

CHAPTER III

WTO, Telecommunication Services Sector and India

In this chapter, formation of WTO from GATT, elements of GATS agreement and Agreement on Basic Telecommunication and India subscribing to the telecommunication protocol are discussed. The evolution of agreement on telecommunication services sector and India's subscription to the Telecommunication Protocol¹ under the GATS is the focus of the chapter.

From GATT to WTO

The Bretton Woods Conference of 1944 recognized the need for a comparable international institution for trade to complement the IMF and World Bank, the twin financial institutions (Harold, 1996). A charter of International Trade Organization was framed; but was still born for USA did not ratify the treaty. However, an agreement was provisionally reached as 'General Agreement on Trade and Tariff' popularly known as GATT. After eight rounds of negotiations, GATT was institutionalized into WTO. Seven rounds of negotiations occurred under GATT before the Uruguay Round started in 1986 and concluded in 1994 with the establishment of the World Trade Organization (WTO) as the GATT's replacement. The principles followed by GATT and the GATT agreement were adopted by the WTO, the institution, charged with administering and extending them. The Uruguay Round lasted for 87 months and brought in WTO as an institution. Apparently the Uruguay Round was held to evolve the rules on removing obstacles to international trade and to encourage global economic growth through greater trade (Paul, 2011).

Most of the developing and underdeveloped countries treated the tertiary sector, that is, the service sector, as domestic in character and ignored

trade in services taking them to be nothing tradable. This view underwent a sea change through the intervention of the developed countries that demanded a multi-lateral treaty on services (GATS) just like the one in goods (GATT). Services trade liberalization including telecommunication services was a bone of contention and no consensus could be achieved at the negotiating table at Uruguay initially. It became clear that insistence on services and a waiting for a consensus on services also, would lead to failure of the entire process. Overcoming all these difficulties the negotiations went ahead and out of the 15 subjects of deep negotiations², discussions and diplomacy, The Final Act³, a draft as prepared by the then Director General of GATT, Mr. Arthur Dunkel was signed by 125 countries on 15 April 1994 whereby it was mandated that the institutionalized mechanism, i.e. WTO would come into force on 1st January 1995 at Marakkesh, Morocco (Kaul, 2010). Even though the multilateral treaty for trade was signed as scheduled, it came into being without completely solving issues on services trade scenario. In spite of the fact that the member countries could not reach a consensus on all the issues of discussion, the conclusion of the trade negotiations at Uruguay was a historic event in the post- Cold War global economy. It covered almost all trade, from tooth brush to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatment (Bhaumik, 2006).

The success of the Uruguay round of negotiations consisted in the fact that it created a defined path for future trade negotiations and that it gave a structure and frame work to the negotiating parties. Further, the 1994 WTO treaty mandated that negotiations to progressively liberalize trade in services including telecommunications were to be held as scheduled. Single undertaking approach of the multilateral treaty is an important principle of WTO. It refers to the principle that, virtually every item of the negotiation is part of a whole and indivisible package and cannot be

agreed separately. It holds that nothing is agreed until everything is agreed⁴. As all WTO agreements are held together as a single undertaking, member countries cannot selectively choose which agreement they will join. The institutionalized WTO along with all of its agreements is a single package that member states must join on an ‘all or nothing’ basis⁵.

WTO is the medium used by the block of developed countries to ensure that the developing and the under developed countries who are dependent on their trade relations with the developed countries came to the table of continuous negotiations for ensuring a structured free trade. The mandate of WTO included ensuring that the developing countries open up their market (i.e. removing tariff and non-tariff restrictions) irrespective of the political ideologies of governance. Hence, it was the beginning of the separation between political (ideology based) governance of a country and that of trade governance in the world. WTO as an institution for governance of world trade may be viewed as the result of the lessons from the failures/mistakes of prior attempts to bring in a binding trade agreement. Even though trade in goods was the moot point in the beginning of discussions, the scope expanded to other areas including services due to the persisting demand of the developed countries. The developed countries faced resistance from the other side against inclusion of services trade in the negotiations. It was because services had become a developed segment in many industrialized countries as a result of the advanced level of agriculture and industrialization they attained. For many developed countries nearly 70 percent of their GDP came from the tertiary (services) sector.⁶ But it was not so for the developing and the underdeveloped countries. That itself pointed to a huge market of opportunities for the developed countries. Thus, for such developed countries formation of WTO – for the governance of trade in goods and services - was viewed as beneficial for their future growth.

GATS – the services agreement under the WTO

It is already seen that when WTO came into being, the members could not fully agree on services trade, in general and trade in telecommunication services in particular. With a specific clause to revisit the agreement in five years time WTO was formed. Further, in particular with respect to telecommunications, members initially agreed on Value Added Services. As WTO came into being members decided to negotiate further on Basic Telecommunications. The WTO countries recognized the growing importance of trade in services by framing the General Agreement on Trade in Services (GATS), a multilateral agreement dealing exclusively with the services sector.

GATS mandated progressive liberalization and continuing discussions for ensuring it. The preamble of the GATS states unambiguously that the agreement is for contributing to trade expansion ‘under conditions of transparency and progressive liberalization and that the agreement would serve promotion of the economic growth of all trading partners and the development of developing countries⁷’. General Agreement on Trade in Services (GATS) is a multi-lateral agreement and the WTO members are, per se, part of the GATS agreement also. But, GATS have incorporated in-built flexibility in its framework. The GATS general obligations and disciplines do not, in themselves, impose any obligation upon the member countries to open up its market in all services/a specific services sector/sub sector. The commitments on market opening and liberalization are expressed in the schedules to the agreement. A member country is expected to follow the obligations to that extent as it has undertaken with respect to a service/ sub sector.

The GATS framework lists various obligations and disciplines for promoting international trade and investment in the services sector. GATS general obligations are applicable to all services sectors including

telecommunications. Most Favored Nation and Transparency clauses are very important general obligations.

Most Favoured Nation (MFN):

Fundamentally, WTO is built on a foundation of non-discrimination which has two major components: the Most Favoured Nation rule (Article II) and the National Treatment Policy (Article XVII).

The Most Favored Nation rule (MFN)⁸ has been a main feature of international trade policy for a long time. It is intended to remove and replace the frictions, bullying and distortions of power-centric (bilateral) policies with the guarantees of a rule - oriented framework where trading rights are not dependent on the individual participants' economic or political clout. Under MFN rule and national treatment policy, the best access conditions conceded to one country is automatically extended to all other participants in the system. Thereby, benefits are extended to all, without additional negotiating efforts. In the context of the GATS, the MFN obligation is applicable to any measure that influences trade in services in any sector under the GATS agreement, irrespective of specific commitments. Exemptions could have been sought at the time of the acceptance of the agreement. They are contained in country-specific lists, and their duration must not exceed ten years in principle.

Transparency

Article III of GATS incorporates the principle of transparency. WTO members are required to publish the trade regulations they frame and implement. They have to ensure that their decisions affecting trade are notified to all WTO members and also to the WTO Secretariat. WTO has a Trade Policy Review Mechanism (TPRM) periodically reviewing the laws and regulations of a member country.

Market Access (Article XVI)

Paragraph 5(a) of the GATS Annex on Telecommunications states that each member is bound to ensure that a service supplier of another member is given access and freedom to use public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for the supply of a service included in the schedule. This was to ensure the principle of non-discrimination within a nation state, among the service suppliers. Market access commitment entails that the government allow foreign entities to operate in its domestic market. If a government limits the number of licenses it would issue to foreign entities in a sector, then that is a market access limitation. In GATS, it applies only where a country has made a specific commitment as exemptions are allowed.

National Treatment (Article XVII)

The underlying rationale behind national treatment⁹ is to ensure that tax and other domestic regulations are not used to restrain trade or to discriminate between national and foreign entities. The national treatment obligation is found in Article XVII of GATS.

Services: GATS definition under the WTO

According to GATS Art. I (3) (b) 'services' are defined as 'any service in any sector except services supplied in the exercise of governmental authority'. This is an inclusive definition where only a particular category of service alone is specifically excluded from the purview of the definition. Thus, the definition proves that GATS has huge potential to affect the day to day lives of the people world over. By providing such a wide definition for services GATS has ensured that its relevance would continue unquestionably. It also has the effect that the governments would free themselves from the activity of providing services, which could be provided by corporate bodies/business entities in competition. Thus, the influence of corporate bodies over the society would get established and

the governments would get reduced to the role of maintaining law and order in the society.

Art. I (3) (c) declare that all services sectors are covered by GATS except those sectors supplied 'neither on a commercial basis, in competition with one or more service suppliers'¹⁰. Thus, GATS, per se, stands for bringing competition in the area of providing services. A school of thought in favor of unbridled competition advocates that competition is the most important self-regulator in the world¹¹. It would level all inefficiencies; correct the manipulative manners and pricing distortions, thus leading the society as a whole to genuine development and growth. GATS have mandated that a service supplied in the exercise of governmental authority¹² is not a service under the GATS. To bring a service within the purview of GATS, it has to be brought out of Governmental authority and it should be provided on a commercial basis in competition with one or more service providers.

Communication services under the GATS

Trade in communication services (under various modes) was taking place in the world. It was not captured or measured adequately. GATS was the first ever attempt to bring in a framework of rules to harness the international trade in services and communication services being one of the most important services segment naturally figures in the GATS list of services classification. Communication services are one of the twelve services identified and listed by the GATS. It is sectorized into five categories. Telecommunication services are one of them. They are the following:

Communication Services

- A. Postal services
- B. Courier services
- C. Telecommunication 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 data base retrieval
 - k. Electronic data interchange (EDI)
 - l. Enhanced/value-added facsimile services, incl. store & forward, store & retrieve
 - m. Code and protocol conversion
 - n. On-line information and/or data processing (incl.transaction processing)
 - o. Other
- D. Audiovisual services
- a. Motion picture and videotape production and distribution services
 - b. Motion picture projection service
 - c. Radio and television services
 - d. Radio and television transmission services
 - e. Sound recording
 - f. Other
- E. Other

Telecommunication services – a subsector under the Communication services

‘Telecommunication services’ is a sector, which in turn has many sub sectors, under the Services classification of Communication services, as given by the GATS. The sub sector services falling under the telecommunications sector are further detailed in the classification list of GATS. It clearly states that all forms of Voice, message and data transfer services including internet services fall within the purview of telecommunication services. It is in fact a narrative list and it may be considered as an inclusive list because the last entry in the list is ‘other’. Therefore, the list of services falling within the telecommunication services sector is not conclusive rather it is inclusive.

The ITU report known as Maitland report, after the name of its author, clearly put it down for the first time in the report of a world forum that ‘Telecommunications should be regarded as a complement to other investments and an essential component in the development process which can raise productivity and efficiency in other sectors and enhance the quality of life in the developing world’ (Peng, 1994). Rapid technological changes in the telecommunications industry (manufacturing and services) have a dual impact on the economics of trade in services (Hoekman, Carlos and Braga, 1997). It is already stated that telecommunication services play a dual role in an economy. (a) As a directly traded product/service and (b) As a facilitator of trade in other sectors. The Basic Telecommunications Agreement (BTA) deals with the first aspect and GATS deals with the second aspect. On the one side, as already noted, international telephony is considered as the prime example for cross-border delivery of a service and the growing technological progress and penetration promote its rapid expansion. On the other side, these developments tend to increase the tradability of services by unbundling production and consumption of information-intensive other

manufacturing/ service activities -- e.g., research and development(R&D), software development, various BPO activities, data entry services, inventory management and quality control, accounting, personnel management, secretarial functions, marketing and advertising, distribution of products and legal services.

The most dynamic component of trade in services is telecommunications (Hoekman, Carlos and Braga, 1997). The telecommunications industry has traditionally been an important component in the services trade of a nation, with monopolistic telecommunication companies buying and selling basic voice telephony. Technological, organizational and regulatory advances have further increased the importance of telecommunications services. This in turn has increased the tradability of several other services, as telecom operators provide the means by which the service producers can access their foreign clients. Growing network flexibility has opened a whole new range of telecom based services like cable television, e- mail, remote data processing, online data bases and finally the information super highway (Warren, 2001). In fact, the volume trade in telecommunications internationally was not captured adequately and accurately until recently. Even now the measurement of services trade is a contentious issue and poses various difficulties. The world community of nations in general accepted telecommunication as a necessary infrastructure for growth. It was prompted by the Maitland Report and its follow up reports. Further, when underdeveloped and developing countries approached international agencies for financial assistance, the developed countries clubbed financial assistance with consultancy for revival and insisted on implementation of recommendations. Such systematic approach of the developed countries compelled the poor nations to accept new thoughts and implement changes. Efficient services are inevitable for economic development, beneficial to customers and critical for international competitiveness of

the industrial and agricultural sectors in the economy. Because services are, typical inputs to production, higher prices and poor quality of services, act as cost escalation factors on production. Due to these reasons many countries have followed the path of unilateral liberalization and initiated policies for the enhancement of level of competition in service. (Pasadilla, 2004).

Modes of Supplying Services and Telecommunication Services

In the international trade in services either the supplier of the service or the receiver of the service or the service should cross the border. Otherwise, there is no need of GATS in the scenario. Then, it may be said that the trade in service took place within the borders of a country and as per the laws of the country. Therefore, GATS have defined the possible circumstances, where it has a role and it is one of the basic concepts of GATS. GATS have identified four modes of supplying services. It is the first multilateral agreement to cover not only cross border trade (Mode 1), but also when a service is provided in the home country (Consumption abroad – Mode 2) to foreign consumers (e.g. tourism or repair of foreign ships). The GATS also recognizes trade through establishment (Commercial presence- Mode 3) in foreign markets, and the movement of persons (Mode- 4) for the purpose of supplying services. An analysis of the modes of supplying services reveals many interesting facts. By clearly defining the various modes of supplying services or ways of supplying services GATS have succeeded in bringing down ambiguity, in its application. Further, such clear enunciation of means of supplying service would lead to better acceptance of the GATS Code among the countries. It would bring within its fold all possible forms of services and supply of services. The four modes of supply of service are detailed below: The division of modes of supply can be analyzed on the basis of:

- (a) Location of the Supplier in his home country (service provider in his own place)

- (i) Supplier of the service is in his home country and service is provided abroad - Mode 1 – Service across the border; eg: Internet enabled services, medical/legal transcription; overseas telephonic medical consultancy etc.
 - (ii) Supplier of the service is in his home country and service is provided in his home country – Mode 2 – Consumption abroad; eg:- tourists coming to the country, foreign students in the country etc.
- (b) Location of the Supplier abroad (Service provider moves abroad)
- (i) Commercial presence of supplier abroad by establishing a unit in the Foreign country – An Indian company setting up a branch abroad -Mode 3
 - (ii) Movement of Natural Persons – Independent professionals or Staff/employee of a company/firm etc. – Mode 4

It is very important to understand the modes of supply as it helps to understand the trade rights and benefits of a supplier under the GATS. It is inevitable to know which mode(s) of supply a service supplier is using to supply service because extent of commitments and obligations depend upon the agreements, which articulate the level of acceptance of conditions by each member country. The schedules spell out the levels of commitments and the types of restrictions applied, if any, in service sectors/any sub sector where commitments have been made. Conceptually, a service may embrace any of the possible modes of supplying it. Telecommunication services also may take any of the four modes of supplying it. Four modes of supply of telecommunication service given in an ITU presentation (Kelly, 2001) are the following:

- Mode 1- Cross-border (e.g., call re-origination¹³)
- Mode 2- Consumption abroad (e.g., calling cards)
- Mode 3- Commercial presence (e.g., Foreign Direct Investment)

Mode 4- Movement of staff (e.g., (Telecom related) consultancy services)

Mode 1 – Cross border supply of service: Under this Mode of supplying services, the service alone crosses the border. There will be a carrier carrying the service to outside the border of the supplier. In this mode the service provider, by availing the services of a carrier delivers the service in a foreign country. Therefore, service provider and the service receiver remains in their respective countries. In many cases, Mode 1 transactions are conducted and delivered through the telecommunication or postal infrastructure. For example, on line consultancy services, on line medical diagnoses (tele- medicine) or distance training, on-line- tuitions, LPO (Legal Process Outsourcing), BPO (Business Process Outsourcing) etc. are received by a domestic consumer from abroad, fall under Mode 1 of supplying services. Mode 1 services include the services of professionals such as architects or graphic artists creating designs that are sent over the Internet or delivered by regular mail (overseas data communication services) or express couriers. In the above instances, services cross the border while the producer and the consumer remain in their own countries. When an Indian national living in India makes a local call or an NLD call there is no international trade of telecommunication services. But, when he makes an ISD call to British national the Indian telecommunication network is availing the services of the British telecommunication network to complete the process of communication and there is cross border supply of service. Here, the service receiver and the service supplier remain in their respective home countries. “International telephony stands as a good example of a service for which cross-border supply is the dominant mode of delivery (Hoekman, Carlos and Braga, 1997).

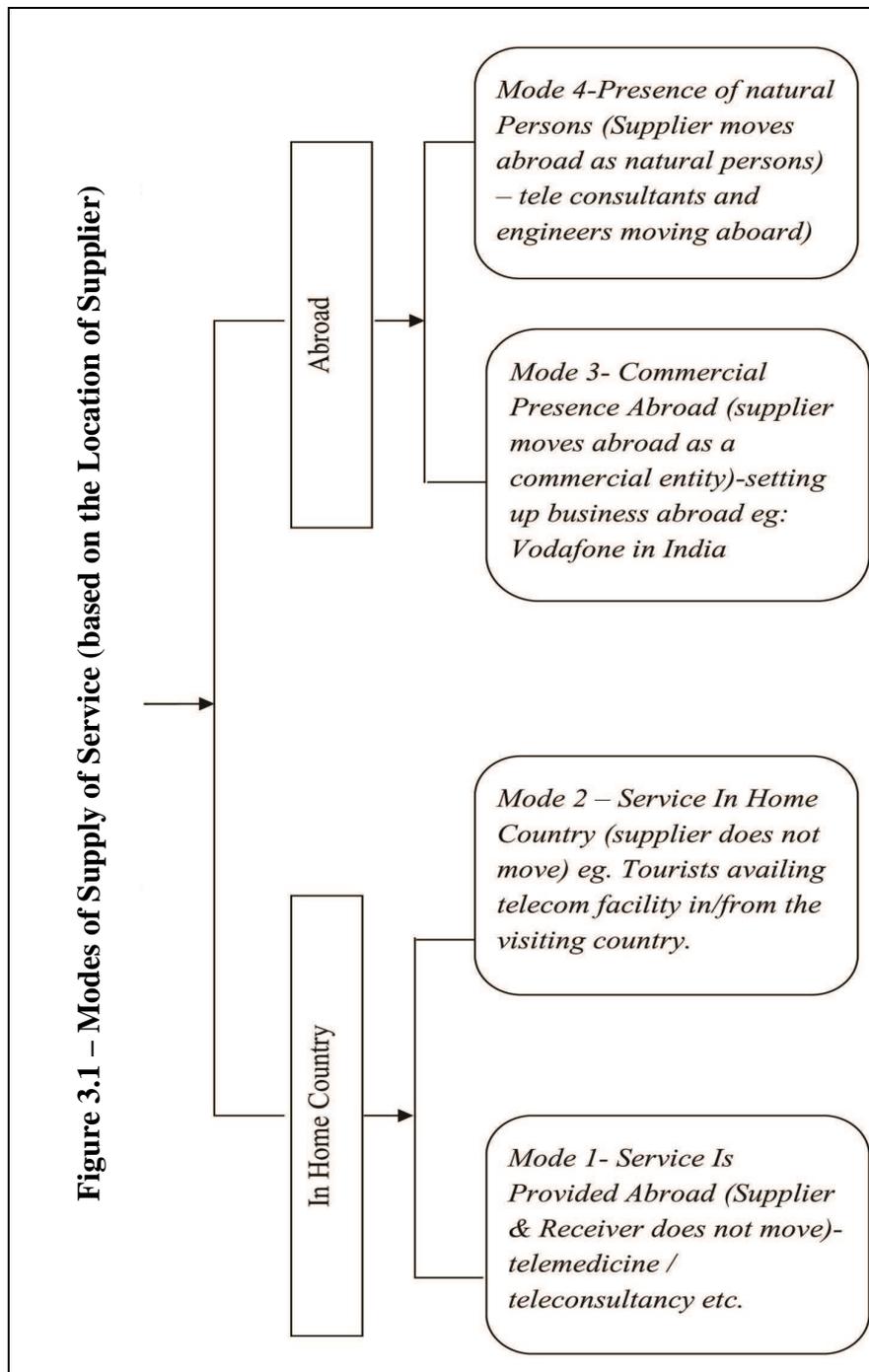
Mode 2 – Consumption Abroad: Here, the supplier of the service lives in his home territory and the service receiver moves into the territory of the supplier to receive the service. Under this mode of supplying service international trade in service takes place when the receiver of the service

consumes the service he desires in a country other than his home country. Examples of mode 2 services trade are many in this era of greater human mobility. Consumption of hotel and restaurant services by tourists spending their vacations abroad is a common example. Mode 2 trade takes place when ships or aircrafts registered in a country are sent to repair in another country. Tourists/patients getting treated in a hospital of another country, students learning in a foreign university in that territory etc. are examples for consumption service abroad.

When a foreign tourist coming to India, with his/her British sim card (ie. International Roaming) and uses it to communicate with his friend in India or anywhere in the world, he is availing the services of the Indian telecommunication network and consumes the service. After reaching India, he makes an ISD call to a British national living in Britain, using the sim card of a telecom operator of India, and then also it is consumption abroad as he is away from his home country and consuming a service abroad. If a businessman travels abroad to consult an architect (it is Mode 2) in the country where an overseas factory is planned. (See Mode 3 below).

Mode 3 – Establishing commercial presence abroad: Under this mode of supplying services, the service supplier sets up own presence in the foreign territory and the service is provided there. Therefore, the supplier is present in the territory of the consumer by having established a commercial presence and engages in delivering service. Joint ventures are a common form of Mode 3 services that involve a foreign company establishing a corporate structure (its commercial presence) with a domestic firm. This may include small and medium sized firms in addition to very large corporations. Services provided by foreign-owned and foreign-controlled banks, hotel groups or supermarket chains etc. in their host markets fall under this mode. When, a foreign telecommunication network operator (eg. Vodafone) sets up an Indian

subsidiary for providing telecommunication solutions to the people of this country; it is mode 3 of supplying service under the GATS.



Mode 4 – Presence of Natural Persons: Under Mode 4 of supply of services GATS have recognized the temporary admission of foreign nationals into a member's territory for the purpose of supplying services. Generally, it covers two forms in which service is supplied.

- (a) Independent, individual service providers/professionals temporarily visiting a foreign country to supply service and
- (b) As employees (staff) of Foreign Service providers temporarily visiting to provide service in the host country.

The basic criterion is that under Mode 4 of supply of service, admission into the territory is temporary and it is only for natural persons. For example, entry for the purpose of seeking access to the employment market, or measures related to citizenship, residence/stay or employment on a permanent basis etc. do not fall within the fold of Mode 4. As in mode 3, the supplier of service, in this case a natural person is present in the territory of the consumer (i.e.abroad). Examples of trade through mode 4 include foreign construction workers or foreign IT professionals providing their services in a foreign territory on the basis of a contract that they (as independent service providers) or their firms (as staff/ employee of their company) have finalized.

Telecommunication Agreement and GATS

The GATS framework under which Telecommunication Agreements fall may be given in a nutshell as below:

- (a) The GATS agreement - General Obligations which was discussed earlier
- (b) GATS Annex on Telecommunications and Negotiated Commitments
- (c) Basic Telecommunication Agreement - BTA- (Fourth Protocol) – Provided the entry into force of Agreement on Basic Telecommunication 5th February 1998.
- (d) Reference Paper and Pro-competitive principles

GATS Annex on Telecommunications and Negotiated Commitments

Basic telecommunications is one of the three service sectors on which intense negotiations took place during the Uruguay Rounds. (The other two being financial services and maritime transport). As telecommunication services were brought under the GATS and the member countries agreed in principle to undertake further negotiations on progressive liberalization measures for the telecommunication services sector, they could offer only the VAS for the initial stages of liberalization. On signing the treaty of WTO itself members agreed on telecommunication services (even though only on VAS and a commitment to further negotiations on progressive liberalization) it was a great achievement for the block of developed countries. Thereafter, Negotiating Group on Basic Telecommunications (NGBT) was formed, which was later replaced by Group on Basic Telecommunications (GBT) with greater participation of members. Both the groups prepared telecommunication annexes based on the negotiations and the offers of the countries.

GATS Annex on Telecommunications

The GATS Annex on Telecommunications attempts to ensure adequate access to national telecommunication infrastructures to all firms (including private or foreign) that require use of telecommunication networks. The annex stipulates negotiations on telecommunications sub sector to focus on 'public telecommunication transport networks and services'. It signals that the WTO members would negotiate on the following three aspects essentially under the telecommunications agreement.

- (a) conditions of access to telecommunication facilities
- (b) use of telecommunication facilities and
- (c) the provision of services.

According to the conditions stipulated in the annex, cable and broadcast distribution of radio and television programming falls outside the scope of the telecommunication negotiations. The annex on telecommunications has

taken adequate care regarding access and other facilities to foreign firms. With respect to network access, the annex requires that the foreign firms requiring the use of telecommunication networks should be given access to and the use of public telecommunication networks (PTNs) on reasonable and nondiscriminatory terms and conditions (National Treatment). Thus, the monopoly control situations prevailing in the host country should not in any way hamper the free flow of operations of the foreign firm that set up a business arm in the host country. Negotiated commitments of a country would undergo changes as discussions progress and greater levels of liberalization is achieved. National Treatment and Market Access are important negotiated commitments.

Protocol on Telecommunication Services - ABT

Protocol on telecommunications show the immense importance the negotiating countries attached to the telecommunication services because of its importance in the development of the economy. A special agreement was entered into by the members annexing the commitments evolved from the negotiations. The telecommunication schedules submitted by the members were annexed as protocol to the telecommunications agreement. Although the ABT is a sectoral agreement with respect to trade in services, its architecture might have implications for both trade in goods, and more general multilateral competition rule making. ABT is built on the GATS commitment of: MFN and national treatment linked to schedules of commitments; transparency; disciplines on the abuse of a monopoly position by a monopoly supplier; and multilateral dispute settlement. In addition, ABT incorporates telecommunications annex to the GATS which addresses issues of access and use of public telecommunications transport networks and services and the Reference Paper of those countries that have agreed to adhere to it.

Telecommunication Schedules

Commitments¹⁴ made by participating countries on basic telecommunication services appear in supplementary schedules¹⁵ and constitute the bulk of the telecommunication agreement. Basic telecommunication schedules are complex as they are prepared comprehensively covering entire spectrum of the following:

- (i) Delineation of market access and national treatment commitments regarding the seven basic telecommunications services
- (ii) Communicate commitments regarding distinct geographic telecommunication markets (e.g., local, long-distance (NLD), and international markets (ILD))
- (iii) Distinct network technologies (e.g., wire line, cellular, and satellite networks) and facilities-based. Supplementary schedules further delineate commitments regarding regulatory principles.

Thus, each supplementary telecommunication schedule implicitly or explicitly indicates through its market access commitments and national treatment commitments, the extent that foreign telecommunication firms may obtain access to the local, long-distance and international service markets through all means of network technologies on a facilities basis or through resale. In addition, each supplementary schedule indicates the extent to which foreign firms may acquire or hold a significant share in national telecommunication firms.

GATS & Indian Telecom Services Market: Towards Multilateralization

During the mid of eighties, ‘telecom for development’ discourse was gaining momentum world over and despite the efforts of GOI to make optimum use of telecommunication sector as a mode to accelerate growth and address poverty, India was subjected to severe ‘development criticism¹⁶’ after its first nuclear test in 1974. As part of liberalization, India resorted to indigenization

of telecom technology with the establishment of C-DoT in 1984. Thereafter, the 'hallo revolution' helped in familiarizing the people of the country with the benefits of communication facilities. VPTs (Village Public Telephone) scheme also helped the people greatly but these measures could also not solve the twin issues of access needs of the burgeoning population of the country and improving teledensity. For India, the nationalist ideologies of self-reliance and the international discourse on telecom for development especially the Maitland report turned out to be crucial in the process of policy change. Then attempts to bring changes led to the service bifurcation and creation of VSNL exclusively for International Long Distance (ILD) calls and geographical bifurcation for the creation of MTNL. The Uruguay rounds began in 1986 and negotiations on services sector was also initiated. During this time India had to initiate the NEP 1991 as part of economic restructuring. Finally, National Telecommunication Policy 1994 was declared with specific objectives as already discussed in the previous chapter. The policy shift of the Government of India at this time was prompted by many factors nationally or internationally.

Unilateral liberalization of telecommunication services was taking place in many parts of the world. Foreign countries demanded opening up of Indian telecom services market for obvious reasons. It was not only to boost their telecom services business, but also to aid the entire spectre of globalization and foreign investments. India was burdened with the failure or rather non-achievement of the expected success in indigenization of telecom technology pursued by the country to further penetrate the rural India. This failure along with burgeoning population accelerated the impact of poor teledensity. Ever-growing waiting list was often characterized as even extending to near ten years. The difficult terrain of India (the diversity) and the massive investment required for improving the telecom technology and its implementation for the society. The inability of the Government to finance such a heavy investment, pressure from international agencies and developed

countries to liberalize the telecommunication services, need of the government to display its intent to further open up the economy even after NEP 1991, projecting telecom as its poster boy of industrial reforms and above all for development and for international acceptance, India had to progressively liberalize its telecommunication services sector. Meanwhile, accession to WTO in 1994 opened up telecom manufacturing under the GATT agreement. But it would not materialize and bring desired results in the telecommunication services sector unless the services segment is also opened up progressively.

There were many foreign telecom companies waiting to join competition in Indian telecom if it is opened up. Opening up telecommunication services sector seemed to be the safe passage for coming out of the 'inadequate liberalization criticism'¹⁷ of the West and the developed. GATS was an inalienable part agreement of the WTO- an outcome of the Uruguay Rounds. Further, during the Uruguay Rounds, the Single Undertaking rule of WTO made many countries including India accept telecommunications also for trade discussions and offered its VAS for liberalization and agreed to go ahead with negotiations on basic telecommunication services. India, as part of its international commitments arising from the economic liberalization and to move along with other countries in the world in the increasing multilateralization of world trade, signed the fourth protocol of GATS dealing with telecommunication.

India and Existing Bilateral Agreements

India had intimated¹⁸ the negotiating group that the following are bilateral agreements India had entered into with other countries/entities.

1. INTELSAT Agreement.
2. INMARSAT Convention & operating agreement on INMARSAT.
3. Commonwealth Telecommunications Organisation Financial Agreement, 1983.

4. ITU (International Telecommunications Union).
5. ITU Radio Regulations.
6. ITU International Regulations.

India has entered into four bilateral telecom agreements one each with Pakistan, Nepal, Bangladesh and Bhutan on some telecommunication services. In the same way the Government of India demanded exemption from WTO for the agreements VSNL had entered into with other countries of the world. This was sought before opening up the ILD services sector in 2002.

Here, the approach of India is cautious and very much nationalistic. It seems to be a wait and watch approach of the negotiators of the country to utilize the Request- Offer discussions under the GATS.

India and MFN Exemptions from Telecommunication Protocol

Even though the same concept is applicable to trade in all services including telecommunications, the objections expressed by the participating countries forced the developed group to allow MFN exemptions on a time bound manner. As GATS under the WTO follows Request Offer approach (RO)¹⁹ and negotiations are ongoing bilaterally and multilaterally under the treaty, member countries are allowed to take exemptions for a limited period. India submitted a document²⁰ to the WTO claiming Article II exemption. India has claimed Article II MFN exemptions mainly regarding International telecommunications. This is claimed in two levels citing clear reasons and the exemption is sought indefinitely. This exemption at first level is related to measures including the application of different accounting rates covered by Bilateral Telecommunication Agreements²¹ entered into by the Government of India with neighbouring countries like Pakistan, Bangladesh, Nepal and Bhutan. India's explanation for this exemption is that it has entered into various bilateral agreements with those governments. At the second level, India has sought MFN exemptions for international telecommunications citing the accounting rates settled by VSNL with many countries. Again, India has

sought these exemptions indefinitely. The indefinite exemption India seeking is inconsistent with paragraph 6 of the Annex on MFN Exemptions, where such exemptions are limited to 10 years with review at the end of 5 years.

Reference Paper and Pro-Competitive Principles of GATS

Reference Paper represents a prominent example of a framework in a WTO agreement that already involves competition principles. It contains a general commitment of the WTO members to maintain appropriate measures to prevent suppliers unilaterally, or collectively, from adopting or continuing anti-competitive practices. A major supplier is defined as one with the power to materially affect the terms of market participation, taking into account price and supply- the two important economic parameters, either due to control over essential, facilities or because of its market position. In addition, the Reference Paper gives several clear examples for illustrating anti-competitive practices. These are:

- (a) Anti-competitive cross-subsidization;
- (b) Using information obtained from competitors themselves (with anti- competitive results);
- (c) Withholding technical and commercially relevant information.

The Reference Paper also applies to “interconnection” issues: e.g. the linking with suppliers providing public telecommunications transport networks or services to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier. Interconnection ensures network economy and a critical mass upon which a new operator may build up. However, the extent of this obligation is limited to the specific commitments undertaken by a member in the various schedules of GATS and ABT commitments. Interconnection must be ensured:

- (a) Under non-discriminatory terms & conditions (including technical standards and specifications) and rates and of a quality at least same

as that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

- (b) In a timely fashion, on terms & conditions (including technical standards and specifications) and cost based rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently item wise so that the supplier is not overburdened for network components or facilities that it does not require for its operation; and
- (c) On request, at points in addition to the network termination points offered to the major number of users, subject to charges incurred specially for it.

The Reference Paper also builds on the principle of transparency in order to ensure that the agreement can actually be operationalized. The procedures applicable for interconnection to a major supplier will be made publicly available, and a major supplier must make publicly available either its interconnection agreements or a reference interconnection offer.

With respect to settlement of disputes under the Agreement, the Reference Paper appears to distinguish between disputes about anti-competitive practices and disputes about interconnection. There is no particular form of dispute settlement provided for disputes over anti-competitive practices of major suppliers. However, a Reference Paper Signatory's failure to maintain appropriate measures to address anti-competitive conduct could, itself, be subject of dispute settlement. Thus, reference paper operates as a control over the national governments to ensure competition and not a control over the supplier of services.

With respect to interconnection, the Reference Paper indicates that for dispute settlement, recourse is to be made to an independent domestic body, which may be a regulatory body. If it is a regulatory body, it must be separate from, and not accountable to, any supplier of basic telecommunications services, and

the decisions of and the procedures used by regulators must be impartial with respect to all market participants. That body must be given the authority to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously. In India, TRAI was established as the regulatory body fulfilling these conditions.

The Reference Paper also reflects a balance between the objectives of both trade liberalization and competition policy and other social or policy objectives of a governments and civil society. The third commitment in the Reference Paper provides that any member has the right to define the Universal Service Obligation (USO) it desires to maintain, and such obligations are not be regarded as anticompetitive *per se*. USO is an explicit exemption granted to all member countries for displaying a balanced approach to the comity of nations and also to make the less developed group to feel a breathing space. However, those requirements must be administered in a transparent, non discriminatory and competitively neutral manner and cannot be more burdensome than necessary for the kind of universal service defined by the member. Similarly, any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights of way, must be carried out in an objective, timely, transparent and non-discriminatory manner. India being a vast country geographically and with large rural parts USO is essential for bringing about balanced regional development. Further, it makes social inclusion more meaningful and a reality. Therefore, being a socialist country, India came out with its USO and administers it in compliance with GATS commitments. USO is discussed in detail in this chapter.

It is a commonly negotiated text, setting various principles/rules binding on the members and giving clarifications and definitions. Reference paper sets out principles on matters like competition safeguards, interconnection guarantees, transparent licensing processes, the independence of regulators etc. They also agreed that each member would use the text as a tool in

deciding the regulatory disciplines to undertake additional commitments. In order to ensure that the market access commitments are kept by the countries, GBT signatories collectively formed supplementary schedule commitments on pro-competitive regulatory principles also. They include commitments to:

- (a) Safeguard against anticompetitive practices, including cross-subsidization of services, among monopolies or other firms with market power;
- (b) Provide timely and cost-based interconnection under nondiscriminatory terms and conditions, tariff rates and quality;
- (c) Provide non-discriminatory and transparent universal service requirements that are no more burdensome than necessary;
- (d) Provide transparent and publicly available licensing criteria and reasons for denial;
- (e) Ensure that the regulator is independent of suppliers of basic telecommunication services; and
- (f) Allocate scarce resources like frequencies (spectrum), numbers and rights of way (RoW) on an objective, timely, transparent and impartial basis.

Growing international trade in goods needed to be structured and effectively monitored for maximizing the gains of the participating countries, where trade is seen as a zero sum game by a section of countries. The developed countries participated in international trade in many commodities from consumer goods to capital goods and gained greater and so structuring the trade, ensuring stability and transparency in trade relations was more required for them than the other countries. Further, the developed countries identified trade in services just as trade took place in goods. For them, the services constituted nearly 70 percent of their GDP and structuring services

trade was also more beneficial to them and the developed countries vehemently demanded for the inclusion of services sector under the negotiations. Identifying telecommunication as the most important service sector with its dual role as consumer service and as support/logistic service for the production sector, the developed countries demanded opening up telecommunication services sector and also its inclusion in the negotiations. Even as Uruguay Round came to an end deciding the establishment of WTO, the developed countries ensured that the developing countries agreed on telecommunications and also decided to continue negotiations on further liberalizing the telecommunication services sector especially the basic telecommunications.

Telecommunication Services and the GATS Negotiations

GATS have defined telecommunication services comprehensively, covering both basic services²² and value added services²³. Services trade and particularly trade in telecommunication services were included as an item of specific negotiations in the Uruguay Rounds under persistent pressures from the developed countries. Most countries on the other side of the negotiating table were unwilling to bring services trade as such under the trade negotiations of the Uruguay Round. Finally, forty-eight schedules, representing fifty nine of the 125 governments participated in the negotiations; containing commitments in the area of telecommunications were included in the GATS. India was also a participating member country. As most countries were sceptical about an agreement on telecommunications, almost all of these commitments covered only value added services. Therefore, most of the relevant subsectors/ markets for communications continued to be outside the multilateral disciplines.

Still, it can be seen that the Uruguay Rounds could accomplish certain very important results for the telecommunications sector. First, it could build up awareness about the need of trade negotiations in furthering the process liberalization of telecommunications. Second, the trade negotiations successfully established that free access to telecommunications services was

inevitable for growth of trade in services and there was a general acceptance evolving that the users had the right to reasonable and fair terms of access. The WTO formation rounds of discussions could not break the hard stance the countries took on liberalizing their Basic Telecommunications. These situations made the member countries to agree on further negotiations on telecommunication liberalization. Finally, a Negotiating Group on Basic Telecommunications (NGBT) was formed in May 1994, specifying deadlines for the completion of talks. Participation in NGBT was not compulsory. That India initially did not join as a member state in the NGBT is significant because, India had several reservations against including services under the WTO trade negotiations. Only thirty three WTO member governments were participating initially and it grew to fifty three and another twenty four governments requested to participate with observer status. The NGBT talks were hooked on why to liberalize the monopoly telecoms. But, the attitude of the participating countries about the usefulness of these negotiations shifted significantly and gradually, the talks moved from 'why to liberalize' to 'how to liberalize' and it was a breakthrough. It was the result of the changing perceptions of the countries about the potential benefits of liberalizing telecommunications. Technological progress was rapidly eroding the sustainability and credibility of old practices based on monopolistic behaviour, state control, and protected markets for the local providers. Call-back systems, virtual private networks (VPN), Internet and possibility of satellite communications threatened the hold of monopolies. Monopolies turned out to be restrictions on greater enjoyment of progress in technology.

From the NGBT to the GBT

The NGBT negotiations led to important conceptual progress as participating countries recognized that every nation required to install a regulatory framework prior to the initiation of the competitive regime under the GATS. It was crucial for the telecommunication services sector even before liberalization commitments are made to the international community. It

would add value to the market access commitments and that it would promote the orderly growth of the domestic telecommunication market. This was the reason that made India establish TRAI without much forethought and in a hurried manner. As the focus of negotiations changed, a new body—the Group on Basic Telecommunications (GBT)—replaced NGBT, to carry on with the negotiations and the rules were changed making all WTO members full participants. Several countries, including India, tabled improved offers, signalling support for a successful conclusion of the negotiations. The submissions/offers made by India to the NGBT before the finalisation of Telecommunication Protocol under the GATS is given in appendix for reference.

Basic Telecommunication Services and Value-Added Services

During the Uruguay Rounds²⁴ of negotiations on services, the developed countries desired very much to bring a comprehensive agreement on telecommunications as it is the single most important service that has many facets of direct impact on trade in itself and trade of many other services (including banking, insurance, shares and securities, information technology entertainment services and so on). Besides, it is viewed as infrastructure and a growth accelerator service which does add volume to trade in goods and services. But many countries participating in the negotiation were unprepared for making decisions on such an important segment of economic activity. It was prompted by the fact that most countries had monopoly government entities/government controlled entities providing telecommunication services. Trade discussions at the Uruguay Rounds on Basic Telecommunications did not move ahead, but the countries agreed on Value Added Services and also to take WTO agreement forward along with GATS and telecommunications as part of GATS. Thus, in telecommunication services sector, there arose the concepts of Basic Services and Value Added Services. Value added services were the telecommunication related services brought within the purview of the WTO agreement in 1994 itself. Thereafter, a time frame was set and a

particular group was formed to concentrate on agreement on Basic Telecommunications. The two concepts as explained by WTO are given below:-

- (a) Basic telecommunications- the relay of voice or data from sender to receiver – access provision to individuals/entities – a technology neutral approach
- (b) Value-added services – services for which suppliers add a value to the customer's information.

As per the WTO definition, 'Basic telecommunications include all telecommunication services, both public and private that involve end-to-end transmission of customer supplier information²⁵'. Under the WTO classification of basic telecommunication services, following are the basic telecommunication 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
- (o) Other
 - Analog/digital cellular/mobile telephone services
 - Mobile data services
 - Paging
 - Personal communications services
 - Satellite-based mobile services (incl. e.g. telephony, data, paging, and/or PCS)
 - Fixed satellite services
 - VSAT services

- Gateway earth station services
- Teleconferencing
- Video transport
- Trunked radio system services

As per the GATS schedules and commitments, the following categories of services are covered by basic telecommunication agreement and commitments, unless otherwise specified:

- Local, Long distance and International calls
- Wire-based (including, e.g. all types of cables and, usually, radio portions of fixed infrastructure)
- on a resale basis (non-facilities based supply)
- radio-based (various forms of wireless, including satellite)
- facilities-based supply
- for public use (i.e., services made available to the public in general)
- for non-public use (services provided for sale to closed user groups)

WTO defines Value added telecommunication services as telecommunications for which suppliers 'add value' to the customer's information by bringing enhancement in the form of service or its content or by providing for its storage and retrieval. WTO gives the following services as examples for value added services:

- On-line data processing, on-line data base storage and retrieval, electronic data interchange, email, and voice mail.

Under WTO approach Basic telecommunication services include telecommunication using landline /mobile technologies. It is technology neutral, where any mode of providing basic access provision falls within the purview of Basic Telecommunication Services. This approach seems to be prompted by the fact, that there were various countries with the achievement

of hundred percent teledensity under the landline technology and the oncoming of the mobile technology was just a value addition of providing mobility factor.

Classification into Basic and Value Added Services: Indian Approach

Teledensity of the country at the time of declaration of the New Economic Policy in 1991 was at an abysmally low level of below 1 percent under the landline technology and mobile technology was not so far adopted in India. The ‘Development Criticism’²⁶ and the ‘Maitland Report of Missing Link’ along with the IMF/World Bank conditions for economic assistance prompted the country to introduce mobile technology in India for access provision. India gradually found mobile technology as the panacea for remedying the low teledensity due to its lower cost per unit and speedy acceptance by the masses.

When WTO agreement was signed in 1994, the countries had not reached a consensus on services agreement and Basic telecommunication services in particular. But they had reached a consensus on the Value Added Services under the telecommunication segment and included them under the treaty while postponing the discussions on Basic services. India included the mobile segment under Value Added Services and introduced the services in India, gradually selecting the territories starting with Metros and Mobile Services began in India in 1995.

In its communiqué²⁷ to the WTO, the GOI held that it had not defined Basic Telecommunications. But, for the purposes of reply to the questionnaire, the word ‘basic telecommunication services’ was assumed to cover the following 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

Thus, India did not treat mobile communications as Basic Telecommunications initially. Instead, it was included under Value Added Services.

To sum up, the transition of Indian telecommunication services market from monopoly market and bilateral settlement agreements to Oligopoly and multilateral GATS regime is highly significant. The next chapter is an attempt to bring to light how far GATS impacted the Indian telecommunication services sector.

¹ GATS is a general agreement to deal with all services (except specifically exempt) just as GATT deals with goods. Having identified Telecommunication services as one such sub services sector under the communication services sector, it falls under the GATS. But Telecommunication services have a dual role. (a) As a facilitator of trade in other sectors and (b) As a directly traded service or product. i.e. while it is, per se a service, it enables production and delivery of other services. GATS being a general agreement deals with the first aspect and the special annex on telecommunication (the fourth protocol) under the GATS deals with the second aspect. Thus, telecommunication in its entirety is brought within the purview of GATS rules. (Ref: Trade in telecommunications & Accounting rate reform, Dr Tim Kelly, Head, Strategy and Policy Unit, International Telecommunication Union, 30 April, 2001). Therefore, there is a special protocol on this sector signed by the member countries.

² The fifteen topics/subjects of discussion at Uruguay were: Tariffs, Non-tariff barriers, Natural resource products, Textiles and clothing, Agriculture, Tropical products, GATT articles, Tokyo Round codes, Anti-dumping, Subsidies, Intellectual property, Investment measures, Dispute settlement, The GATT system and Services

³ Arthur Dunkel was the then Director General (1980 to 1993) of GATT and he had steered a draft report which was called Dunkel Draft. It was finally accepted and became the foundation stone for WTO, even though many changes took place, subsequently. In the absence of a codified agreement the discussions continued to be discussions during the Uruguay Rounds. Then Arthur Dunkel codified it. Hence also known as Dunkel Draft.

- ⁴ http://www.wto.org/english/tratop_e/dda_e/work_organ_e.htm, visited on 14th September 2014.
- ⁵ <http://moci.gov.af/en/page/8772>, visited on 26th March 2014.
- ⁶ Available at http://www.worldbank.org/depweb/beyond/beyondco/beg_09.pdf, retrieved on 18th July 2013.
- ⁷ Preamble to the GATS Agreement of WTO, Geneva
- ⁸ https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s6p1_e.htm, retrieved on 17th January 2013.
- ⁹ https://www.wto.org/english/tratop_e/serv_e/gats_factfiction6_e.htm, visited on 20th January 2014
- ¹⁰ http://www.wto.org/english/tratop_e/serv_e/1-scdef_e.htm, visited on 23rd January 2014
- ¹¹ The Economic Lowdown, the Federal Reserve Bank of St. Louis, Volume 1, Episode 3 (6:21). Adam Smith described self-interest and competition in a market economy as the “invisible hand” that guides the economy. (https://www.stlouisfed.org/education_resources/economic-lowdown-podcast-series/the-role-of-self-interest-and-competition/). In his book, ‘Wealth of Nations’ Adam Smith described it as: “It is not from the benevolence (kindness) of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.” Adam Smith described the opposing, but complementary forces of self-interest and competition as the invisible hand. Further, it is argued that in every society there is a marginalized group of people, who for no fault of themselves suffer from inequalities and inequities and that they are never enabled to enjoy the fruits of science and technology. Such people should be brought to the main stream by the government through various social welfare schemes and subsidies. Otherwise, those marginalized would get further sidelined and thrown out and the competitive spirit and profit sense of commercial competition would never be able to include them.
- ¹² The exact import of the term “governmental authority” is unclear. For example, when the government and the private sector provide the same service, (for eg: education) where the private sector provides it at commercial rates, and government provides at non-commercial rates, it is not clear whether it will be deemed that the government is in competition with the private sector. There is another school of thought that what is provided by the government is under the exercise of ‘governmental authority’. Therefore, for the present it is deemed that the government is not providing that service in competition with the private sector. Hence, only the private provisioning of services alone, in such cases, fall under the definition of GATS services. Thus, Art. I (3)(c) would prove that if there exist a situation where the government and private suppliers provide a service, the government-supplied service at non-commercial rate, is considered to be “supplied in the exercise of governmental authority”. This is significant as this is a grey area to decide whether a service in question would fall within the ambit of GATS

definition of services and the GATS disciplines and obligations would get applied. This in turn means that the government must comply with GATS obligations (general) and schedule commitments (specific – vertical/horizontal). It would lead to the end of preferential treatments and subsidies. Because, if the government provides a subsidy, even the foreign companies engaged in providing service in the country in the same sector/sub sector would become eligible for the preferential treatment/subsidy, on account of the principle of non-discrimination.

¹³ International Call Re-Origination (Call Back)

Ref: <http://www.ictregulationtoolkit.org/en/toolkit/notes/practicenote/3282>. This is a form of arbitrage, also known as “international call-back” that takes advantage of the difference in international call charges across countries. Call-back service enables callers in a country facing high international charges to trigger a dial tone in a low-cost country to make an international call. For example, if country B has much lower settlement rates with country C than with country A, it might be cheaper for country A to send its traffic for country B via country C. One of the first larger arbitrage routes was for traffic between Australia and the US, which was cheaper if sent via New Zealand and Canada. Arbitrage is and was practiced even before the spread of de-regulation. The receiving telecom company is able to inspect the CLI to see the origin of call and charge accordingly. In practice, switches are able to remove or change the CLI, for disguising the point of origin of the call. Even though some countries have tried to ban call-back services, it is practically difficult to enforce. Call-back has created a southward pressure on international call prices, and has contributed to pressure to move away from the bilateral accounting rate system for international calling.

¹⁴ such commitments are officially known as schedules under WTO terminology

¹⁵ Scheduling Methodology for Supplementary Schedules on Basic Telecommunications Services: The schedule commitments on market access and national treatment of the GATS signatories with respect to the four distinct modes of supply (i.e., cross-border supply of service, consumption of service abroad, commercial presence of a foreign entity and the presence of natural persons) are recorded for each industry. It means that eight explicit or implicit schedule entries are recorded for each of the industries covered under the GATS. Within national schedules, signatories made commitments of:- Complete market access and/or national treatment commitments - which indicate that no sector-specific restrictions exist; or Partial commitments - which describe existing restrictions; or Unbound limitations on commitments - which indicate that a country reserves its right to impose additional restrictions on market access and/or national treatment in the future without penalty.

¹⁶ “Development criticism” refers to the unrelenting criticism of the developed world against the continuing poverty India. Even while India depended on the wheat supply of

USA for the Indian poor, India went ahead with nuclear and space research. Development criticism was heavily satirical which is epitomized by Dominique Lapierre in his *City of Joy*, when he graphically portrayed the exultant group of emaciated slum dwellers distributing sweets when they heard in the radio, “this morning we exploded our first atomic bomb”(1974).

¹⁷ India was often criticized by the developed countries that the liberalization measures taken were inadequate and half – hearted. The criticism was severe and unrelenting. It can be seen from the following excerpts: India’s telecommunications products and services market is potentially worth over \$60 billion. However, because India chose not to accept all of the principles set forth in the Reference Paper of the WTO Basic Telecommunications Agreement (BTA), U.S. telecommunications firms still encounter formidable difficulties in entering the Indian market. Current challenges for U.S. telecommunication product and service providers in India include changing political climates and an uncertain, evolving regulatory environment. In addition, U.S. firms contend with:

- (i) Discriminatory government procurement policies;
- (ii) India’s lack of a transparent regulatory regime;
- (iii) Corruption and bribery;
- (iv) India’s lack of compliance with negotiated trade agreements;
- (v) Non-tariff barriers such as burdensome licensing and approval procedures;
- (vi) Standards and service-related obstacles.

Indian bureaucrats need to understand that policies should be implemented to facilitate investment in telecommunications and these policies need to be strictly enforced.(India: Adopting a Pro-Competitive Policy for Telecommunications, Ashok R. Menon, May 12,1999, p. 2).

¹⁸ See WTO: S/NGBT/W/3/Add.34 dtd. 26 October 1995, visited on 24th November 2012.

¹⁹ In GATS, negotiations proceed on the basis of requests and offers - that is, countries request each other to consider liberalisation in particular sectors, and respond with offers. Agreement to liberalise is not reached until all participating Members – including developing countries – are satisfied with the total package being offered. This approach provides flexibility to the process of discussions. Often, agreements are finalised informally in this way. (http://commerce.nic.in/trade /international_trade_matters _service_consultation.asp)

²⁰ WTO: S/NGBT/W/19 26 April 1996 , visited on 20th November 2013.

²¹ Under the ITU regime countries entered into bilateral agreements with other countries for International telecommunication services. It was essential especially for deciding the call rate with respect to the charge fixed by the country where the call is being landed. The originating call country had to compensate the call landing country for permitting the call to land in the network of the landing country. Fixing such rate (accounting rate) was a

bilateral affair. Trade Unit 1999, Approaches to Services Liberalization by Developing Countries, Sherry M. Stephens on http://www.sice.oas.org/tunit/studies/srv_lib/SRV4e.asp

²² Those services involving end-to-end transmission of voice or data. Basic services cover voice telephony, telex, telegraph, facsimile, data transmission, private leased circuit services, fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communication services.

²³ Services involving modification of the form or content of the messages transmitted through the networks. Value added services include email, voice mail, on-line data processing, on-line database storage and retrieval, and electronic data interchange.

²⁴ The Uruguay Round of negotiations on establishing a feasible multilateral trade discussion and facilitation organization was the 8th round of multilateral trade negotiations conducted within the framework of the General Agreement on Tariffs and Trade (GATT). It spanned from 1986 to 1994 and 123 countries signed initially as "contracting parties".

²⁵ http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_coverage_e.htm, visited on 19th February 2013.

²⁶ *Supra* footnote 16

²⁷ See World Trade Organization, S/NGBT/W/3/Add.34 26 October 1995.