

MEXICO – MEASURES AFFECTING TELECOMMUNICATIONS SERVICES

Request for Consultations by the United States

The following communication, dated 17 August 2000, from the Permanent Mission of the United States to the Permanent Mission of Mexico and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Mexico pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article XXIII of the General Agreement on Trade in Services (GATS) regarding Mexico's commitments and obligations under the GATS with respect to basic and value-added telecommunications services.

Among other things, Mexico's GATS commitments and obligations require Mexico to:

- (1) provide market access and national treatment for basic and value-added telecommunications services (GATS Articles XVI and XVII and Mexico's Schedule of Specific Commitments annexed to the GATS);
- (2) maintain appropriate measures for the purpose of preventing a major supplier of basic telecommunications services from engaging in or continuing anti-competitive practices, such as anti-competitive cross-subsidization (Section 1 of the Reference Paper on Pro-Competitive Regulatory Principles (the Reference Paper), which Mexico has inscribed in its Schedule of Specific Commitments as "additional commitments" pursuant to GATS Article XVIII);
- (3) ensure interconnection with a major supplier at any technically feasible point in the network; under non-discriminatory terms, conditions and rates; in a timely fashion; and at cost-oriented rates that are transparent, reasonable, and sufficiently unbundled; and to provide recourse to an independent domestic body to resolve interconnection disputes within a reasonable period of time (Section 2 of the Reference Paper);
- (4) administer any universal service obligation in a transparent, non-discriminatory, and competitively neutral manner that is not more burdensome than necessary for the kind of universal service defined by Mexico (Section 3 of the Reference Paper);
- (5) ensure that its regulatory body is not accountable to any supplier of basic telecommunications services and that the regulator's decisions and procedures are impartial with respect to all market participants (Section 5 of the Reference Paper);

- (6) administer in a reasonable, objective, and impartial manner its laws, rules, regulations, and other measures of general application affecting trade in basic and value-added telecommunications services (GATS Article VI:1); and
- (7) ensure access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for the supply of basic and value-added telecommunications services and ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available (GATS Annex on Telecommunications, Sections 4 and 5).

Since the entry into force of the GATS, the Government of Mexico has adopted or maintained anti-competitive and discriminatory regulatory measures, tolerated certain privately-established market access barriers, and failed to take needed regulatory action in Mexico's basic and value-added telecommunications sectors. These acts and failures to act raise serious questions regarding whether Mexico is in compliance with its GATS commitments in these sectors. For example, Mexico has:

- (1) enacted and maintained laws, regulations, rules, and other measures that deny or limit market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- (2) failed to issue and enact regulations, permits, or other measures to ensure implementation of Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- (3) failed to enforce regulations and other measures to ensure compliance with Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- (4) failed to regulate, control and prevent its major supplier, Teléfonos de México (Telmex), from engaging in activity that denies or limits Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico; and
- (5) failed to administer measures of general application governing basic and value-added telecommunications services in a reasonable, objective, and impartial manner, ensure that decisions and procedures used by Mexico's telecommunications regulator are impartial with respect to all market participants, and ensure access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for the supply of basic and value-added telecommunications services.

A list of specific actions and failures to act by the Government of Mexico of the sort described above is set forth in Annex 1.

The United States considers that the action and inaction described above and specified in Annex 1 may be inconsistent with Mexico's GATS commitments and obligations, including Articles VI, XVI, and XVII; Mexico's additional commitments under Article XVIII as set forth in the

Reference Paper inscribed in Mexico's Schedule of Specific Commitments, including Sections 1, 2, 3 and 5; and the GATS Annex on Telecommunications, including Sections 4 and 5.

We look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.

ANNEX 1

LIST OF MEASURES

- (1) The International Long Distance Rules published by the Secretariat of Communications and Transportation in the Diario Oficial on 11 December 1996 ("Reglas para prestar el servicio de larga distancia internacional que deberán aplicar los concesionarios de redes públicas de telecomunicaciones autorizados para prestar este servicio") (hereinafter "1996 International Long Distance Rules"), which, among other things, prevent service suppliers of the United States from supplying cross-border telecommunications services and from obtaining competitive rates for the termination of international traffic consistent with Mexico's commitments and obligations under the GATS.
- (2) The Agreement of the Secretariat of Communications and Transportation establishing the procedure to obtain concessions for the installation, operation, or exploitation of inter-state public telecommunications networks, pursuant to the Federal Telecommunications Law, published by the Secretariat of Communications and Transportation in the Diario Oficial on 4 September 1995 ("Acuerdo por el que se establece el procedimiento para obtener concesión para la instalación, operación o explotación de redes públicas de telecomunicaciones interestatales, al amparo de la Ley Federal de Telecomunicaciones"), which, among other things, prevents service suppliers of the United States from exercising effective control over concessionaires authorized to provide telecommunications services in Mexico consistent with Mexico's commitments and obligations under the GATS.
- (3) Failure by the Government of Mexico to permit the cross-border supply of basic telecommunications services over leased lines consistent with Mexico's commitments and obligations under the GATS.
- (4) Failure by the Government of Mexico to issue regulations and permits for the supply of basic telecommunications services by locally-established commercial agencies over leased lines consistent with Mexico's commitments and obligations under the GATS.
- (5) Failure by the Government of Mexico to maintain appropriate measures (such as dominant carrier regulations) to prevent Telmex from engaging in or continuing anti-competitive practices consistent with Mexico's commitments and obligations under the GATS, including but not limited to:
 - (a) anti-competitive cross-subsidization;
 - (b) anti-competitive pricing practices;
 - (c) discriminatory application of tariffs to calls to regions where competitive suppliers do not have facilities;
 - (d) the use of unregistered tariff and discount plans;
 - (e) requiring competitive carriers to lease unnecessary private lines;
 - (f) discriminatory billing and collection practices;
 - (g) use of information obtained from competitors with anti-competitive results, such as the improper use of presubscription information;

- (h) failure to make available to other service suppliers on a timely basis technical information about essential facilities and other commercially relevant information which are necessary to provide telecommunications services;
 - (i) refusal to provide private lines and circuits to competitive carriers on a timely basis;
 - (j) denial of private lines and circuits to certain Internet service providers (ISPs); and
 - (k) discriminatory treatment for calls to ISPs by Telmex.
- (6) Failure by the Government of Mexico to ensure – consistent with its commitments and obligations under the GATS – local, long-distance, and international interconnection with Telmex at any technically feasible point in the network; under non-discriminatory terms, conditions and rates; in a timely fashion; and at cost-oriented rates that are transparent, reasonable, and sufficiently unbundled, including for calls terminating in cities in which competitive suppliers lack facilities, through, for example:
- (a) the Secretariat of Communications and Transportation Resolution Concerning Interconnection Plans for Public Long Distance Networks, dated 17 June 1994 ("Resolución sobre el Plan de Interconexión con Redes Públicas de Larga Distancia");
 - (b) the 1996 International Long Distance Rules;
 - (c) the Administrative Resolution by which the Secretariat of Communications and Transportation determines the tariff regulations applicable to the interconnection services of public telecommunications networks authorized to provide long distance services, dated 26 April 1996 ("Resolución administrativa por la que la Secretaría de Comunicaciones y Transportes establece la regulación tarifaria aplicable a los servicios de interconexión de redes públicas de telecomunicaciones, autorizadas para prestar servicios de larga distancia");
 - (d) the Administrative Resolution by which the Secretariat of Communications and Transportation, through the Federal Telecommunications Commission, establishes the costs of the interconnection projects with regard to the signalling, presubscription and numbering that shall be recovered by Teléfonos de México, S.A. de C.V. and Teléfonos del Noroeste, S.A. de C.V. in their local service operations, dated 28 May 1997 ("Resolución administrativa por la que la Secretaría de Comunicaciones y Transportes, a través de la Comisión Federal de Telecomunicaciones, determina los costos de los proyectos de interconexión en materia de señalización, prescripción y numeración que deberán ser recuperados por Teléfonos de México, S.A. de C.V., y Teléfonos del Noroeste, S.A. de C.V., en su operación de servicio local");
 - (e) Resolution No. P/271198/0281 of the Federal Telecommunications Commission setting forth rates and other conditions applicable to the interconnection between Teléfonos de México, S.A. de C.V., and Teléfonos del Noroeste, S.A. de C.V. with Alestra, S. de R.L. de C.V., dated 27 November 1998 ("Resolución por la que se establecen las tarifas y demás condiciones aplicables a la interconexión entre Teléfonos de México, S.A. de C.V., y Teléfonos del Noroeste, S.A. de C.V. con Alestra, S. de R.L. de C.V."); and

- (f) the August 1990 amendment by the Secretariat of Communications and Transportation to the concession title of Telmex ("Modificación al título de concesión de Teléfonos de México, S.A. de C.V.").
- (7) Failure by the Government of Mexico to resolve interconnection disputes within a reasonable period of time consistent with its commitments and obligations under the GATS.
- (8) Failure by the Government of Mexico to ensure that Telmex provides private lines and circuits to competitive carriers and other competitors consistent with its commitments and obligations under the GATS.
- (9) Failure by the Government of Mexico to enforce tariff registration requirements against Telmex and to ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available consistent with its commitments and obligations under the GATS.
- (10) Failure by the Government of Mexico to address on a timely basis complaints by competitive carriers regarding the quality of interconnection consistent with its commitments and obligations under the GATS.
- (11) Failure by the Government of Mexico to administer a universal service obligation in a transparent, non-discriminatory, and competitively neutral manner that is not more burdensome than necessary for the kind of universal service defined by Mexico consistent with its commitments and obligations under the GATS.
- (12) Failure by the Government of Mexico to ensure that its regulatory body is not accountable to any supplier of basic telecommunications services and that its decisions and procedures are impartial with respect to all market participants consistent with its commitments and obligations under the GATS.
- (13) Failure by the Government of Mexico to apply in a reasonable, objective, and impartial manner its laws, rules, regulations, and other measures, including measures of general application, affecting trade in basic and value added telecommunications services consistent with its commitments and obligations under the GATS, including but not limited to the measures listed above, and:
 - (a) Federal Law on Telecommunications, dated 18 May 1995 ("Ley Federal de Telecomunicaciones");
 - (b) Rules for Long Distance Service, published by the Secretariat of Communications and Transportation in the Diario Oficial on 21 June 1996 ("Reglas del Servicio de Large Distancia");
 - (c) Local Service Rules, dated 23 October 1997 ("Reglas del Servicio Local");
 - (d) Agreement by which the procedures for the registration of the telecommunications service rates are set forth pursuant to the Federal Telecommunications Law, dated 18 November 1996 ("Acuerdo por el que se establece el procedimiento para el registro de tarifas de los servicios de telecomunicaciones, al amparo de la Ley Federal de Telecomunicaciones");
 - (e) Federal Telecommunications Commission Resolution that sets forth the methodology for accounting separation according to which Teléfonos de México, S.A. de C.V. and

Teléfonos del Noroeste, S.A. de C.V. must deliver the accounting information referred to in Condition 7-5 of the modifications to the respective concession titles, published by the Federal Telecommunications Commission in the Diario Oficial on 1 December 1998 (Resolución que establece la metodología de separación contable por servicio bajo la cual Teléfonos de México, S.A. de C.V., y Teléfonos del Noroeste, S.A. de C.V., deberán entregar la información contable a la que hace referencia la Condición 7-5 de las modificaciones a sus respectivos títulos de concesión); and

- (f) the 1990 Telecommunications Regulation published by the Secretariat of Communications and Transportation on 29 October 1990 ("Reglamento de Telecomunicaciones").
- (14) Failure of the Government of Mexico to ensure access to and use of public telecommunications transport networks and services, including private lines and circuits, on reasonable and non-discriminatory terms and conditions for the supply of basic and value added telecommunications services consistent with its commitments and obligations under the GATS.
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