RESULTS OF THE 2002 "SECTION 1377" REVIEW OF TELECOMMUNICATIONS TRADE AGREEMENTS

This year's "Section1377" review highlights USTR's telecommunications trade enforcement priorities for the coming year. USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988.

USTR conducted this review on the basis of public comments submitted by U.S. industry and other interested parties and in consultation with other U.S. Government agencies and U.S. trading partners. On this basis, USTR has concluded that it will focus on the following practices as a matter of priority: (1) mobile wireless interconnection rates in European Union (EU) Member States and Japan, (2) provisioning and pricing of leased telecom lines in EU Member States and Switzerland, and (3) interconnection and other competitive concerns in Mexico. USTR will also closely monitor other telecommunications trade practices in Australia, Brazil, China, Colombia, India, Japan, Peru, and South Africa.

EU Member States and Japan - Mobile Wireless Interconnection Rates

There is growing evidence that mobile wireless operators in the EU and Japan charge wireline telecommunications carriers wholesale rates to "interconnect" their calls that are significantly above cost. With the rapid growth in mobile wireless services, the burden of these above-cost charges on U.S. operators and consumers may soon reach billions of dollars annually. The EU Member States and Japan have committed in the WTO to ensure that major suppliers of basic telecom services provide interconnection at "cost-oriented" and "reasonable" rates.

Several EU Member States, including France and the United Kingdom, have begun to analyze mobile wireless network costs in order to determine what competitive rates would be. Last week, Japan's major mobile operator proposed new rate reductions. These efforts are encouraging, and USTR urges Japan, the EU Commission, and other EU Member States to continue to take steps to ensure that mobile wireless operators charge competitive interconnection rates. USTR will carefully monitor ongoing developments in this area and intends to work closely with mobile wireless operators and U.S. trading partners to address this growing problem.

EU Member States and Switzerland - Provisioning and Pricing of Leased Telecom Lines

New entrants use leased lines to connect their networks to customers in areas where they do not yet possess their own facilities. Typically, these companies lease lines from the former monopoly telecom operator. U.S. companies face serious difficulties throughout the EU in obtaining leased lines from former monopolies on a timely basis and at reasonable and non-discriminatory rates. These delays and high prices prevent new entrants from competing for customers and therefore bolster the dominance of former monopoly operators. The EU Member States and Switzerland have committed in the WTO to ensure that basic telecom providers from other WTO countries have access to and use of leased lines on reasonable and non-discriminatory terms and conditions.

Provisioning: U.S. carriers have experienced the most severe problems in Germany. There, new entrants have faced six-month delays in obtaining leased lines from the former monopoly operator (compared to provision periods of under 30 days in the United States). To remedy this problem, the German regulator has proposed a series of robust safeguards, including penalties for delays. This proposal is encouraging and could set the standard in the EU for ensuring that new entrants are able to obtain leased lines from former monopoly suppliers on a timely and non-discriminatory basis.

Pricing: U.S. operators have raised concerns about excessive prices for leased lines in Belgium, France, Ireland, Spain, and Switzerland. These high rates make it harder for new entrants to offer competitive services. WTO rules require these countries to ensure that foreign service suppliers have access to and use of leased lines on reasonable terms and conditions. USTR urges the European Commission and national regulators in the EU and Switzerland to identify benchmarks for leased line prices to ensure that these rates are reasonable.

Mexico - Interconnection

In Mexico, U.S. operators continue to have difficulty obtaining interconnection from Mexico's major supplier of telecommunications (Telmex), as specified under Mexico's WTO obligations. The United States has requested a WTO panel to examine its claims that Mexico has failed to ensure that (1) Telmex provides U.S. telecom companies interconnection for international calls at "cost-oriented" and "reasonable" rates and that (2) U.S. telecom companies can send their calls into and out of Mexico over leased lines. The United States remains open to resolving these concerns with Mexico. However, absent action on the part of the Government of Mexico, the United States will continue to pursue its WTO rights.

In addition, Mexico's regulator has not resolved a local interconnection dispute between Telmex and a U.S.-affiliated operator, which has invested heavily in building local networks. The delay in resolving this dispute - which has now dragged on for 15 months -prevents the U.S.-affiliated operator from expanding its service. WTO rules require Mexico's regulator to resolve interconnection disputes in a timely and impartial manner. Likewise, Mexican law requires the regulator to resolve interconnection disputes within 60 days. USTR urges Mexico to resolve this dispute and to ensure that the U.S.-affiliated operator obtains interconnection from Telmex at cost-oriented rates.

Finally, USTR remains disappointed that Mexico has not enforced domestic rules designed to prevent Telmex from engaging in anti-competitive practices, despite numerous instances of alleged violations.

Other Telecommunications Trade Practices

USTR will also carefully monitor other telecommunications trade practices raised in this year's Section 1377 review:

Australia: USTR has received complaints that Australia's telecom regulator has not acted impartially toward competitors to Telstra - Australia's 50.1 percent government-owned telecom operator. USTR will monitor such developments closely and will continue to urge Australia to fully divest its shares of Telstra.

Brazil: In contrast to a majority of countries in the region, Brazil has not undertaken market access and national treatment commitments for basic telecommunications services in the WTO. USTR will urge Brazil to do so during ongoing WTO services negotiations.

China: USTR is keenly interested in the success of China's efforts to establish an effective, independent regulator.

Colombia: USTR remains concerned that Colombia has not yet fully implemented key WTO telecommunications commitments, which are currently under review in Colombia's Constitutional Court. The Court is expected to release its decision in late-May.

EU: USTR welcomes enforcement action taken by the EU Commission to ensure full implementation of its telecommunications directives. The Commission is currently considering a complaint concerning the potential anti-competitive effects of high mobile wireless interconnection rates. USTR will monitor resolution of this complaint with great interest.

India: U.S. carriers have raised concerns about the weak enforcement powers of India's telecom regulator and about apparent conflicts of interest arising out of the Government of India's ownership interest in India's telecom operators. USTR urges India to address these concerns as part of ongoing efforts to privatize its telecom operators.

Japan: Three principal issues will be the focus of USTR's attention in the coming year.

(1) Japan is considering raising key wireline interconnection rates, which are already well above competitive levels. This action would be unprecedented for an advanced economy and would represent a serious blow to competition. USTR urges Japan to avoid backsliding in this area and to implement past pledges to reduce interconnection rates to competitive levels.

(2) Unnecessary regulation represents a significant barrier to new entrants. USTR urges Japan to eliminate regulations designed for the monopoly era and institute a regulatory regime that facilitates competition and innovation.

(3) USTR continues to have serious concerns that Japan has not taken adequate steps to ensure the independence of the regulator, particularly with respect to issues affecting the 46 percent government-owned operator (NTT). USTR will continue to press Japan to strengthen the independence of its regulatory system and divest its stake in NTT.

Peru: U.S. carriers have raised concerns about the influence of Peru's dominant carrier (Telefonica del Peru) over Peru's telecom regulator (OSIPTEL) and the transparency of OSIPTEL's regulatory proceedings. In the past, OSIPTEL has developed a solid regulatory record, particularly on interconnection issues. USTR supports efforts to increase OSIPTEL's independence and the transparency of its proceedings.

South Africa: USTR continues to have concerns about uncertainties in South Africa's regulatory regime, which appear to disadvantage competitors to South Africa's state-owned monopoly supplier of basic telecommunications services (Telkom). Without impartial regulation, South Africa will find it difficult to attract foreign investment in this sector and ensure that consumers benefit from innovation and competition.

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