

*Remarks by Lee Tuthill, Counsellor, TSD, WTO*

Good afternoon ladies and gentlemen and thank you to the Australian delegation for inviting me to make a few observations at the Symposium. In my remarks, I would like to take a step back from the picture at large and approach it, instead, with a broader brush.

A question I'd like to address is *why are we gathered here today talking about international mobile roaming at the WTO?*

I think we will find part of the answer in the fact that the Services Agreement, the GATS, is the first multilateral trade agreement to have included some elements of competition policy within its architecture. However, this was not with the intent of negotiating or importing competition policy, per se, as a trade issue.

For services, the aim was to ensure that the trade obligations and commitments are not undermined -- to ensure that they are not undermined by the lack of a legal and commercial environment that would allow service suppliers to take advantage of opportunities extended to one another by WTO Members.

Article VIII, is a provision of the GATS on monopolies and exclusive providers. It was the initial foray into competition policy concerns. Negotiators realized that there were a number of service sectors characterized by monopoly holdings. The article was a first step in the direction of holding governments responsible for the behavior of certain suppliers in their markets.

The article obliges governments to oversee the behavior of suppliers in who respects. The first is that it obliges governments to ensure that any monopoly supplier of a service does not, in the supply of its monopoly service, act in a manner inconsistent with the Member's obligations under Article II and specific commitments. The second is that governments must ensure that a monopoly supplier does not act in a manner that abuses its monopoly position with respect to committed services in which the monopoly is allow to compete. As you can see, the objective was to safeguard the integrity of trade the trade obligations and commitments.

Article VIII is a general obligations applying to all sectors, as relevant. However as negotiations proceeded in the examination of sector-specific issues, additional concerns about the market position of telecommunications suppliers came to the fore. As a result, the GATS Annex on telecommunications took shape.

The Annex on Telecommunications does not explicitly mention monopoly status or dominance. Yet, its reason for existence can essentially be credited to unease about the competitive landscape in telecommunications. There was widespread recognition of the potential of certain suppliers to behave in a way that could frustrate the benefits of commitments made to open markets for many services

that may rely on telecom services and technologies to supply their services. This is why the Annex requires governments to ensure that their suppliers of public telecom networks and services provide other suppliers, the suppliers of *any* committed services, with reasonable and nondiscriminatory terms and conditions for access to and use of the telecom services they need. It is interesting to note that the concern for the potential for abuse of market power in the sector was considered to be extensive enough that the Annex holds governments responsible for the behavior of certain suppliers - with respect to access and use - whether or not they possess monopoly rights.

Admittedly telecommunications was unique in that, despite the predominance of monopolies at the time, it was on the cusp of a wave of liberalization. Moreover, even in markets well along the path of market opening, the potential to abuse market power by certain market players was considered to be pervasive. Telecommunications was also treated as fairly unique because it is not only an infrastructure for other economic activities, but also a so-called networked industry in which inadequate safeguards could have ramifications on businesses across an entire economy. In this context, let us recall that, apart from Article VIII, telecommunications is the only sector with more explicit and far reaching provisions that relate to competition policy. And as telecommunication-specific negotiations proceeded further, there was shared concern that commitments would have little meaning if possible market failure and abuse of power were not taken into account.

The Reference Paper, regulatory undertaking to which a considerable number of WTO governments have committed in their schedules goes even farther than the Annex. It took the notions enshrined in Article VIII and applied them to dominant suppliers. It contains not only a general clause on maintaining safeguards on competition, but also extensive disciplines on what governments are obliged to apply to the behavior of certain suppliers with respect to interconnection. (Interconnect was, at the time and remains today, one of the principle domains in which market power can be exercised to the disadvantage of other market participants.

Therefore, we can see how and why, in certain situations, WTO governments are required to take responsibility for actions undertaken by private sector entities. Although the GATS and its Annex does not directly apply to the actions of these entities, there is nonetheless an unmistakable *indirect* link.

That brings us back to the question of why WTO would be concerned about international mobile roaming charges. To go to the heart of this question, it is unavoidable to look at pricing matters when considering the functioning of a competitive framework. Pricing practices is the issue that brings us here today. While the Reference Paper is explicit about its coverage of pricing practices of operators, at least with respect to interconnection, the relevance of pricing to the

Reference Paper's general competition safeguard and to the functioning of the Annex on Telecommunications is clearly implied. When authorities dealing with competition policy are trying to determine whether or not market failure or anticompetitive practices are taking place, pricing is probably one of the most important signals that need to be examined.

Other more complex details on possible implications of GATS can be found in the Secretariat Note on roaming which has been made available to help stimulate Members' discussions. Therefore, I have tried not to repeat here many of the points made in the Note. What I have provided are thoughts of a more conceptual, overarching nature that I hope may be useful.

Thank you.