UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Peter M. Robinson
President & CEO

December 21, 2007

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

VIA ELECTRONIC TRANSMISSION

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements

Dear Ms. Blue:

The United States Council for International Business (USCIB) is pleased to have this opportunity to submit comments on the operation and effectiveness of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1998 (19 U.S. C. Section 3106). The effective implementation of telecommunications trade agreements is of concern to all of our members.

USCIB has worked closely with the Office of the U.S. Trade Representative and others in the Executive Branch on many U.S. trade initiatives addressing telecommunications, and we greatly appreciate your efforts on behalf of U.S. industry. USCIB is unique in that it represents all facets of the telecommunications and information services industry – including international carriers, long distance carriers, incumbent local exchange carriers, competitive local exchange carriers, wireless carriers, broadband providers, Internet and value-added service providers, satellite service providers and manufacturers, equipment manufacturers, software companies and business users. The comments submitted herein represent common concerns in the effective implementation of the WTO Basic Telecoms Agreement, the GATS Telecommunications Annex, and the GATS schedule of commitments on value-added services.

USCIB submits comments on Canada, China, Germany, India, Jamaica, Mexico, Peru and South Africa. Please note throughout the importance that our members place on the establishment of a strong independent regulator with effective enforcement powers.

1212 Avenue of the Americas
New York, NY 10036-1689
212.354.4480 tel
212.575.0327 fax
www.uscib.org

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CANADA

Canada maintains foreign ownership restrictions in telecommunications, prohibiting U.S. and other foreign investors from controlling facilities-based telecommunications carriers and thus preventing open competition. Canada continues to limit foreign investment in a facilities-based carrier to a maximum of 46.6% for all services except fixed satellite and submarine cable service.

Canada's Telecom Policy Review Board recently acknowledged that Canada, a leading U.S. trading partner, retains one of the most restrictive and inflexible set of rules limiting foreign investment in the telecom sector among all OECD member countries and recognized the drawbacks of this policy. In June, 2006 Canada's Minister of Industry issued a proposed policy directive consistent with relaxation of regulation in favor of general 'market forces' criterion; however the conclusion of the Telecom Policy Review Panel earlier that foreign ownership restrictions should also be relaxed or eliminated over time was not addressed by the Minister and this inconsistency remains. Although the Minister formally called for changes in telecom regulation, there was no request for removal of foreign ownership restrictions.

As a consequence of these foreign ownership restrictions, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. These restrictions limit global telecommunications service providers' options for providing high-quality, end-to-end telecommunications services as they cannot own or operate their own telecommunications transmission facilities. The removal of these foreign investment restrictions would increase telecommunications market entry and investment in Canada, open broad access for Canadian carriers to international capital markets, and encourage sustainable facilities-based competition in the Canadian telecommunications industry and broader economic growth. Canada's recent measures undertaking additional deregulation of its facilities-based telecom market further highlights the need for U.S. and other foreign telecom suppliers and other non-Canadian investors to have opportunities for 100% facilities-based telecom ownership in this important market. Of concern, Canada is now moving to deregulate several competitive safeguards that apply to facilities-based Canadian carriers, but is not moving to allow foreign owned carriers to build their own facilities. This disparity distorts the availability of market-based responses if the price or quality of network inputs substantially change in a deregulated market.

We urge USTR to explore with the Canadian Government the i) timetable to pursue all of the earlier recommendations to remove these restrictive limitations in telecommunications and the ii) speed with which any supporting findings of the Competition Policy Review Panel can be implemented after its report in the second half of 2008.

CHINA

Since its accession to the World Trade organization (WTO) in 2001, China has conducted a comprehensive reform of its services trade policy, which has opened key services sectors to foreign participation, improved its policy predictability, and made China subject to the global WTO trade regime. Important progress has been made in revising existing laws and passing new

laws and regulations to open service sectors to foreign competition. China also has greatly benefited from more open services markets resulting from its WTO membership. According to the World Bank, Chinese global cross-border services exports grew from $5.7 billion in 1990 to $91 billion in 2006. The U.S. services trade surplus with China was $2.6 billion in 2005, based on strong U.S. exports in business, professional, educational, financial, and telecommunications services. The level of foreign direct investment in China has also been growing steadily, from $46.9 billion in 2001 to $86.1 billion in 2005. These developments demonstrate that China's bold decision to open its economy to foreign capital has benefited both China and its trading partners. Nevertheless, China's WTO compliance record in services is hurt by incomplete implementation of its accession commitments and by remaining services trade barriers, including those in telecommunications, where China's narrow interpretation of value added services, high capitalization requirements for basic telecommunications services, lack of an independent regulator, and restrictions on the provision of VoIP and Internet services by non-Chinese companies remain key outstanding issues.

Market entry opportunities for U.S. telecommunications providers in China are limited by several factors, including China's overly narrow definition of value-added services (VAS) for value added network service licensing. China's regulator, the Ministry of Information Industry (MII) defines the meaning of VAS in China's WTO commitments narrowly to exclude most commercially important services, such as international IP-virtual private networks (IP-VPN) services demanded by global enterprises, by limiting VAS virtual private networks to "domestic" services. The narrowing of value added services is a backward step from China's pre-WTO service classifications, which is inconsistent with China's WTO commitments. China should expand the list of VAS to include such value-added services as international IP-VPN services. China also should be encouraged to lift its prohibition on resale.

USTR has identified China's unreasonably high capitalization requirement for basic telecommunications services as a severe limitation on market access in its last four 1377 Reports. [1] Basic services licenses continue to be subject to a 2 billion RMB (US$250 million) capitalization requirement, which is almost 200 times larger than the capital requirement for China's value added service licenses. On December 11, 2007, the USTR announced that China had confirmed, at the U.S.-China Joint Commission on Commerce and Trade (JCCT) meetings, that it will lower the registered capital requirements for U.S. telecommunications service providers to operate in China. This is a positive development and China should be encouraged to make public the details of the lower capitalization requirements expeditiously.

USTR has identified China's requirement that foreign telecom service providers may only enter into a joint venture with one of the existing state-owned enterprise telecom providers as a further problematic restriction. [1]
Given the de facto duopoly China currently maintains in every telecommunications sub-sector, this policy reduces joint venture partners to a commercially untenable number. USTR sho uld continue to urge China to clarify that any generally qualified Chinese company is eligible to be a joint venture partner in the telecommunications sector.

[1] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at p. 13.

China also has not implemented its WTO Reference Paper commitment to establish an independent regulator. The Chinese Government still owns and controls all major operators in the telecommunications industry, and the Ministry of Information Industry (MII) still regulates the sector. USCIB encourages USTR to place a high priority on working with China to establish a regulatory body that is separate from, and not accountable to, any basic telecoms supplier, and that is capable of issuing impartial telecom decisions and rules. Specifically, it is important that the regulatory body adopts the following: transparent procedures for drafting, finalizing, implementing and applying regulations and decisions; appropriate measures, consistent with the WTO Reference Paper to prevent dominant suppliers from engaging in, or continuing, anti-competitive practices; a defined procedure – as it has done for interconnection – to resolve efficiently and fairly public telecom suppliers' commercial disputes over their agreements; an independent and objective process for administrative reconsideration of its decisions; and appropriate procedures and authority to enforce China's WTO telecom commitments, such as the ability to impose fines, order injunctive relief, and modify, suspend, or revoke a license.

Further, finalizing and adopting the pending Telecom Law should be a top priority for the government. Interested parties must also be provided a reasonable period for review and comment on the Ministry's regulations and decisions as required by China's accession documents. Virtually no notice was given, and no comments invited, before the revised Catalogue of Categories of Telecom Businesses went into effect in 2004 and 2007.

The Chinese government also imposes strict limitations on non-Chinese companies that wish to offer Voice over Internet Protocol (VoIP) services in China. No non-Chinese company may offer any kind of VoIP service in China, as VoIP requires a VAS license, which foreign companies may obtain only through a joint-venture company. Connection to the public switched telephone network (PSTN) requires a telecom license. Only a few small pilot VoIP projects -- involving the dominant Chinese telecom operators -- are allowed to offer PSTN-interconnected VoIP services to Chinese consumers. In its 2007 1377 Report, USTR expressed its strong concern about policies among trading partners hat tifle technologies that help promote innovative services, such as voice services provided through VoIP.[2] USTR should continue to urge the Chinese government to remove restrictions in the efficient use of IP technologies, including voice applications.

In addition, recently China's National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued a revised Catalogue for the Guidance of Foreign Investment Industries that places some Internet services under the prohibited foreign investment industries category. More specifically, the revised foreign investment catalogue indicates that foreign investment in "[n]ews websites, Internet-based video and audio program services, Internet services establishments, and Internet cultural operations" is prohibited. At this time, it is unclear to what extent the new classification of these Internet services will impact the ability of foreign investors to offer Internet services in China. What is clear is that these policies create additional barriers to market entry in the telecom sector and discourage foreign investment.

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[2] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at pp. 8-9.

GERMANY

The German Federal Network Agency, BNetzA, continues to be subject to inappropriate political pressure. The German Government still holds a direct and indirect ownership interest of 31.7% in Deutsche Telekom AG ("DTAG"), the incumbent.

Under German law, BNetzA itself is a subordinated authority of the Federal Ministry of Economics. Although the decisions of its ruling chambers cannot be overruled by the Ministry, BNetzA remains bound by the Ministry's directives. In addition, there continues to be a lack of transparency in the regulator's operations. When BNetzA does release a decision, only the operative provisions are made available in print, not the entire decision. As a result, in some cases only one-half page of a twenty-page decision may be released. Although the data is arguably redacted to protect business data, this does not appear to be the reason for such a limited release of decision. At present, the regulator does not even fully release non-confidential decisions and decisions are not published on BNetzA's website at all, limiting access to even the presently inadequate representation of regulatory decision-making available. BNetzA also has no rules comparable to the FCC's ex parte process by which there is disclosure of meetings that the regulator has held with outside parties regarding matters being decided by it.

USCIB continues to be concerned about the lack of opportunities for competitors to participate in any proceeding that will have a direct and substantial impact on their business plans. Due to the Administrative Court's rules of procedure, competitors have little or no opportunity to participate as third parties in the court's proceedings, and therefore have no opportunity to follow regulatory developments in court. In contrast, DTAG always is a party to the case and can therefore influence decision-making at the court level.

Similarly, USCIB is concerned that BNetzA's decisions must be made in a more timely manner. The German Telecommunications Act requires cases on the abuse of market dominance to be decided within four months from the commencement of proceedings. BNetzA, however, has exceeded this time frame in numerous instances. USTR should continue to monitor BNetzA's progress in this area and encourage BNetzA to make its methodology clear and consistent and publish its reasoning.

INDIA

India has made great strides in opening its market to competition, and USCIB commends India for these pro-competitive reforms. India has increased the permissible level of foreign direct investment in telecom licensees to 74 percent and has lowered entry barriers for International and Domestic Long Distance licenses to encourage new entrant competition and investment. Additionally, India has implemented important measures during the past year allowing the resale of international private leased circuits ("IPLCs") and requiring non-discriminatory access to cable landing station facilities. The additional competition in India's telecom markets resulting from these far-sighted measures will benefit Indian businesses and consumers and the economy as a whole by ensuring lower prices, new and innovative products and services and expanded customer choice. However, the Department of Telecommunications (DOT) as the policy maker

and the Telecom Regulatory Authority of India (TRAI) as the regulator have a continuing mutual responsibility in developing, implementing, and enforcing laws and regulations that provides new entrants the assurance that they can compete on a fair and equitable basis in India.

(1) Market Entry

India's regulatory framework continues to impose barriers that impede the ability of foreign carriers to access India's telecommunications market on a fair and non-discriminatory basis. As USTR recognizes in its 2007 1377 Report, although the Indian government reduced the National Long Distance (NLD) and International Long Distance (ILD) license fees to approximately US$635,000 (each), this fee is still high relative to license fees in other countries.[3] Moreover, India still maintains foreign ownership limits of 74% in the telecom sector, which should be removed.

(2) Resale of International Bandwidth

We understand that the DOT recently accepted the recommendations of TRAI to permit the resale of international private leased circuits (IPLCs) in India. However, no guidelines or license conditions have been issued by DOT to date. We urge the Indian Government to issue these recommendations expeditiously and to ensure that all parties have sufficient opportunity to comment on and recommend any revisions necessary to clarify or enhance such guidelines or conditions.

(3) Submarine Cable Capacity

In response to concerns raised by USTR, USCIB and other parties in previous 1377 submissions, TRAI took action late in 2005 to lower the cost of international private leased circuits (IPLCs) which provide the essential links connecting India's robust economy with the rest of the world. In June 2007, TRAI issued regulations that appear to address many of the concerns previously raised by USCIB regarding the need to ensure non-discriminatory, fair, and open access to essential facilities at cable landing. Whereas we applaud the efforts made by the TRAI, the regulations do not uniformly provide sufficient assurance of transparency, certainty, or timely provision of needed services. These concerns include the following: (i) the Reference Interconnection Offer (RIO) is not a mandated set of agreements but is to be negotiated on an ad-hoc basis, (ii) denial of access can be "for any valid reason" – a term that is not defined in the regulations, (iii) there are extensive time periods to give effect to RIOs for new systems, (iv) rates of cross-connection charges should be independent of capacity, and (v) the minimum provisioning period for access services is too long. USCIB asks that TRAI clarify its regulations to address the above stated concerns.

(4) Permit Non-Indian Competitors to Offer VoIP Service

Currently, the Indian telecom regulator imposes strict limitations on the provision of VoIP services (sometimes known as "Internet telephony") by non-Indian companies. India imposes strict limitations on private enterprises that wish to use VoIP for internal communications. Such

[3] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at p. 13.

enterprises cannot connect to the Indian PSTN directly, or through a competitive VoIP provider, unless the enterprise partners with an International Long Distance/ National Long Distance telecom operator. In its 2007 1377 Report, USTR expressed its strong concern about policies among trading partners that stifle technologies that help promote innovative services, such as voice services provided through VoIP.[4] We understand that the Government of India is considering the liberalization of the Indian VoIP market. USTR should urge the Indian government to include the following considerations should it decide to proceed with this market-opening process: i) open India's VoIP market to a wider range of competitive operators (including direct interconnection to the PSTN); and ii) enable private enterprises to choose carriers/technologies of their communications needs (including VoIP) without having to use the Indian incumbent telecoms' services.

(5) Access Deficit Charge

India's Access Deficit Charge ("ADC"), which is a component of India's overall universal service regime, continues disproportionately to impact consumers making international calls to India. Although India implemented significant reductions in these charges in 2007, inbound international calls to India remain subject to per minute ADC of 1.00 Rupee (US$0.025), while per minute ADC was removed altogether for outbound international calls from India. All service providers, including access providers, long distance operators and international operators are also subject to "revenue-share" ADC of 0.75 percent of adjusted gross revenues. Thus, as a result of India's most recent changes in the ADC regime, inbound international calls are now the *only* telecom service subject to per minute ADC.

India's ADC regime therefore continues to place an unreasonable and discriminatory burden on foreign international carriers and their customers making calls to India that fails to comply with India's WTO Reference Paper commitment to administer universal service obligations in a transparent and non-discriminatory manner.[5] The Telecom Regulatory Authority of India (TRAI) estimates that 70 percent of the total amount of ADC to be collected for the financial year 2007-2008 will be contributed by the charges on inbound international calls.[6] We understand that TRAI plans to take steps in early 2008 to implement reduction of the ADC to zero for all services by April 2008. We encourage USTR to monitor developments with the goal of completing the elimination of this discriminatory treatment of U.S. and other foreign carriers and their customers.

JAMAICA

Jamaica maintains a discriminatory and unreasonably burdensome "universal service" levy introduced in June 2005 to fund broadband Internet access for schools and libraries in Jamaica. The levy of 3 cents per minute for fixed-terminated calls and 2 cents per minute for mobile-

[4] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at pp. 8-9.
[5] WTO, Fourth Protocol to the General Agreement on Trade in Services, *India – Schedule of Specific Commitments Supplement 3, Reference Paper*, Apr. 11, 1997, ¶ 3.
[6] Telecom Regulatory Authority of India, Press Release No. 30/2007, *TRAI Announces Lowering of "Access Deficit Charge (ADC),"* Mar. 21, 2007 (total amount of ADC to be collected for financial year 2007-08 is reduced to approximately Rs. 2000 Crores (US$500 million), of which incoming international calls are expected to contribute Rs. 1400 Crores (US$355 million).

terminated calls applies only to international-inbound traffic terminating in Jamaica. Because this levy does not apply to international-outbound calling from Jamaica or to domestic calling within Jamaica, it imposes the entire burden of subsidizing this Jamaican universal service program on U.S. and other non-Jamaican carriers and their customers. In announcing this levy, Jamaica's Minister of Commerce, Science and Technology "emphasized that the levy would not be a charge on the Jamaican consumer, as it would only be applied to incoming international calls."[7] The WTO Reference Paper states that universal service "obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory, and competitively-neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."[8] The FCC has noted, "universal service obligations that are levied disproportionately on foreign-originated calls clearly violate these principles."[9]

USTR expressed its concerns in both its 2006 and 2007 Section 1377 Reviews that Jamaica is funding this program on the basis of fees on foreign operators and regarding the lack of transparency in the program to determine the need for this large surcharge and the absence of information concerning the use of these funds.[10] USTR expressed its keen interest in seeing an accounting of the funds that have been collected, whether they are appropriate to the needs identified, and how they have been used. Jamaica should adopt a more equitable and transparent approach to funding its universal service programs that collects such funds from a broader base of users (i.e., not exclusively foreign operators) to ensure that the program does not adversely affect access to the Jamaican market nor constitute a program that is more burdensome than necessary to achieve Jamaica's program goals. USTR recommended that the surcharge collection be suspended until Jamaica is able to provide answers to the questions raised its 2007 Review. USCIB urges USTR to continue to monitor this situation closely. Further, as USTR made clear in the 2007 Review, Jamaica should suspend the surcharge until it is able to provide adequate information concerning the need for and duration of this program.

MEXICO

In 2006, Mexico introduced surcharges for international calls to mobile networks in late 2006 as the result of its decision to apply the calling party pays (CPP) system to these calls rather than the receiving party pays (RPP) system formerly in effect. U.S. carriers are subject to per-minute surcharges of approximately 14 cents for international calls to wireless phones in Mexico. [11] In its 2007 1377 Report, USTR urged Mexico's regulatory authority, Comisión Federal de

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[7] Government of Jamaica, Ministry of Commerce, Science and Technology, News Stories, Government Imposes Levy on Incoming International Calls, http://www.mct.gov.jm/call_levy.htm.

[8] WTO, Jamaica – Schedule of Specific Commitments Supplement 1, at 10.

[9] International Settlement Rates, 12 FCC Rcd. 19,806, ¶ 87 (1997). See also, id., ¶ 148 ("We disagree with commenters who argue that foreign carriers are entitled to require that universal service requirements be financed disproportionately through settlements revenues. . . . [W]e believe that universal subsidies must be nondiscriminatory and transparent").

[10] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at pp. 2-3.

[11] See FCC Consumer Advisory, Probable Increase in Charges for Calling Wireless Telephones in Mexico, Oct. 19, 2006, http://www.fcc.gov/cgb/consumerfacts/Mexico_caller_pays.html.

Telecomunicaciones (COFETEL) to ensure that – at a minimum – Telcel, with more than 70 percent of the Mexican mobile market, immediately offers a wholesale rate for terminating calls on its network that is no higher than the rate it charges its own retail customers to terminate within the Telcel network (e.g. which, for some calling plans, is as low as 7 cents per minute, compared with over 12 cents it currently charges other networks for the same function. COFETEL issued a ruling in September 2006 requiring annual termination rate reductions for domestic local fixed to mobile calling in Mexico under the CPP system down to approximately 9 cents in 2010. COFETEL has thus explicitly recognized the need and ability for reductions in CPP termination rates in Mexico. USTR should encourage COFETEL to accelerate this reduction process.

Mexico continues to maintain a ceiling of 49% foreign direct investment in wireline carriers authorized to own and operate basic telecommunications facilities. This restriction constitutes a major impediment for foreign carriers interested in entering and investing in the market. There have been reports of interest among government officials in eliminating this prohibition on foreign participation in the Mexican market. USCIB urges USTR to explore all avenues for encouraging the Government of Mexico to address this market access barrier as soon as possible.

Lack of Effective Regulation and Anti-Competitive Practices

Mexico's Competition Commission, the CFC, recently launched separate investigations into the country's mobile telephony and broadband Internet markets. The CFC said that wireless carriers charge rivals termination fees that are higher than what they bill their own clients to make on-net calls. CFC also plans to launch an investigation into possible market dominance in the fixed-line telephony market in December 2007. While USCIB recognizes that the Mexican government is making some positive steps towards improving its regulatory climate, more needs to be done.

Mexico's telecommunications regulator, COFETEL, was established under Mexico's New Federal Telecommunications Law in 1995, and reports to the Mexican Ministry of Communications and Transport (SCT). COFETEL repeatedly has failed to effectively regulate and enforce its regulations. U.S. telecommunications operators have voiced concerns about the problems inherent in Mexico's telecommunications regulatory environment and USCIB has addressed these concerns in comments submitted during the last four years' 1377 reviews. The absence of an independent and effective regulator has had a negative impact on the development of competition. For example, Mexico has failed to maintain appropriate measures to prevent anti-competitive practices by Telmex, as required by Mexico's commitments under Section 1.1 of the Reference Paper. Although the CFC has found that Telmex possesses market power, COFETEL has failed to promulgate new dominant carrier rules to prevent Telmex from engaging in anti-competitive conduct.

As USCIB has noted in the past, enforcement of dominant carrier safeguards is long overdue in Mexico.

COFETEL's authority and enforcement powers need to be addressed. COFETEL's regulatory authority is limited to issuing recommendations to the SCT for the imposition of sanctions in instances in which telecommunications operators violate the telecommunications law or fail to

comply with regulatory obligations. Upon receipt of COFETEL's recommendations, the SCT has the sole authority to implement or reject the sanctions. This regulatory structure has not been effective.

PERU

Currently, the Peruvian regulatory body, Organismo Supervisor de la Inversión Privada en Telecomunicaciones ("OSIPTEL"), only has two members on its Board of Directors. On May 28, 2007 three of the five Board members submitted their resignation in response to a modification adopted by a Supreme Decree that eliminated the authority of the Board of Directors to appoint OSIPTEL's General Manager and granted such power exclusively to the Board President.[12] When the resignations went into effect, on August 2007 (Board members who resigned are required to given 60 days notice), one of the five seats was already vacant. This left the President as the only remaining member of the Board.

For the past five months, the President of OSIPTEL has been using powers granted under OSIPTEL's internal regulation, [13] allowing him to issue "emergency" decisions that typically require consensus from the Board in cases where the Board cannot be validly convened. This detrimentally affects the transparency of the regulator's actions and is contrary to commitments under Peru's WTO Reference Paper and the U.S.-Peru Trade Promotion Agreement. [14] We therefore request that USTR urge the Peruvian Government to resolve the prolonged vacancies on the Board of Directors of OSIPTEL.

SINGAPORE

As USTR's 2007 1377 Report emphasizes, access to SingTel's local leased lines continues to be a major concern for U.S. carriers in Singapore despite progress in implementing the FTA. [15] The regulations continue to deny (i) the supply of local leased circuits at tandem-switching centers; (ii) the availability of high capacity aggregation options; and (iii) the provisioning of tie cables for cross connections within reasonable time frames. SingTel has also has refused access to ducts it controls, creating further inefficiencies and slowing competitive entry.

In addition, USTR's points in 2007 regarding SingTels' plans to close exchanges and the

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[12] Supreme Decree 046-2007-PCM (May 26, 2007). Resigning board members argued that this move modified the principle of joint decision-making, severed the balance between the authority of the Board of Directors and the President of the regulator, and weakened the efficacy of the Board Members' phased appointment mechanism. *See* José I. Távara Martín, Letter of Resignation to the Board of Directors of OSIPTEL(May 28, 2007), available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=3000&P=%2FOsiptelDocs%2Fgcc%2Fcomunicaciones%5Finstitucionales%2Ffiles%2Fotras%5Finstituciones%2F162066%5FJose%5FTavara%2Epdf, Carlos A. Fuentes Cruz, Letter of Resignation to the Board of Directors of OSIPTEL (May 28, 2007), available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=3000&P=%2FOsiptelDocs%2Fgcc%2Fcomunicaciones%5Finstitucionales%2Ffiles%2Fotras%5Finstituciones%2F162067%5FCesar%5FFuentes%2Epdf, and Raul Pérez-Reyes Espejo, Letter of Resignation to the Board of Directors of OSIPTEL (May 28, 2007), available at http://www.osiptel.gob.pe/Index.ASP?T=T&IDBase=3000&P=%2FOsiptelDocs%2Fgcc%2Fcomunicaciones%5Finstitucionales%2Ffiles%2Fotras%5Finstituciones%2F162065%5FRaul%5FPerez%2Epdf.

[13] Supreme Decree 008-2001-PCM, Article 86(j).

[14] U.S.-Peru TPA, Article 14.12.

[15] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at pp. 9-10.

resulting importance of tandem-level interconnection are still germane. In June 2006, SingTel announced plans to consolidate its end-office switching centers, reducing them from 27 to 12. In a public consultation document issued in late January 2007, Singapore's regulator, the Infocomm Development Authority of Singapore ("iDA"), proposed that SingTel give competitors up to 18 months notice regarding any particular exchange it plans to close. On June 7, 2007, iDA issued its decision in connection with its review of the decommissioning of co-location sites offered under Singtel's RIO. The effect of the decision is to extend the notification for the closure of local exchanges from 6 to 18 months. However, this decision does not provide sufficient certainty or transparency required by alternative operators in deciding on their investment and build-out to Singtel's co-location sites.

SingTel's failure to provide details concerning which end-office switching centers would be decommissioned has put other service providers at a serious competitive disadvantage, as competitors must either put their build-out plans on hold or face significant risk regarding any network expansion. Further, competitors would be left with only 18 months to recover the costs of build-out to any particular exchange that SingTel may choose to decommission. As USTR pointed out in its 2007 1377 Report, it is vitally important that competitors be given the option of interconnecting with leased capacity at tandem exchanges, at least until SingTel completes its network reconfiguration. [16] USTR should continue to strongly urge Singapore to find a more reasonable and practical solution to this problem.

SingTel's practice of appealing regulatory decisions directly to the Minister of Communications (MOC) has reduced transparency and predictability in the regulatory process. In particular, there is no obligation to make information publicly available concerning a company's request for a stay of decision or the filing of an appeal, to request public comments about such request, or to publish a detailed explanation concerning final decisions made by the Infocomm Development Authority or MICA. The Singapore government reportedly is reviewing this process to determine how to make it more transparent, and we hope significant improvements in the process will be adopted.

Further regarding regulatory process, we are concerned about the absence of judicial review of decisions by the telecommunications regulator. The sector is regulated by a Telecoms Competition Code ("Code") addressing regulatory principles and framework, consumer protection rules, interconnection regime, infrastructure sharing requirements, sector-specific competition rules, mergers and consolidation framework, and enforcement mechanisms. (The general Competition Law of 2004 excludes the telecommunications sector.) The Code does not contain the right of judicial review, which seriously undermines the effectiveness regulatory regime in achieving the competition for which it is intended.

Furthermore, on its own, the Code is inadequate for addressing competition concerns typical of the telecoms sector, such as:

- Its voluntary approach to regulating the provision of wholesale services by a dominant undertaking;
- Limited dispute resolution by the iDA and only concerning interconnection and infrastructure

[16] See Results of the 2007 Section 1377 Review of Telecommunications Trade Agreements at pp. 9-10.

sharing issues;
- No ability to appeal an NRA decision to an independent third party.

Given the market structure of telecoms and international practice, there is a role for ex-post competition law and ex-ante competition regulation to coexist in effectively regulating the behavior of undertakings with Significant Market Power (SMP). We strongly urge the Singapore government to lift the exemption and subject the telecommunications sector to general competition law provisions while retaining existing competition regulation.

SOUTH AFRICA

Although a second network operator in the PSTN market has been licensed, Telkom SA Limited retains the *de facto* monopoly. The value added network services industry remains of the view that Telkom continues to abuse its *de facto* monopoly through margin squeezes in horizontal participation and competition with its wholesale market. To this extent, various complaints have been lodged and are under investigation at the South African Competition Commission. However, some of these complaints were lodged as far back as 2005, and the investigation has not yet been finalized.

Furthermore, the independent regulator, independent Communications Authority of South Africa (ICASA) has not been particularly effective. Its authority has been limited through a cumbersome dual jurisdictional structure with the Ministry of Communications, and the Government's mistrust of ICASA's independence has resulted in efforts to control it. The Ministry itself had a structural conflict of interest as both the policy-maker for the sector and the custodian of the state's considerable shareholding in Telkom. As a result, policy in the sector has unfolded in fits and starts, marked by many controversial incidents and abrupt reversals of strategy, including the cancellation of ICASA regulations by the Minister."[17]

Sincerely,

Peter M. Robinson

[17] See *Another instance where privatization trumped liberalization: The politics of telecommunications reform in South Africa—A ten-year retrospective,* Robert B. Horwitz, Department of Communication, University of California-San Diego, and Willie Currie, Association for Progressive Communications, published by Science Direct Telecommunications Policy 31 (2007), pp. 445 – 62.