

**Caribbean Seminar on Regulatory and Cost Issues
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Impact of the Reference Paper in the National Regulatory Authority Policies

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**The Regulators and
the Reference Paper (RP)**

RP provisions

Evolution of GATS provisions

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The Regulators and the Reference Paper (RP)

- **The changing role of the Regulator**
- **New targets for the Regulator**
- **What a Regulator need to know**

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**The Regulators and
the Reference Paper (RP)**

RP provisions

Evolution of GATS provisions

RP Definitions

- **User**
- **Essential Facilities**
- **Major Supplier (MS)**

RP provisions

- **Competitive safeguards (MS)**
- **Interconnection (MS)**
- **Universal service**
- **Licencing**
- **Independent Regulator**
- **Allocation and use of scarce resources**

RP provisions

Competitive safeguards

- **Target: to avoid that MS uses anticompetitive means as:**

- **Cross subsidisation**

- **Unfair usage of information provided by competitors**

- **Not providing timely technical and trade information on essential facilities**

RP provisions Interconnection

- **The interconnection will be provided by a MS at any point of the network technically feasible with non discrimination on tariffs, quality and time for delivery**
- **A public procedure for discussing the interconnection agreement will be available**
- **Interconnection agreements will be transparent**
- **A procedure for dispute settlement will be put in place**

RP provisions Universal service

- **Right of the Member to define the kind of universal service obligation he wants to maintain**
- **Such obligations will not be considered as anticompetitives if managed in a transparent, non discriminatory and neutral in competence, not being more burdensome than necessary**

RP provisions Licenses

- **Information publicly available**
 - **Criteria and timing for deciding on granting licenses**
 - **Terms and conditions of individual licenses**
- **Reason for denial of a license must be made known to applicant, on request**

RP provisions Independent Regulator

- The Regulator will be independent of any basic telecommunication service provider**
- The Regulator decisions and procedures will be impartial with respect to all market actors**

RP provisions

Allocation and use of scare resources

- **The procedure for allocation and use of scare resources (frequencies, numbering, rights of way) will be objective, transparent, timely and non discriminatory**
- **All frequency bands available will be published in the actual status except those used for governmental purposes**

Impact of the Reference Paper in the National Regulatory Authority Policies

**The Regulators and
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RP provisions

Evolution of GATS provisions

Evolution of GATS provisions

What sort of commitments are these ?

- **Non-discrimination**
- **Transparency**
- **Domestic Regulation**
- **Licensing and Authorization Requirements**
- **Interconnection**
- **Universal Service Obligations (USOs)**
- **Allocation and Use of Scarce Resources**
- **Competitive Safeguards**
- **Administrative Recourse**
- **Access to and Use of Public Telecommunications Transport Network and Services**

Evolution of GATS provisions

Where can these be found?

Framework Agreement

Reference Paper

Telecommunications Annex

**Other
GBT chairman's note**

Evolution of GATS provisions

Non-Discrimination

- **Most-favoured-nation (MFN) :** this is the most fundamental of WTO principles prevents discrimination among all WTO members countries and applies to all services whether scheduled or not (art.II) unless exempted (art. II Exemption)

Evolution of GATS provisions

Non-Discrimination

- **National treatment:** pertains to treatment of services and service suppliers once they are allowed to enter a market and applies only to scheduled services and is subject to any limitations stated in schedule (art. XVII)
- **Evolution:**
 - Telecommunications Annex: Access to public networks and services (5)
 - Reference Paper: Interconnection (2)

Evolution of GATS provisions

Transparency

- **Requires publication of all relevant measures (laws, regulations, administrative guidelines) of general application pertaining to trade-in services but not confidential (including commercial) information. WTO has to be informed of changes to these measures. (art. III.1 and art. III bis)**
- **Requires establishment of inquiry points to provide requested information (art III .4)**

Evolution of GATS provisions

Transparency (evolution)

- **Requires making publicly available all relevant information on conditions affecting access to and use of public telecommunications transport networks and services (PTTNS) including (Annex):**
 - **tariffs and other terms and conditions of service**
 - **technical interface specifications**
 - **information on relevant standards making bodies**
 - **conditions on terminal attachments**
 - **licensing, notification, and registration requirements**

Evolution of GATS provisions

Transparency (evolution)

- **Major suppliers have to make publicly available either their interconnection agreements or a reference interconnection offer (Ref. Paper 2.4)**
- **Licensing criteria, terms, and conditions of individual licenses (Ref. Paper 4)**

Evolution of GATS provisions

Domestic Regulation

- For scheduled services all measures of general application must be administered in a reasonable, objective, and impartial manner (art. VI.1)
- Must have objective and impartial review mechanism for administrative decisions through judicial, arbitral, administrative tribunals or procedures (art. VI.2).

Evolution of GATS provisions

Domestic Regulation

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Evolution of GATS provisions

Domestic Regulation (evolution)

- Regulator must be independent of supplier of PTTNS (Ref. Paper.5)
- Decisions and procedures of regulator must be impartial with respect to all market participants (Ref Paper .5)

Evolution of GATS provisions

Licensing and Authorization Requirements

- Licensing and authorization requirements are permitted
- Licensing (including technical standards) requirements and procedures to supply a scheduled service must not constitute barriers to trade. They must be objective, transparent, and not over-burdensome (art. VI.4)

Evolution of GATS provisions

Licensing and Authorization Requirements (cont'd)

- Status of and decisions about applications for authorizations to supply scheduled services must be provided to applicant in a timely manner (art. VI.3)
- There can be provision for recognition of other Members' licences; however this cannot be done in a discriminatory manner [Art. VII]
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Evolution of GATS provisions

Licensing and Authorization Requirements (evolution)

- **Terms, conditions and time required to get a license must be publicly available (Ref. Paper 4)**
- **Reason for denial of a license must be made known to applicant, on request (Ref. Paper 4)**

Evolution of GATS provisions

Interconnection

- **Competing service suppliers must be able to interconnect with dominant operator in a timely fashion, at any technically feasible point in the network, under non-discriminatory, transparent, and reasonable terms and conditions and at the same cost-oriented, unbundled rates as the dominant operator charges itself or its affiliate. [Ref. Paper (2)]**

Evolution of GATS provisions

Interconnection (cont'd)

- **Interconnection procedures, agreements and rates will be made publicly available [Ref. Paper (2)]**
- **There will be an independent mechanism to resolve disputes arising from interconnection negotiations, within a reasonable time [Ref. Paper (2)]**

Evolution of GATS provisions

Universal Service Obligations (USOs)

- **Member has a right to maintain the sort of USOs that it wants to maintain [Ref. Paper (3)]**
- **USOs must be administered in a transparent, non-discriminatory, and competitively neutral manner [Ref. Paper (3)]**
- **USOs must not be over-burdensome [Ref. Paper (3)]**

Evolution of GATS provisions

Allocation and Use of Scarce Resources (frequencies, numbers, rights of way)

- **Procedures for the allocation and use of scarce resources will be objective, timely, transparent, and non-discriminatory [Ref. Paper (6)]**
- **Current state of frequency allocation will be made publicly available [Ref. Paper (6)]**
- **Limitation on the availability of frequencies does not constitute a limitation on market access [GBT Chairman's Note]**

Evolution of GATS provisions

Competitive Safeguards

- Monopoly or exclusive suppliers can be maintained, if not contrary to scheduled commitments
- Monopoly cannot supply its monopoly service in a manner contrary to the country's MFN obligations and scheduled commitment [Art. VIII (1)]
- Monopoly cannot abuse its monopoly position if it also provides a scheduled service directly or through an affiliate [Art. VIII (2)]
- Countries must be prepared to enter into consultations with other Members to eliminate business practices which constrain competition [Art. IX]

Evolution of GATS provisions

Competitive Safeguards (evolution)

- **Dominant supplier cannot engage in anti-competitive cross-subsidization, use information in an anti-competitive manner and cannot withhold essential technical and commercial information [Ref. Paper (1)]**
- **Monopoly must accord access to and use of its PTTNS to any service supplier of any other member for a scheduled service on reasonable and non-discriminatory terms and conditions [Annex (5)]**

Evolution of GATS provisions

Administrative Recourse

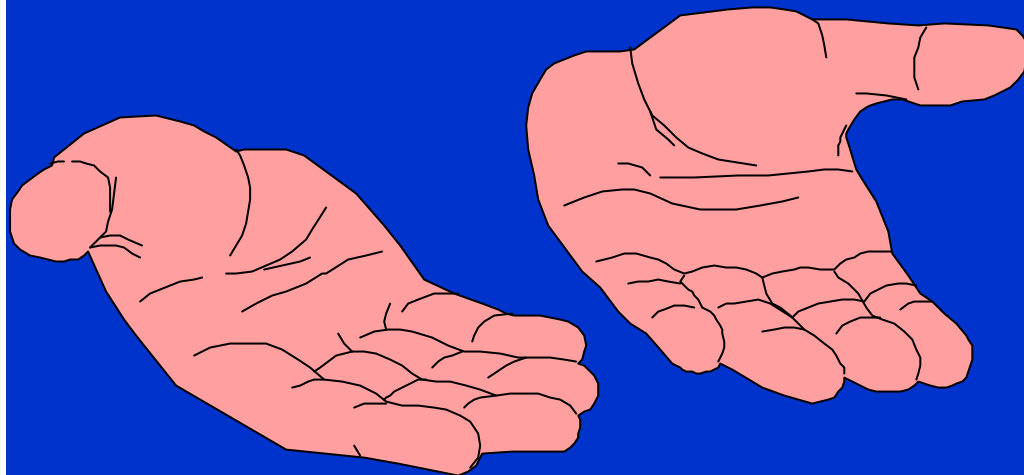
- Requirement to maintain judicial, arbitral, or administrative tribunals or procedures for prompt review and where justified appropriate remedies for administrative decisions [Art VI(2a)]
- Provision for recourse to an independent body to resolve disputes regarding appropriate terms, conditions, and rates for interconnection [Ref. Paper (2.5)]
- Provision for recourse to WTO Disputes Settlement Body(DSB) under Disputes Settlement Understanding(DSU)

Evolution of GATS provisions

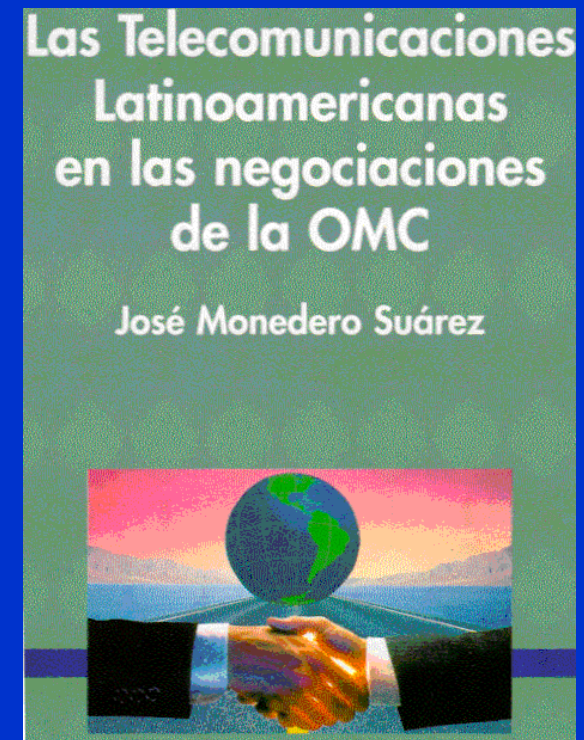
Concept		GATS	R.P.	Annex
No discrimination		MFN treatment (art.II) National treatment (art XVIII)	Point 2	Point 5
Transparence		Art.III y III bis	Point 2.4 Pointo 4	
Domestic Regulation	Requisitos	Art.VI.1		
	Rev.decisions	Art.VI.2	Pointo 2 Ppoint 5	
	Independence			
	Licencing	Art.VI.4 Art.VI.3	Point 4	
6 July 2000		Art.VII		

Evolution of GATS provisions

Concepto		AGCS	DRR	Anexo
Domestic Regulat.	Universal Serv.		Point 3	
	Spectrum		Point 6	Ch.Paper
Competit. Safeguards	Acces guaranted			Point 5
	Dominant position	Art.VIII y IX	Point 1	
	Interconnetion		Point 2	



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- Download of presentation: www.cibertele.com