global mobile personal communications services or digital cellular services rather than mobile services generally). In a dynamic environment where rapid innovation quickly generates new systems and services that were not envisaged just a short time ago—eg Low Earth Orbital Satellites, Internet access, and so on—a technology-dependent definition could have unduly constraining effects.

Hence, while a few governments opted to include additional value-added service commitments in their schedules, negotiators agreed to focus on services that—as per the Telecommunication Annex definition—move customer information between points without value-adding changes in form or content, but to include both services to the general public and private services, eg those supplied to closed user groups. Commitments were scheduled using the categories employed in the Uruguay Round for each of the four modes of supply. Both networked service provision and resale were on the table, which opened the door to market access commitments for both the commercial presence and cross-border delivery modes of supply. In effect, this acknowledges the reality that trade and investment in telecommunications are closely related and must both be subject to multilateral rules for competition to flourish.

However, while the scope of services negotiated on was broad, and nothing was formally excluded at the outset, some parties drew lines in the sand as the process unfolded. For example, at the behest of France and Belgium, the European Union argued that it would be inappropriate to include mass media transmission services under the rubric of basic telecommunications and therefore refused to schedule commitments in this area. Its schedule stipulates that “Telecommunications services are the transport of electromagnetic signals—sound, data, image and any combination thereof, excluding broadcasting (defined in a footnote as ‘the uninterrupted chain of transmission required for the distribution of

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information-based services: the Uruguay round and beyond’ in Drake WJ (ed) *The New Information Infrastructure: Strategies for US Policy*. Twentieth Century Fund Press, New York (1995) pp 269–302. For analyses of the Telecommunications Annex and related GATS instruments, see, Tuthill, L ‘Users’ rights? The multilateral rules on access to telecommunications’ *Telecommunications Policy*, 1996, 20, 89–99; Pipe, GR *Trade of Telecommunications Services: Implications of a GATT Uruguay Round Agreement for ITU and Member States* International Telecommunication Union, Geneva (1993); and *Trade Agreements on Telecommunications: Regulatory Implications—Briefing Report No. 5 of the International Telecommunication Union Regulatory Colloquium* ITU, Geneva (1996).

<sup>6</sup>World Trade Organization *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* WTO, Geneva (1994) p. 360.

TV and radio programme signals to the general public, but does not cover contribution links between operators.’). Therefore, commitments in this offer do not cover the economic activity consisting of content provision which require telecommunications services for its transport.”<sup>7</sup> Further, due to a dispute with Canada, the US ultimately decided to take MFN exemptions on one-way direct-to-the-home and direct broadcasting satellite services, as well as on digital audio services. Eight other countries also scheduled horizontal or service-specific MFN exceptions. These exceptions aside, the net result of the process is that a wide range of services in 69 countries are for the first time subject to multilateral trade disciplines.

### *Significant market access commitments*

While the initial offers floated early in the negotiations tended to reflect existing domestic regimes, over time they were enriched to cut deeper into domestic limitations. In this sense, there is a qualitative difference between the schedules produced during the Uruguay Round and in the 1994–1996 Negotiating Group on Basic Telecommunications (NGBT) phase and the additions made to them in the 1996–1997 GBT phase. Previously, governments generally offered ‘stand still’ concessions: the liberalization programs already undertaken at the national level were simply translated into WTO commitments. During the GBT talks, in contrast, many governments ended up offering ‘roll back’ concessions that commit them to go further than their existing domestic liberalization programs, albeit for developing countries often on a phased in basis. This is somewhat ironic in that competition in basic telecommunications has always been seen as more sensitive and politically difficult than it is in value-added services. The shift reflects how far governments have come in their thinking over the past year.

What concessions were made? According to informal tabulations generated by the WTO staff, for voice telephony, 47 of the schedules (covering 61 governments) commit to competitive supply by two or more providers. Generally these allow the supply of public voice services, either immediately or on a phased-in basis, in at least one market segment. Breaking this down further, 41 schedules (55 governments) made commitments on local service, 38 schedules (52 governments) made commitments on domestic long-distance, and 42 schedules (56 governments) made commitments on international service. Resale of public voice services is included in 28 schedules (42 governments). It should be noted that 25 of the 61 governments that commit to some form of competitive supply for voice telephony will phase-in their commitments.

For non-voice services, 49 schedules (covering 63 governments) included commitments on data transmission; 41 schedules (55 governments) allow competition in the supply of leased circuit capacity; 46 schedules (60 governments) allow market access for cellular mobile services; 45 schedules (59 governments) include commitments on other types of mobile services like personal communications services, mobile data, or paging; 37 schedules (51 governments) committed on some or all kinds of mobile satellite services or transport capacity; 36 schedules (50 governments) make commitments on fixed satellite services or transport capacity; and eight governments scheduled additional commitments on value-added services like electronic mail, on-line data processing, and data base retrieval.<sup>8</sup>

<sup>7</sup>Communication from the European Communities and their Member States: Schedule on Basic Telecommunications’ World Trade Organization, Group on Basic Telecommunications, S/GBT/W/1/Add.1/Rev.2, 15 February 1997. There was even pressure to apply broadcast regulations and limitations on video transmitted over the Internet, which is not a broadcast medium. On the politics of what to include or not in the negotiations, see Beltz, C ‘Global telecommunications rules: the race with technology’ *Issues in Science and Technology*, Spring 1997, 63–70.

<sup>8</sup>The WTO Negotiations on Basic Telecommunications: Informal Summary of Commitments and MFN Exceptions’ March 6 1997, p 1, on the World Wide Web at <http://wto.org>.

Slicing the numbers from another angle, the US Trade Representative's office concludes that 29 governments—two thirds of them from industrialized countries—guaranteed market access for international telecommunications services and facilities. Another 23 governments, primarily from the developing and newly emerging countries, will phase-in such commitments, mostly by the year 2006. Six additional countries are open for only selected international services, while 12 have little or no market access commitments in this area. Regarding commercial presence *via* direct foreign investment, 27 countries (including almost all of the industrialized world) permit foreign ownership or control of all telecommunications services and facilities. Exceptions here include Australia (Vodafone and Telestra), Belize (the state-owned company), Chile (local service), France (France Telecom), Italy (Stet), Japan (KDD and NTT), New Zealand (49.9% limit in Telecom NZ for any one foreign firm), and Spain (Telefonica). Twenty-one countries, mostly in the developing world, phase in investment commitments by the year 2004. Ten countries permit more limited foreign ownership or control of certain networks and services, while 12 countries allow only minority equity stakes.<sup>9</sup>

While it is beyond our purpose here to review all of the 55 schedules in detail, some broad patterns should be mentioned. Most of the industrialized countries have committed to provide market access *via* the relevant modes of supply for all basic services and market segments (local, long-distance, and international). The most common exceptions involve limits on equity ownership (especially in traditional national carriers) that have been retained by some European countries, as well as by Canada, Japan and Korea; and phased-in liberalization schedules for less affluent countries like Spain, Portugal, Greece and Korea. In many cases, these countries were already well on their way toward opening markets, although a number of the commitments exceed previously announced initiatives and lock them into international law. In other cases, most notably Korea, the agreement took the government far beyond what was previously announced.

Arguably, the most notable commitments came from other regions. With regard to the so-called 'newly industrializing countries,' Chile and Mexico—who, admittedly, were already liberalizing—went the furthest by committing to full competition, save local telephony in Chile and some equity limits in Mexico. Others like Brazil, India, Indonesia, Malaysia, South Africa, Thailand and Turkey made more carefully circumscribed (and sometimes very limited) offers that opened certain market segments while reserving some or all of voice telephony for companies that had already been granted exclusive rights. In some such cases, promises were often made to review the situation after the year 2000 or the passage of new national laws.

The 'emerging markets' of Eastern Europe like Bulgaria, Hungary, Poland, the Czech and Slovak Republics, and Romania also undertook notable but limited commitments and promised to open themselves to further (usually complete) liberalization between 2000 and 2004. And some of the biggest surprises came from the lower-income developing countries. El Salvador clearly went further than the rest by offering full competition immediately, an initiative well exceeding prior liberalization efforts. Most of the others offered the usual liberalization of specific markets with full or nearly full competition to be phased in later, eg Bolivia in 2001, Cote d'Ivoire in 2007, Grenada in 2006, Jamaica in 2013,

<sup>9</sup>USTR 'World Trade Organization Basic Telecommunications Services Talks' 20 February 1997.

Mauritius in 2004, Morocco in 2001, Peru in 1999, Trinidad and Tobago in 2010, and Venezuela in 2000.

Of course, one could argue that the various limitations and phase-in periods mentioned above means that the agreement does not immediately result in a harmonized and rigorous level of liberalization across all participating countries. Inevitably, GBT members held back in certain instances for a variety of reasons—to preserve regulatory flexibility for new circumstances, to give their domestic industry time to adjust before facing new competition, to cater to local interest group pressures and conceptions of the public interest, and so on. Even so, the commitments that have been made remain notable in a great many instances, and pressures for ‘progressive liberalization’ will inexorably spill over from the open market niches to the less open ones in the years to come.

#### *Pro-liberalization regulatory principles*

According to the WTO staff calculations, a surprising 63 of the 69 governments submitting schedules committed themselves to new domestic regulatory principles that are subject to international monitoring, consultation, and dispute resolution. A full 57 countries committed themselves in whole or with few exceptions to the Reference Paper on regulatory reform that was initially drafted in the NGBT phase of the negotiations. The paper sets out a framework of six principles for the redesign of national regulatory rules and institutions to ensure compatibility with trade disciplines. These are:

- (1) *Competitive Safeguards.* Governments are required to ensure that major suppliers, especially the national PTOs, do not engage in anti-competitive cross-subsidization, use information gathered from competitors with trade-restricting results, or fail to make available, on a timely basis, the technical information about their facilities and operations needed by competitors to enter the market.
- (2) *Interconnection.* PTOs are to provide market entrants with interconnection at any technically feasible point in the network. Interconnection is to be provided at nondiscriminatory terms, conditions and rates, and should be of a quality no less favorable than the provider gives its own services. Moreover, interconnection rates are to be cost-oriented, transparent, and where economically feasible, unbundled. A dispute mechanism administered by an independent body is called for to handle disagreements over interconnection terms and other issues.
- (3) *Universal Service.* Such obligations are to be administered in a transparent, nondiscriminatory, and competitively neutral manner that is no more burdensome than required to meet the policy objectives.
- (4) *Public Availability of Licensing Criteria.* Where licenses are needed, information and decision making procedures are to be transparent.
- (5) *Independent Regulators.* Regulatory bodies are to be separated from service providers and not accountable to them.
- (6) *Allocation and Use of Scarce Resources.* Procedures for allocating and using frequencies, numbers, and rights-of-way are to be carried out in an objective, timely, transparent, and nondiscriminatory manner.

The number of countries agreeing to endorse the Reference Paper and appending it to their schedules was one of the most dramatic leaps forward achieved during the GBT negotiations. In April 1996, when

the NGBT ended unsuccessfully, only 44 governments had included regulatory commitments, and only 31 had signed on to the Reference Paper.

The incorporation of regulatory principles into a trade policy framework was a remarkable achievement. After all, the entire history of global telecommunications has involved states regulating their national systems as each saw fit. The instruments of the international regime negotiated in the International Telecommunication Union (ITU) positioned sovereignty as an overarching principle, and governments sought to insulate their markets from foreign influence while reaping the benefits of international correspondence, for example by interconnecting monopoly systems at designated gateways and jointly providing services on a non-competitive basis.

With the shift to a trade framework of global governance, the new forms of international service delivery require what have been called 'beyond the border' and 'deep integration' measures. GBT members have bound themselves to make their domestic regulatory institutions and rules consistent with multilateral trade disciplines and transnational market forces. It is easy to imagine that much of the agreement's thrust might have been frustrated without these regulatory obligations. For example, offering market access *via* commercial presence or cross-border delivery might mean little without an internationally recognized right to interconnect with other public telecommunications networks, or without transparent licensing criteria.

Implementation of the Reference Paper's principles on competitive safeguards, interconnection, transparency of licensing criteria, independent regulators separated from the service provider, and allocation and use of scarce resources will be a very demanding task, especially for the developing countries. The industrialized countries and multilateral agencies like the World Bank and the ITU will have to work closely with them to provide the requisite technical assistance. But if new regulatory frameworks are successfully institutionalized, this will affect how all policy decisions and industry plans will evolve in participating countries well into the future. In this sense, the implications of the agreement extend far beyond the market access concessions that were made in the GBT.

#### *Application of GATS general obligations*

The deal is significant not only because of the breadth and depth of the liberalization commitments listed in the national schedules, but also because the General Obligations and Disciplines (GODs) of the GATS Framework Agreement apply to the national commitments. As such, much of the telecommunications industry has been brought fully under the trade mechanisms of the WTO; indeed, telecommunications has become one of the best-covered service sectors in the GATS.

All the GODs are important, but five merit particular mention here. Article II on MFN treatment entails a big shift away from the reciprocity policies that frequently generate friction in international trade relations, in particular between the US and its trade partners. For companies seeking entry into markets like the US, nondiscrimination (save where specific exemptions are scheduled) could represent a substantial change from the status quo ante. And indeed, some movement away from strict reciprocity may soon be visible. In June 1997, the FCC tentatively



concluded that it should eliminate its controversial 'effective competitive opportunities' test as part of the public interest analysis undertaken when carriers from WTO member countries seek to provide facilities-based, resold switched, and resold non-interconnected private line services.<sup>10</sup>

Article III on Transparency requires the publication of measures of general application, prompt replies to requests for information, and sets notification requirements concerning new measures and changes to existing measures. These requirements will involve significant adjustments in the anti-competitive practices of many telecommunications ministries and carriers. Article VI on Domestic Regulation may be equally significant. It requires governments: to maintain or establish tribunals or procedures for the prompt and impartial review of complaints; to ensure that all measures are administered in an impartial manner; to advise service suppliers within a reasonable time of their decisions as to permitted operations; and to refrain from instituting new practices that are inconsistent with GATS principles.

Article VIII on Monopolies and Exclusive Service Suppliers binds governments to ensure that PTOs do not, in the supply of reserved services, act in a manner inconsistent with MFN and their Specific Commitments. The same is true for abuse of dominant positions, eg cross-subsidization of competitive services from reserved services, and for the negotiation of compensatory adjustments when monopoly rights are newly granted. And Article IX states that in the case of business practices that restrain competition and trade, governments must, upon request, enter into consultations with a view to eliminating such practices.

The application of these GODs to basic telecommunications could signal a major shift in the dynamics of market entry and scope of competition. For example, a government cannot, with impunity, schedule the removal of quantitative limitations on commercial presence in packet switching but then layer on a set of procedural hurdles and information restrictions that make access all but impossible. This sort of openness in name only has often characterized 'reform' initiatives, and it has allowed the accumulation of significant cross-national asymmetries in the actual (as opposed to announced) level of liberalization. Practices that derogate from the applicable GODs can now be challenged in bilateral consultations, and cases that cannot be resolved may move to the WTO dispute resolution mechanism.

#### *Multilateral surveillance and a framework for consultations*

This last observation leads to a broader conclusion that frames the points made below: From an institutional perspective, the real significance of the GBT deal does not rest on how deeply countries have liberalized any given sector or sub-sector in the short-term. What may matter more for the governance of the global information economy is that the deal signals the beginning of an evolutionary process of mutual adjustment that will unfold according to a clearly defined set of principles, baselines, and mechanisms. For the GBT agreement institutionalizes a multilateral system of mutual surveillance, and a framework for bilateral consultations on implementation issues.

Regarding the former, the deal extends GATS mechanisms to provide a variety of information-sharing procedures through which everyone can see what everyone else is doing in basic telecommunications and judge whether their actions conform with shared principles. Through such

<sup>10</sup>See Federal Communications Commission *In the Matter of Rules and Policies on Foreign Participation in the US Telecommunications Market: Order and Notice of Proposed Rulemaking* FCC 97-195, 4 June 1997.

mechanisms as meetings of the telecommunications group of the Council on Trade in Services, reports on country conditions, and bilateral interactions, the ability of member governments to hide violations of their international commitments should be curtailed. Regarding the latter, clear substantive rules are established according to which bilateral consultations can be conducted. A country whose service supplier is seeking entry abroad is no longer simply left to plead with its trade partner. Instead, it can now claim a right based on a binding and explicit set of shared guidelines. The net effect of these surveillance and consultation mechanisms should serve to create a measure of convergence in the pace and content of national liberalization programs. That could be significant for the difficult implementation work that lies ahead.

#### *Institutionalization of dialogue and conceptual convergence*

The GBT agreement also institutionalizes dialogue among parties and collective examinations of problems, thereby promoting conceptual progress and convergence. All social actors—individuals, business, governments, etc—behave on the basis of cognitive constructs, beliefs, interpretations, and understandings of their interests and the larger environments in which they operate, and these ‘mental images’ help to define what is appropriate in any given situation. As many social scientists have shown, the development of cognition generally is not something that happens in an atomistic, entirely individualized manner, since most of us do not live in isolated caves. Instead, it is to a significant degree a collective experience, one that plays out through complex processes of ongoing interaction and communication. The collective development and internalization of shared information and beliefs in an essential underpinning of all international institutions and patterns of world order. Indeed, the institutionalization of trade in services discourse in the 1980s signaled a major shift in governments’ collective understanding of international telecommunications and in the norms for defining, bargaining over, and resolving policy problems.

The GBT deal expands this process of conceptual development and convergence. The very act of having to think through their market access and national treatment policies for each service on each of the four modes of supply was an important exercise for governments to go through. So too was the elaboration of the Reference Paper’s principles, which each government had to think about in relation to its domestic regulatory regime and market structures. The utility of these processes was especially great for developing countries, which previously often lacked clear policies on all the questions involved. They will need a great deal of assistance in redefining their domestic regulatory systems to achieve conformity with international standards and notions of best practice. Dialogue on these and related matters will now continue in an ongoing, structured manner in the years ahead. Further, at a more mundane level, questions of statistical measurement and national accounting of basic services also will be continuously addressed in a manner that promotes shared understandings and negotiations.

#### *Dispute resolution and sanctions*

The GBT deal brings basic telecommunications—and hence, most of the global market—under an internationally accepted enforcement mechanism. For countries that wish to fend off bilateral pressure tactics,

this represents an important break with the past. The institutional mechanisms may be especially important for small and developing countries that would otherwise find themselves at a disadvantage in dealing with more powerful countries. The process begins with bilateral consultations, in which the Director General of the WTO may offer his 'good offices' to mediate the dispute. If these efforts fail, the Dispute Settlement Body (DSB) will establish a panel with clear terms of reference and an agreed composition. The panel then examines the issues in meetings with the parties and concerned third parties over a period not to exceed six months (three months in urgent cases). The panel submits its report to the parties and the DSB for an interim review. The DSB must decide on the report within 60 days. An appellate review not to exceed ninety days may then be launched. The DSB monitors the implementation of the adopted panel report or appellate body recommendation, and parties may then negotiate compensation pending full implementation. If all else fails, the DSB can authorize retaliatory measures against the infringing party.

Never before have telecommunications services been subject to such a clear and forceful multilateral framework for preventing and resolving bilateral conflicts; the instruments of the ITU, for example, lack provisions for settling disputes over competition. Trade policy officials hope that the carefully staged sequence of WTO dispute resolution steps will resolve differences before they reach the boiling point.

There are, however, potential problems with this framework. One is whether the composition and conduct of the DSB and its panels will prove sufficiently open and transparent to command widespread respect. Another is whether the involvement of the DSB and the WTO telecommunications group in the intricacies of domestic regulatory issues like interconnection will generate new conflicts. Finally, there is no guarantee that the sequence of dispute remedies, up to and including retaliation, will actually change offending practices when powerful countries find themselves on the losing side of a DSB decision.

#### *Consolidating pro-liberalization coalitions*

The GBT deal helps to consolidate pro-liberalization coalitions. The institutionalization of trade in services as a subject of negotiation over the past decade has been an important factor in altering national policy making processes. In the past, telecommunications policy was largely the proprietary preserve of ministries of posts and telecommunications (or independent regulatory agencies like the FCC), national carriers, and other powerful interest groups that typically had stakes in the status quo. When national carriers were closely linked to or part of the ministries, government policy not unsurprisingly acted to preserve their monopolies or at least slow down competitive entry. Similarly, even independent agencies like the FCC frequently succumbed to strong influence from the companies they were to regulate; some observers go as far as to allege that the FCC has often been subject to 'capture' by dominant firms in telecommunications and broadcasting, although the historical evidence for this is less than consistent.

Either way, absorbing telecommunications into the trade policy environment has clearly altered the mix by making the organizational objectives and intellectual frameworks of trade and finance ministries a vital part of decision making. Permanent bureaucratic coalitions have

been established with stakes in promoting liberalization to the benefit of the economy as a whole, rather than in protecting the prerogatives of traditional national carriers. In Europe, this has also strengthened the position of the European Commission relative to national telecommunications ministries. Further, the new coalitions help raise awareness of telecommunications policy among ruling politicians, frequently driving the issues closer to the top of the national agenda.

The same sort of thing has occurred in the private sector. Pro-liberalization firms that are looking to international markets have been emboldened to press for more openness at home as a price for gaining access abroad. Users, too, have pushed for freer trade, since this allows them to purchase the best service without regard to the nationality of the provider. Telecommunications ministries, PTOs, protected manufacturers, and other players whose first preference might be for closed markets can no longer unilaterally define problems and get their way without being challenged.

The GBT deal deepens these trends. It does this most directly by requiring, in line with the Reference Paper and the GODs, that carriers and ministries be separated, and that transparent and fair procedures be employed in dealing with foreign requests for market access, authorization, and so on. But it does this indirectly as well, by giving trade and finance ministries and pro-trade firms a larger voice in the policy mix. And this is true not just in matters of value-added services and private networks, as before, but now also in the biggest portion of the market-basic telecommunications.

#### *Redefining multilateral governance*

The domestic shift in the balance of influence has a multilateral counterpart. Since the late 1980s—and especially since the 1988 World Administrative Telegraph and Telephone Conference—the ITU has changed its spots. Gone are the days when the Place des Nations complex served as the exclusive club house of national monopolies that designed international agreements to buttress their market power and preclude competition. The organization has become infinitely more open and representative of the growing diversity of global telecommunications stakeholders. The ITU's institutional procedures have been adjusted to actively solicit the participation of a wide variety of the private firms in its work and decision making.

Moreover, many of the key instruments of the international telecommunications regime—eg the accounting and settlements system, the technical standardization process and its products, the regulations of private leased circuits and networks, and so on—have been adapted to allow governments and firms to develop competitive market arrangements. Indeed, the regime has undergone a fundamental transformation over the past decade.<sup>11</sup>

The entry of the GATT, now the WTO, into the global policy mix—which has been called ‘the ultimate bypass’—has been an important part of this process over the past decade. The shift to a trade framework has meant that some of the most interesting and important activity has moved down the street from the ITU's Place des Nations site to the WTO's location at Place Albert-Thomas. Together with the growing involvement of other regional, plurilateral, and multilateral institutions, the WTO's growing role means that jurisdiction over key aspects of

<sup>11</sup>For discussions of these developments, see Drake, WJ ‘Asymmetric deregulation and the transformation of the international telecommunications regime’ in Noam, EM and Pogorel, G (eds) *Asymmetric Deregulation: The Dynamics of Telecommunications Policies in Europe and the United States*. Ablex, Norwood (1994) pp 137–203; Drake, WJ ‘The transformation of international telecommunications standardization: European and global dimensions’ in Steinfield, C, Bauer, J and Caby, L (eds) *Telecommunications in Transition: Policies, Services, and Technologies in the European Economic Community*. Sage, Newbury Park (1994) pp 71–96; and Rutkowski, AM ‘Multilateral cooperation in telecommunications: implications of the great transformation’ in Drake WJ (ed) *The New Information Infrastructure: Strategies for US Policy*. The Twentieth Century Fund Press, New York (1995) pp. 223–250.

global governance has become a contested market. The ITU continues to play essential roles on many issues—eg technical standardization, frequency spectrum management, assistance to developing countries, and so on—but the locus of debate over the main economic issues has been moving to the WTO. This is significant because none of the ITU's instruments actively promotes competition and market entry; they simply allow it, if members wish to follow that route.

The GBT deal deepens these trends. As the Council for Trade in Services' work and the consultations on implementation issues take off, governments and firms in the ITU at times will have to adjust their programs and policies to accommodate the WTO process. Technical standards, radio frequency spectrum management agreements, and other instruments negotiated in the ITU may need to be examined in relation to WTO commitments, and there may be difficulties in certain instances. No wonder that in June 1997, the ITU's Council decided to schedule a second World Telecommunication Policy Forum for March 1998 to consider the implications of the GBT deal and related issues.

One particularly important effect of the GBT deal may be on the accounting and settlements system that has been developed in the ITU and widely implemented by national carriers. Efforts within the ITU over the past six years to reform the system and move toward cost-oriented pricing, nondiscrimination, and transparency have been very slow to yield results. By fostering the development of competition on international routes, including corporate alliances and new forms of direct interconnection, the GBT deal should encourage a growing share of international traffic to move outside the accounting rate system. This could provide fresh incentives to reduce accounting rates, and alternatives arrangements like termination fees and facilities based interconnection charges may become more potent competitors. In short, together with new technologies and services like call-back and Internet telephony, the deal may well be a factor in undermining this market distorting part of the international telecommunications regime and fostering a broader restructuring of the global communications order.

### **Potential problems with the GBT deal<sup>12</sup>**

Politics is the art of the possible. By that standard, the world trade negotiators deserve a pat on the back for passing the GBT deal, after 10 years of trying. The agreement is a step in the right direction. But it is quite another matter to declare it, as credit-grabbing victory bulletins did, a revolution, a breakthrough, a telecommunications D-Day. Much of that view is steeped in the belief that reality in the information sector is shaped by intergovernmental rules, rather than the other way around.

Of course, the people directly involved in the drafting, lobbying, analyzing, and implementing of the agreement have worked hard to seal the deal, and it is therefore natural for them to believe that the result of their attention has been a monumental change rather than a monumental effort. And because the trade community is influential, this negotiation-centric view of the world becomes the common perspective. Doubts are dismissed as protectionist, as if government agreements necessarily further free markets. Or it is argued doubters seek perfection in a messy world, whereas the agreement merely initiates a process. But that process has been going on for years, and would have continued. Thus, the

<sup>12</sup>The assistance on this section of Marc Austin, John Kollar, Jennifer Schneider, and Gene Fang is gratefully acknowledged.

question must be asked: does the WTO's basic telecommunications deal make much of a difference? Is it a cause or merely an effect of more fundamental change? And the answer is: The impact of the agreement is certainly much less than claimed. In some areas, it will make no difference to the process of liberalization. In others, the deal modestly accelerates processes that had started already. And in still other cases, it may even slow down future change. This will now be discussed.

*The scope of the agreement is being exaggerated*

The offers of market access by the various countries, according to the WTO, account for over 90% of telecom revenue worldwide. Some estimates claim up to \$1 trillion in gains to global income. According to the US government, the agreement will lead to an 80% reduction in the costs of telephone calls and create up to a million new jobs in the US alone. Similar pronouncements were issued by other countries, and repeated by an underinformed press. But are they correct?

Some skepticism is in order. Let us begin with the scope of the agreement. It is less remarkable than numbers suggest. 73.6% of the world telecommunications market is accounted for by the US, Japan, and the EU. These countries had already committed themselves to liberalization and market opening as a result of their own internal evolutions. They were also in the process of opening to each other. To mention but two among numerous examples, BT had already announced its purchase of MCI; and Ameritech was part-owner of Belgacom.<sup>13</sup> Many other countries have been similarly moving towards liberalization and market opening on their own, including Australia, Mexico, New Zealand, Canada, and Hong Kong.

Furthermore, simply adding the tele-populations is also misleading because the GBT agreement is not a treaty in which the signatories agree to the same set of actions. It is more in the nature of a series of pledges. The scopes of national commitments differ greatly. Many countries attached conditions to, or delayed the date of their implementation, thereby in effect providing a protective or protectionist cushion.

Foreign investment commitments are an example. Fifty-six countries made such commitments. Of these, 21 countries are committed to implement the agreement at a later date (from 1999 for Peru to 2004 for Pakistan), and 18 have limitations on foreign investments (either on incumbents, or on selected services). For example, Canada maintained its current limit on foreign carrier ownership of 46.7%, including a limit of 20% for direct ownership—in facilities-based suppliers. Japan maintained 20% ownership limits for NTT and KDD. The major European countries reserved the right to maintain state holdings in their national carriers, including France Telecom, Deutsche Telekom and Telefonica of Spain. In Portugal, only companies established in the country will be able to offer international services. Only 17 nations have made foreign investment commitments without reservations.

Of the offers covering voice telephony, 40% are to be phased in over various periods of time.<sup>14</sup> Most of the early adoptees are the major telecommunications countries already engaged in such liberalization.

Among excluded services, the transmission of audiovisual material is particularly important. As telecommunications and broadcasting converge through digital technologies, the audio-visual exclusions could become a huge loophole in liberalization. Internet-style video, for

<sup>13</sup>Noam E, Singhal A. Supra-national regulation for supra-national telecommunications carriers? *Telecommunications Policy*, 1996, 20(10), 769–787

<sup>14</sup>Data on telecommunications market covered by the WTO negotiations on basic telecommunications' *Informal Background Information*, WTO 17 February 1997.

example, would be excluded by countries that define it as a one-way service to the public.

The deal's exemptions and exceptions are not the end of the story. In implementing it, democratic countries will not meekly follow their trade negotiators. The US Congress, for example, has been vocally concerned about foreign investment restrictions in Mexico, Canada and Japan, and may well intervene in the future. Already, the US has begun to undermine the WTO procedures in its dispute with Europe over the Helms-Burton law dealing with Cuba. The US argued that the matter affects its national security and is thus exempt from panel adjudication. Similar exemptions could be claimed, in telecommunications, for a variety of reasons, eg environmental protection, employment, etc. The WTO panels could ignore such arguments, but this points precisely to their problem in terms of democratic legitimacy—they are likely to be single-issue oriented experts focused on the trade dimension. The political process is unlikely to accept such abrogation of powers—not to mention sovereignty—and will therefore continuously add conditions affecting countries' implementation.

The treatment of satellite communications shows the hollowness of many of the offers. This segment of telecommunications is potentially the most instantaneously open to international entry. It is also the segment where many countries chose to delay market access from the normal 1 January 1998 deadline. Argentina, for example, limited fixed satellite service via geostationary satellites in order to protect its satellite operations. Brazil required firms to use foreign satellites only when they "offer better technical, operational, or commercial conditions".<sup>15</sup> Of the 52 countries that agreed specifically to include satellite services in their offers, 23 chose to delay access. Canada agreed to eliminate Telsat Canada's exclusive rights on satellite facilities and earth stations serving the North American market only by the year 2002. Partly in response the US took an exemption from providing MFN treatment for digital broadcasting, direct-to-home video services via satellite and digital audio radio services. It argued that these services are defined in the US as telecommunications, but in other countries as broadcasting (which is outside the deal), which would therefore be asymmetrical discrimination against US providers in other countries.

Thus, the most likely competitive entry route by international carriers—satellite communications—is on a slow track for most countries, whereas other and less likely entry routes are becoming formally open, possibly because such entry poses no competitive threat. It was, of course, always possible for countries to delay opening to satellite competition. But with the deal, such delay has become part of an internationally agreed-upon framework, and there are fewer grounds to complain.

#### *Liberalization and market opening were happening anyway*

As mentioned, an increasing number of countries had already initiated various unilateral and bilateral liberalization initiatives and would have continued to do so. The US has been liberalizing at home at an accelerating pace, and has been pushing the same agenda internationally. In Europe, the European Commission has moved its members toward liberalization, privatization, and market opening. Europe had internally agreed on substantial liberalization by 1998. The GBT agreement did not advance that schedule.

<sup>15</sup>*Communications Daily, A Review of WTO Commitments*, 1 May 1997.

The developing world, too, turned away from state monopolies. Much of Latin American telecommunications has been privatized already, motivated by the need to lower debt burdens and by efforts to push firms and bureaucracies toward economic reform. Often, developing countries liberalized to attract foreign investment. Even before the GBT agreement, international opening has generated, in a few short years, a truly astonishing number of trans-border telecommunications investments, with no end in sight.<sup>16</sup> Several of the largest carriers have already achieved a significant penetration of international markets. According to the FCC, in 1996, BT was present, directly or by way of venture activities, in markets accounting for 80% of multinational corporations, and of 57% of all international voice traffic.<sup>17</sup> AT&T has a similar, but lower, market penetration. GlobalOne, another of the main alliances, was said to have an even greater reach. The GBT increases the opportunities for such deals marginally, but further opening would have continued in any event.

This is not to say that there will be no effects at all of the deal. Some reluctant countries may have been pushed to go a bit further than otherwise. But since they might still be able to retract in the implementation phase, the jury is still out.

#### *The WTO may slow down liberalization*

In the WTO, countries that pioneer policy reform are likely to find themselves in the minority. The WTO will be dominated by coalitions of countries that play the international game well and take a centrist position on reforms, with an emphasis on stability, gradualism and international compatibility. This could hold back change by reducing national experimentation and by raising the transaction costs of reform.

The notion of the WTO as an agent of change may be wishful thinking. In telecommunications, the history of international agreements, going back to the 19th century, has been one of cartel protection. It would be surprising if the new supranational regulatory arrangements were not similarly captured overtime by those desiring stability rather than change. In the negotiations leading up to the WTO agreement, large firms influenced outcomes, while few nongovernmental organizations or consumer organizations took an active role. This will continue. The complexity and proliferation of WTO telecom trade disputes will leave only the largest of players able to afford continued participation.

The life cycle of regulatory institutions—from youthful vigor to senescent status-quo protection—has often been commented upon. Why should the WTO be different, after its early burst of energy is dissipated?

The ITU, the WTO's sister organization, has been captured by the PTTs since its birth more than a century ago, even though this has improved in recent years. There is no reason to believe that similar forces will not accumulate and affect the WTO. Some argue that the WTO is more user friendly and less 'specialized' than the ITU, and hence less susceptible to stakeholder pressure. But in reality, the WTO is just as specialized, only along a different dimension. Trade is important, but surely it is only one factor in a complex society. Those stakeholders most affected will make the greatest investment in the process of influencing the institution.

In institutionalizing that specialization, the WTO creates a distance to politics. There is no openness of the dispute resolution process, no

<sup>16</sup>Noam and Singhal *op cit* Ref 13.

<sup>17</sup>Federal Communications Commission International Bureau, *Global Communication Alliances: Forms and Characteristics of Emerging Organizations* prepared by Douglas Galbi and Chris Keating, 8 February 1996.



hearing mechanism, no public record. Considerations other than trade could be disregarded. All this will inevitably lead to backlash.

*The WTO process itself will be slow*

Given the 10 years of deliberations needed in coming to an agreement, there is little reason to believe that the WTO telecommunications decision making process will be speedy. The WTO, as a multi-national bureaucracy, will respond to the disputes associated with rapid change in the telecommunications industry—such as callback and Internet telephony, to mention two recent examples—even less quickly than most national regulators. Its processing capacity is limited. Inevitably, yet another layer of telecommunications bureaucracy will be created.

It is claimed that the new process, by setting a variety of timelines for the resolution of disputes, will speed up liberalization. Is that true? There is indeed an agreed-upon time schedule, but it applies only to the WTO segment of a dispute. Even there, administrative bottlenecks may create problems, and create stopped clocks and multi-stage decisions. More importantly, there may be lengthy procedures in advance of a case reaching the WTO.

The WTO is an organization of governments, not a civil court. Unlike bringing their grievance to a national court, companies do not present cases, governments do. Companies must rely on their governments to put forward their complaints in an intergovernmental procedure. The firm must convince its national government to back its claim and present it to the other governments, the arbitration panel, etc.

This means that: (1) the government will have to conduct its own investigation into the complaint; (2) it will next have to make sure that its support of firm A will not negatively impact the trade position or wellbeing of another national firm B; (3) it may even need to make a ruling on whether the firm is in fact a national firm or a foreign entity; (4) it will have to decide whether the case is worth spending national resources in a protracted WTO battle.

The US government already has made it clear that it will not take all complaints to the panel but only especially grievous incidents against a single signatory to the overall GATS agreement, not necessarily in the telecommunications sector.

Even after a WTO panel decision, a company may not receive satisfaction. In the WTO, negotiating bottlenecks may be resolved by linking issues. Concessions in one sector can be traded off against concessions in another. Thus, even after a panel decision, a government can choose, in theory, to pair off acquiescence to a restriction in telecommunications in another country in return for the acceptance of a restriction of its own over, say, toothpaste.

Contributing to slowness is the inevitable jurisdictional dispute among the WTO, the ITU, and other multinational bodies. This is inevitable, despite good-faith declarations of intended collaboration by the principals, because the various interests will invariably engage in forum shopping to find a congenial result. For example, trade barrier issues (the WTO's mandate) could be re-defined as technical standards issues (the ITU's mandate), etc.

This is predictable. Interest groups pragmatically desire the regulatory level and body whose outcome they like best, regardless of their official ideology. In the case of the WTO, various PTOs with international

ambitions, and in particular large users of telecommunications services, perceived that they would get better results from the WTO to force a few slow but profitable countries to speed up liberalization, and to extract some concessions for steps they would have taken anyway.

All of this means that the dispute resolution process may require a long and expensive road to justice for those firms with legitimate complaints.

It is claimed that the formalized WTO structure will facilitate the exchange of information on countries' policies. Perhaps. But such exchange already takes place in the numerous international conferences, trade shows, and through trade magazines and consulting reports. It does not require the existence of the WTO for France to find out about South Korea's interconnection policy.

#### *The problems of international agreements*

A fundamental question in evaluating the GBT is whether agreements on regulatory policy across international boundaries are necessarily a good thing. Jagdish Bhagwati, one of the world's most respected trade economists, and one of the WTO's own senior advisors, has argued that the effort to harmonize regulations and standards among trading nations is hopeless and counterproductive. Free trade is most efficient when there are differences among nations that can be exploited by industry seeking to specialize. When nations seek to harmonize their regulatory environments, they remove many of the gains from trade that we would have in a less rigidly ordered world.<sup>18</sup>

The stated justifications are to facilitate interaction, eliminate negative externalities, prevent free-riding, and gain economies of scale.<sup>19</sup> But countries differ in endowments, technologies, preferences, institutions, and coalitions. Why then should they share a regulatory approach for telecommunications? The WTO and its GBT are just another instance of the permanent struggle between centralism and diversity, between globalism and localism, between state control and market force. Each has some advantages, and it is far from clear that a policy agreement around the world is the better way, even for those seeking liberalization.

Why not differentiate telecommunications policy? After all, telecommunications encroach on domestic politics, touching on sensitive issues such as a nation's control of its communications infrastructure, the funding of social objectives, redistribution and employment policies,<sup>20</sup> to name just a few examples. Different countries have different tastes for the trade-offs among these issues.

It is argued that there is nothing to prevent a country from becoming more deregulatory than the WTO framework. True. It is also claimed that the agreement puts pressure on countries not to be out of line in liberalizing. Also true, and in conflict with the first statement. By the same logic of international compatibility, the agreement would strengthen those opposed to far-reaching reforms that are out-of-line internationally. Hence, a possible effect will be to institute a certain parallelism of change-speeding up the slow countries, slowing down the leading edge.

Much is made of the acceptance of a regulatory reference model, making it seem like the adoption of some universal charter of telecommunications freedom. The reality is more modest. The 'model' principles are mostly procedural, not substantive. They speak of 'independence' of the regulator, but this merely refers to independence from the monopolist, not from politics. As if formal independence prevents capture. The

<sup>18</sup>Bhagwati, J and Hudec, R (eds) *A Fair Trade and Harmonization: Prerequisites for Free Trade?* MIT Press, Cambridge, 1996.

<sup>19</sup>Leebron, D, in Bhagwati, J and Hudec R (eds) *A Fair Trade and Harmonization: Prerequisites for Free Trade?* MIT Press, Cambridge, 1996.

<sup>20</sup>Beltz *op cit* Ref 7, 64.

principles speak of openness, public licensing criteria, transparency, and objective allocation procedures. All this sounds good, but is worth little because of its vagueness, if a government drags its feet. For example, an openness of process can mean very little outside of formal meetings, whereas most serious work gets crafted outside the public 'sunshine' on the senior staff level before ceremoniously reaching the official decision event.

Entirely missing from the Reference Paper is a principle against public and private monopolies in telecommunications. All the agreement does is prevent discrimination against one set of rival entrants and in favor of another, or its unfair extension into competitive segments. But there is no restriction against a legal as a natural monopoly *per se*.

The most substantive aspects of the model rules are commitments to a non-discriminatory universal service burden (had anyone disagreed before on that issue?) and interconnection. That is indeed important, but it is entirely derivative of the existence of competitors. And the model principles do not require competition. They merely require, *if* competition is permitted, that it be non-discriminatory, including in interconnection, cross-subsidization, and access to information. This is useful for those situations where a country permits competitive entry on paper, but somehow wishes for the entrants, especially foreign ones, to fail. This is useful but not critical. The experience of liberalizing countries has been that once a pro-competition policy was adopted, new entrants actually received some form of regulatory protection against the massive power of the incumbent. The reason is that after embracing a liberalization policy, governments do not want it to fail (unless such liberalization is purely the result of foreign pressure).

There are no shortcuts to the internal dynamics of overcoming the traditional supplier monopoly by entry and strengthening the role of the user community.

## **Conclusion**

As the above discussions indicate, there are distinctly different arguments one can make about the the GBT deal's implications for global telecommunications. From a skeptic's standpoint, the benefits of any new international collaboration must be weighed against the transaction costs incurred, and in particular against the risk that multilateralism may reduce policy innovation at the national level.

In many cases, the best coordination mechanism would be through market forces and arbitrage rather than through inter-governmental collaboration. It is true that market forces by themselves do not deal with all policy problems, such as redistributive goals, negative externalities, law enforcement, and the transition to a competitive system that may require interconnection arrangements. But these are primarily national issues, calling for differentiated national responses. These national policy responses, in turn, would create opportunities of entry or prevent them. And the differentiation in offerings and pricing creates opportunities for arbitrage and other mechanisms to whittle at national restrictions. This process may seem less elegant than a set of multilateral agreements. But the implementation of the latter will not prove to be elegant, either.

Thus, from this skeptical standpoint, the GBT deal needs to be seen in the proper perspective. It will unleash very little that is not already in

motion due to the fundamental transformation of global telecommunications. It is the result of these forces, not its trigger. It may formalize the process a bit, but it is not clear whether formality of process will drive change or slow it down. It creates a supra-national mechanism, but it is not clear whether supra-nationalism is good for telecommunications reform. In the past, it was not. The agreement pushes some countries toward some reforms. But the effectiveness of liberalization and the significance of telecommunications to economic development had already become too clear to be resisted, even if unilateral reforms are repackaged as multilateral trade concessions. It provides an international forum more congenial to large users, but those organizations would have found other ways to make their voices heard. On the whole, therefore, the deal, while useful in some aspects and towards some countries, will turn out to be modest in impact.

Alternatively, one could argue that the GBT does, in fact have the potential to be extremely significant for global telecommunications. In this view, there is no reason to believe that the WTO's role will prevent governments from pursuing innovations in national policy, at least not innovations that are consistent with free trade and liberalization. More generally, if one takes immediate, total liberalization of all market segments everywhere in the world as the baseline against which to measure the degree of change, then of course there are grounds for suggesting that the commitments do not go far enough, multilateral cooperation is not fast enough, and so forth. But this is an appropriate starting point of analysis.

For more than a century, telecommunications has been subject to extensive state control at the national level, while at the multilateral level there have been no rules obliging governments to allow foreign companies to compete. Indeed, the collective institutional frameworks of the traditional global communications order—the international regimes for telecommunications, radio spectrum management, and satellite systems—were designed to limit or preclude foreign competition. Now this old order is breaking down (a process that has been gathering momentum for some time) and the GBT deal adds speed to its fall. It applies market opening trade principles to basic telecommunications services in 69 countries accounting for 90% of the global market; will spur governments to undertake deep, pro-liberalization regulatory reforms; and institutionalizes multilateral mechanisms that allow governments to pursue alternative policy approaches, but within an agreed set of parameters and under conditions of transparency.

There is widespread hope that the GBT deal will help to establish a new architecture for global telecommunications policy that facilitates increasingly deep liberalization in the years to come. Whether that hope becomes a reality will depend on how it is implemented in national policy, multilateral agreements, and market decisions over the years to come.