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Council for Trade in Services

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COMMUNICATION FROM THAILAND

CERTIFICATION OF SCHEDULE OF SPECIFIC COMMITMENTS

The following communication has been submitted to the WTO Secretariat by the Government of Thailand with a request to initiate a certification procedure regarding improvements to Thailand's Specific Commitments on Telecommunication Services as contained in its Schedule GATS/SC/85/Suppl.2 pursuant to the "Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments" (S/L/84). Accordingly, if no objections are communicated to the Secretariat within 45 days from the date of this communication, the certification procedure shall be concluded, and the intended improvements shall be certified and will constitute an integral part of the Schedule of Specific Commitments on Telecommunication Services of Thailand (GATS/SC/85/Suppl.2).

According to Thailand's Schedule of Specific Commitments on Telecommunication Services (GATS/SC/85/Suppl.2), it contains specific commitments to introduce the market access, national treatment elements as well as additional commitments that are conditioned upon passage and coming into force of all necessary new communication acts, commencing from year of 2006.

With the coming into force of Telecommunication Business Act B.E. 2544 (2001) and its amendments and relevant laws and regulations, Thailand intends to update its existing Schedule of Specific Commitments. The improvements are as follows;

- 1) General Conditions: revise the conditions to be in accordance with relevant laws and regulations including Telecommunication Business Act B.E. 2544 (2001) and its amendments and Thai laws and regulations with regard to the establishment of juridical persons, and eliminate other conditions that are no longer in force.
- 2) Specific Commitments: increase foreign equity participation from not exceeding 20 percent to not exceeding 49 percent of the registered capital for market access and national treatment.
- 3) Additional Commitments: undertake obligations contained in the Reference Paper on Telecommunication Services with respect to voice telephone services, telex services, telegraph services, and facsimile services.

Please find attached the draft schedule indicating the improvements in track changes as well as the clean version of the draft schedule for ease of reference.

ATTACHEMENT 1
THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p><u>Commitments undertaken in this offer are subject to the following general conditions:</u></p> <p>Each service to be supplied in Thailand requires a specific governmental licence. - Any juridical person who intends to operate a telecommunications business in Thailand shall obtain a licence from the designated national authority (or authorities) in accordance with relevant Thai laws and regulations including Section 7 and Section 8 of the Telecommunications Business Act B.E. 2544 (2001) and its amendments.</p> <p>- Licences are granted only to service suppliers duly constituted according to the Thai laws and regulations. legislation, which requires head office and management located in the Thai territory.</p> <p>- Due to scarce resources, the number of licences may be limited.</p> <p>- The services in the Schedule of Specific Commitments shall be provided on facilities basis.</p> <p>The service provider shall be a Thai registered company with foreign equity participation not exceeding 20 per cent of the registered capital and the number of foreign shareholders must not exceed 20 per cent of the total number of shareholders of the company.</p> <p>The Communications Authority of Thailand has exclusive right to link with Intelsat and Inmarsat.</p> <p>Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, commitments on public telecommunication services will be introduced, and carried out in accordance with the implementing regulations to be issued by virtue of those acts.</p>			
<p>2.C. Telecommunication Services</p> <p>Public local, domestic long distance and international services:</p> <p>a. Voice telephone services</p> <p>b. Telex services</p> <p>c. Telegraph services</p> <p>d. Facsimile services</p>	<p>1), 2) None, other than</p> <ul style="list-style-type: none"> - traffic shall be routed through a gateway in Thailand operated by a supplier duly licensed; - the provision of concerned services shall be agreed by the suppliers duly licensed of both ends. 	<p>1), 2) None</p>	<p>Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce into its Schedule of Specific Commitments on public telecommunication services its treatment on the subjects relating to competitive safeguards, interconnection, universal service, public availability of licensing criteria, separation of regulatory and operational functions, and the allocation and use of scarce resources.</p>

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>3) Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce the market access elements as contained in those acts into the relevant parts of its Schedule of Specific Commitments relating to the supply of public telecommunication services. <u>Shall be a juridical person under Thai laws and regulations with foreign equity participation not exceeding 49 per cent of the registered capital.</u></p> <p>4) Unbound as indicated in the horizontal section</p>	<p>3) Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce the national treatment elements as contained in those acts into the relevant parts of its Schedule of Specific Commitments relating to the supply of public telecommunication services. <u>Shall be a juridical person under Thai laws and regulations with foreign equity participation not exceeding 49 per cent of the registered capital.</u></p> <p>4) Unbound as indicated in the horizontal section</p>	<p><u>Thailand undertakes the obligations contained in the attached Reference Paper on Telecommunication Services with respect to the following services:</u></p> <p>a. <u>Voice telephone services</u> b. <u>Telex services</u> c. <u>Telegraph services</u> d. <u>Facsimile services</u></p>

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than 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-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

(a) at any time or

(b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, 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.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such 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.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

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Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p><u>Commitments undertaken in this offer are subject to the following general conditions:</u></p> <ul style="list-style-type: none"> - Any juridical person who intends to operate a telecommunications business in Thailand shall obtain a licence from the designated national authority (or authorities) in accordance with relevant Thai laws and regulations including Section 7 and Section 8 of the Telecommunications Business Act B.E. 2544 (2001) and its amendments. - Licences are granted only to service suppliers duly constituted according to the Thai laws and regulations. - Due to scarce resources, the number of licences may be limited. - The services in the Schedule of Specific Commitments shall be provided on facilities basis. 			
<p>2.C. Telecommunication Services</p> <p>Public local, domestic long distance and international services:</p> <p>a. Voice telephone services</p> <p>b. Telex services</p> <p>c. Telegraph services</p> <p>d. Facsimile services</p>	<p>1), 2) None, other than</p> <ul style="list-style-type: none"> - traffic shall be routed through a gateway in Thailand operated by a supplier duly licensed; - the provision of concerned services shall be agreed by the suppliers duly licensed of both ends. <p>3) Shall be a juridical person under Thai laws and regulations with foreign equity participation not exceeding 49 per cent of the registered capital.</p> <p>4) Unbound as indicated in the horizontal section</p>	<p>1), 2) None</p> <p>3) Shall be a juridical person under Thai laws and regulations with foreign equity participation not exceeding 49 per cent of the registered capital.</p> <p>4) Unbound as indicated in the horizontal section</p>	<p>Thailand undertakes the obligations contained in the attached Reference Paper on Telecommunication Services with respect to the following services:</p> <p>a. Voice telephone services</p> <p>b. Telex services</p> <p>c. Telegraph services</p> <p>d. Facsimile services</p>

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