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WORKING GROUP ON TELECOMMUNICATIONS SERVICES

Note on the Meeting of 9-11 July 1990

1. The Chairman opened the meeting and called attention to the agenda, which included nine topics: mode of delivery, transparency, standards-related issues, pricing, conditions of supply/use of networks, "basic" and "non-basic" services, access to information and privacy, anti-competitive behaviour, and increasing participation of developing countries. He introduced the concept of transparency as the first item for discussion.

2. The representative of Egypt noted that transparency was included in the proposal presented by his and other delegations (MTN.GNS/TEL/W/1) with a requirement that all necessary information be made available through an inquiry point. The inquiry point would make information available on terms and conditions for use of public telecommunications services, licensing requirements for different classes of telecommunications users, criteria and procedures for testing and attachment of terminal equipment to public telecommunications services infrastructure, and tariffs and other charges.

3. The representative of Japan referred to article 3.17 of his delegation's non-paper and said that while his delegation was unsure whether transparency would need to be covered in a sectoral annex on telecommunications, there might be a need to specify that transparency in this sector applied to uses and conditions as well as tariffs.

4. The representative of the European Communities stated that the non-paper presented by his delegation set out clearly the kinds of information that a transparency provision would cover in the telecommunications sector. These included: terms and conditions for use, particularly usage conditions on leased lines; tariffs and prices for public telecommunications network services; specific licensing requirements; criteria and procedures for testing and attachment of equipment to the public network; procedures for establishing standards and the fora in which standards were developed; and specifications for technical interfaces. This was not an exclusive list but the main points of transparency necessary for meaningful access to the network.

5. The representative of the United States said that the annex proposed by the U.S. contained a separate article on transparency. Since the public telecommunications transport services were highly complex, usually provided on a monopoly basis, and served as an infrastructure for the

provision of other services and intracorporate communications, transparency assumed considerable importance. The U.S. proposal focused on the information needs of customers to ensure that all providers of covered services could efficiently use public telecommunications transport services. Specific provisions for transparency should include advance notice of intent to undertake changes in regulatory decisions or proceedings, the opportunity for interested parties to comment on the implications of proposed regulatory actions, and timely publication of laws, regulations, policies and tariffs. In addition to providing for meaningful access to, and use of, the network, transparency also gave meaning to other principles in a services framework.

6. Noting that most annex proposals contained provisions on transparency, the representative of Sweden, speaking on behalf of the Nordic countries, said that it was the view of her delegation that the general transparency provision in the framework could be applied to the telecommunications sector. While avoiding too much specificity, however, further elaboration of transparency with respect to monopolies and exclusive rights, tariffs, and conditions of access and use in the telecommunications sector might be useful. Her delegation also assumed that a framework provision on transparency would apply at the sub-national as well as the national level.

7. The representative of Australia said that since transparency should be adequately covered in the framework, an annex would need only to mention certain specificities or exceptional cases. Her delegation would want transparency to apply also to the public availability of judicial decisions. She wondered what the obligations of private operators would be with respect to publication and public availability of standards.

8. The representative of the European Communities said that transparency should as far as possible be covered in the framework. However, since the telecommunications network was used to provide other services, it might be necessary to go beyond the general framework provision. It would be important, for example, to assure transparency regarding access and use, and technical interface specifications for the public network for national, regional, local and independent entities. Meeting obligations would be the responsibility of signatories, however, by passing domestic legislation to assure compliance by public or independent entities.

9. The representative of Switzerland said that the general framework would have to define as precisely as possible the transparency obligations. In article 7, the framework proposal of Switzerland mentioned transparency and the relevant obligations. Article 7 referred to, among other things, international regulations, national laws, administrative rules and regulations (including technical regulations), and judicial decisions. These obligations would apply to the telecommunications sector. Provisions on transparency in the proposed annexes and the considerations cited by delegations provided examples of the application of the general principle to telecommunications, but these examples were illustrative and did not constitute any new obligations.

10. The representative of the United States said that, with regard to technical interface specifications, a delicate balance would be required between the need to acknowledge the importance of transparency and the need to recognize the importance of intellectual property protection. Interfaces, to the extent that they constituted protected expressions of ideas, were now protected under the copyright laws of all EC member states. She asked whether the intervention by the representative of the European Communities implied the over-ruling of copyright protection for interfaces. The representative of the European Communities noted that discussions of intellectual property were taking place in other fora and might not be appropriate in this working group. His delegation's position was that there was a need for information on the specifications of technical interfaces through transparency, in order to have the ability to connect to the network.

11. The representative of Canada noted that it would not be possible to reach definitive conclusions in the working group so long as a framework was not available. The working group could, nevertheless, engage in discussions on the substance of the issues without prejudice to the final outcome of the framework or annex. His delegation's position on transparency was that all international agreements and domestic measures should be published and made publicly available, and that there should be a national enquiry point. For telecommunications, transparency was important with respect to self-regulating operators. For technical interfaces, it was difficult to determine what kind of information could be divulged without encroaching on the right to protect commercially confidential information.

12. The representative of Cuba said that transparency was a difficult topic for developing countries. One of their greatest concerns was its implementation. The transparency provisions in the proposal put forward by four developing countries covered the elements contained in proposals by the European Communities, Korea, Japan and others.

13. Regarding the question of transparency obligations on private operators, the representative of Sweden, speaking on behalf of the Nordic countries, said her delegation would rather consider the function of operators independently of whether they were privately or publicly owned. If an operator functioned as a monopoly provider or with exclusive rights, then the transparency obligations would apply. As for technical interfaces and intellectual property rights, copyright protection should not necessarily conflict with transparency since it did not entail secrecy.

14. The representative of Japan said that transparency provisions in a telecommunications annex would help to prevent future disputes. If the term technical interfaces referred to user-network interfaces, then transparency would be necessary to ensure the efficient use of and access to networks. This was independent of intellectual property rights issues. Regarding the question on private operators, in the provision of "basic" or "reserved" services, transparency should be mandatory, but for

"superstructure/enhanced" services there should be no transparency obligation.

15. The representative of the United States said that a definition might help to further discussions. She asked what was meant by the term "technical interface specifications" and upon whom would the obligations devolve? The term "tariffs" also required further clarification.

16. The representative of Australia said that her delegation's earlier question regarding obligations of private operators referred primarily to private operators offering public telecommunications services. Would there be an obligation in the framework to ensure transparency even if a government had the competitive provision of public telecommunications in its market, and if so would the implementation fall on the licensee or the government? The agreement should clarify that the government had an obligation with respect to such operators.

17. The representative of Hungary said that a general transparency provision in the framework would likely satisfy the requirements in the telecommunication sector. Transparency should apply to private or public operators who were monopoly providers.

18. The representative of the European Communities said that obligations should rest on the shoulders of the parties and each party should decide how to meet the obligations. Implementation of these obligations did not need to be harmonized unless particular problems arose. He clarified that his delegation's proposal referred to user/network interfaces.

19. The Chairman opened the floor to discussion of standards-related issues.

20. The representative of European Communities said that international standards should be promoted and that an issue for discussion was what standards should be made mandatory, particularly for access to a public network. Private leased-line networks normally would not be subject to mandatory standards, unless a private network were to become involved in the provision of a basic service. It was important that standards provide for protection of the network, the operator, the user, and privacy of the user.

21. The representative of Sweden, speaking on behalf of the Nordic countries, said that there should be no provisions in the framework or annex that would make it difficult to continue work on the development of standards in the ITU and other specialized organs. Standards themselves should not be discussed and negotiated here. Her delegation sought non-discrimination in the application of standards. Standards should only consider whether there would be harm to the network or harm to the information provided over the network. An agreement should not go into detail regarding how private operators should set up their networks.

22. The representative of Japan said that the importance of the work of ITU concerning technical standards must be recognized. He noted that

CCITT had recommendations regarding the definition of terminal equipment that should be taken into account in discussions. Regarding user/network interfaces, the principle that applicable standards should be decided by the service provider, not by the user, should be clearly stated in an annex. On the issue of harm to the network, in the digital environment the interpretation of the principle of "no harm" to the network must be broadened.

23. The representative of Egypt said that the proposal submitted by developing countries raised three points with respect to technical standards: parties would undertake to promote international standards which were primarily established in the ITU; parties would agree not to employ private proprietary standards in their public telecommunications services; and parties would agree to cooperate to reduce problems of interconnection and to encourage a similar commitment by equipment manufacturers and telecommunications service operators.

24. The representative of the United States said that his Government supported the development of standard telecommunications protocols and interfaces for public networks and services which were designed to promote many types of applications and the inter-operability of public-switched service. The United States also supported the use of proprietary protocols for the provision of value-added services. Competition would flourish and users would benefit if both public data networks using standard telecommunications protocols and value-added networks using customised, proprietary or standard protocols were allowed to develop simultaneously. His delegation would strongly oppose any attempt to mandate the application of standard protocols in the provision of value-added services or the use of mandatory interconnection standards for value-added services which would preclude the use of proprietary protocols. The U.S. supported the need to assure the inter-operability of public telecommunications transport services and the development of international standards through the CCITT. Experience in the U.S. telecommunications market showed that market forces, shaped by customer demand, were moving in the direction of greater standardization even though proprietary systems, and their resulting benefits, were allowed. Standard and proprietary protocols could co-exist.

25. The representative of Australia said that since standards should facilitate trade, internationally agreed standards for public services were logical. The issue was how far such standards could be extended and still facilitate rather than distort trade. How far standards should go in terms on inter-connectivity, safety and security was essentially a matter of national policy, although most administrations derived their approach to standards from the parameters expressed in the recommendations of the ITU. Even CCITT standards were only recommended. Some recommended standards also allowed for alternatives. Safety was critically important but was not the only issue. Most would agree on standards that provided for electrical safety and that standards should be applied on a non-discriminatory basis. Difficulties would arise if standards were to aspire beyond this point.

26. The representative of Switzerland stressed the importance of international standards for telecommunications. An important question was which standards would be obligatory. Drafting of the standards should be undertaken at the ITU, but a sectoral annotation might contain precise rules to ensure network integrity, the functioning of the network, the security of operating personnel, the safety of the user, and the maintenance of an international service.

27. The representative of Mexico said that complying with the standards developed by the ITU should continue to be the basis for the operation of the public networks at a national and international level. The protection, safety and security both of the public network and personnel was important. The working group discussions should focus on the facilitation of trade. His delegation believed that annex provisions regarding the inter-connectivity of networks would be relevant to international trade. A mechanism to settle matters related to differing interpretations would be useful.

28. The representative of Canada said that the essence of Canada's approach to standards was that there should be "no harm" to networks and that equipment should be safe for users and technicians. The issue of electro-magnetic compatibility was subject to disagreements in international and domestic fora and, as such, might not be an appropriate issue to address in this context.

29. The representative of the European Communities said that requirements for the maintenance of network integrity mentioned in his delegation's proposal had a direct relation to the "no harm" formulation used in other proposals, but that network integrity extended beyond this concept. The use of international standards in this context was extremely important for an open and orderly market.

30. The representative of the United States said that his delegation supported criteria for attachment of terminal equipment that encompassed no more than standard of "no harm" to the network. In the United States, the "no harm" criteria was mandatory and service providers were not permitted to set additional attachment standards. This was one area in which it was useful to have a clear set of government-imposed standards. The "no harm" concept in the U.S. annex proposal would include technical harm and protection for network personnel. The United States also had mandatory electrical safety standards to protect users of equipment. The United States used the term customer premises equipment to refer to what some delegations were calling terminal equipment. Customer premises equipment was a broad concept that encompassed equipment that might not be included in some countries' conception of terminal equipment. The representative of Japan said that CCITT recommendations could be referred to for a definition of terminal equipment. He noted that CCITT recommendations define the function of terminal equipment, whereas the term customer premises equipment did not refer to any functionality of the equipment.

31. The Chairman noted that it would be the responsibility of national regulatory authorities, using ITU recommendations as a basis, to adopt definitions of some of the terms under discussion. Most delegations agreed that whatever standards were adopted should be applied in a non-discriminatory fashion. Another issue concerned which standards governments would decide to make mandatory. Discussions indicated that standards were necessary and that mandatory standards might be required for public networks and for interfaces between private-leased networks and public networks. He noted that a revised non-paper by the Korean delegation and two proposals submitted jointly by the delegations of Cameroon, Egypt, India, and Nigeria would be presented.

32. The representative of Korea said that his delegation was now tabling a proposal that carried forward the thrust of the paper circulated in June. The proposal attempted to define the principles with greater specificity and to supplement certain concepts. His delegation believed that a major issue to be addressed in the annex was whether service providers of telecommunications services to third parties and service providers of covered services other than telecommunications (e.g. banking, insurance) should be treated alike in terms of access to and use of basic telecommunications services. The question was whether a user of basic telecommunications services that was not in the business of providing telecommunications services should be allowed to provide non-covered (or excluded) telecommunications services to its customers utilising the basic telecommunications services. In many countries, basic telecommunications services were regarded as infrastructure telecommunications services, including voice transmission and telex. Basic services were subject to regulation for various reasons, including: (1) their role as pipelines for the provision of other types of telecommunications services; (2) the monopoly status of basic telecommunications service providers in most countries; (3) the desire to achieve and maintain universal service; and (4) national security considerations. From the perspective of basic telecommunications service providers, use of leased lines by telecommunications service providers was no different from that by non-telecommunications service providers. Moreover, in most cases, non-telecommunications service providers experienced no significant inconvenience when required to provide services through the networks of basic telecommunications service providers. From the perspective of policy-makers: (1) it would be difficult to differentiate non-telecommunications service providers from telecommunications service providers in terms of use of basic telecommunications services, given the fact that non-telecommunications service providers also received financial compensation for their services utilising basic telecommunications services; (2) even if distinguished, the precise scope of non-telecommunications service providers would be difficult to determine - in particular, the definition of a closer-user group; and (3) provision of basic telecommunications services through leased lines by non-telecommunications service providers would often entail bypass of the network and result in a loss of revenue by basic telecommunications service providers. Korea's proposed solution to the above-described issue was to treat telecommunications and non-telecommunications service providers alike in terms of access to, and use of, basic

telecommunications services and to ensure that non-telecommunications service providers did not engage in the provision of basic telecommunications services to third parties utilising the basic telecommunications services. By so doing, parties could avoid a long-standing debate over distinctions and definitions relating to the above-described issue. However, since non-telecommunications service providers would not be subject to the telecommunications market access regulation, such providers would enjoy relatively easier access to, and use of, basic telecommunications services than the telecommunications service providers. The major goal of the Korean paper was to equalise the range of telecommunications services that telecommunications and non-telecommunications service providers were allowed to provide to third parties utilising the basic telecommunications service. Thus, under this approach, the extent and manner in which non-telecommunications service providers could use basic telecommunications services would be limited by the definition of covered telecommunications services now being negotiated. Considering that most non-telecommunications service providers currently utilized data communications involving the use of a computer and telecommunications for the conduct of their principal services, his delegation believed that a minimum range of these data communications services should be included in the scope of the covered telecommunications services. These data communications services would include, but not be limited to: (i) on-line database and remote computing services; (ii) information transmission services combined with storage functions (e.g. electronic mail, message handling service, etc.); and (iii) information transmission services combined with data processing functions (e.g. computer reservation services, electronic data interchange, etc.). Signatories needed to agree on the precise scope of the minimum data services discussed above. However, given the difficulty of working out such a definition by consensus, he suggested that only a general definition (or set of guidelines) of the data services be included in the annex and that each signatory be allowed to determine the precise definition of the data communications services as it deemed appropriate. He said that the Korean proposal was structured in four chapters: Chapter 1 addressed definitions and scope of application; Chapter 2 contained general provisions; Chapter 3 covered market access; and Chapter 4 related to access to and use of excluded telecommunications services.

33. The representative of India said that he would introduce two papers on behalf of the delegations of Cameroon, Egypt, India and Nigeria: MTN.GNS/TEL/W/1 which was a sectoral annotation of telecommunications services, and MTN.GNS/TEL/W/2 which was an annex on telecommunications as a mode of delivery. The two papers were submitted in an effort to make a distinction between telecommunications as a mode of delivery and telecommunications as a service. The delegations presenting the papers believed that mode of delivery was related to the definition of services, a matter that would ultimately be settled in the GNS. However, annexes might be needed to deal with this and other modes of delivery. This sector was important as a mode of delivery because telecommunications was a necessary support service for the delivery of other services and because of the striking differences in the development of telecommunications

infrastructure in developing and developed countries. It could be described as a "horizontal" mode of delivery. Regarding the proposed annex on telecommunications as a mode of delivery, he noted that Articles 1 and 2 sought a commitment from participants to provide access to telecommunications services on reasonable terms and conditions, to ensure that service suppliers, not only those of telecommunications services, were provided effective access to markets. An important reservation to this obligation was that it would not require any party to provide a public telecommunications network or service that was not available on the date of entry into force of the agreement. Article 2 stated that parties shall ensure that access to markets for those services included in their schedules of concessions would not be nullified by lack of access to the telecommunications network. Article 5 attempted to make a further distinction between telecommunications as a facilitator and as a mode of delivery by specifying that there would be no obligations to provide access to the public telecommunications network for delivery of services which had not been subject to specific access commitments in the schedule of concessions. He reviewed other articles which addressed national treatment, licensing conditions, most-favoured-nation treatment, participation of developing countries, ensuring that users did not bypass public networks, and definitions of terms. Introducing the proposed sectoral annotation on telecommunications services, he said that it stressed the fundamental importance of telecommunications for the national economies. He noted that as a result of poor telecommunications infrastructure, the trade of developing countries in telecommunications services was almost negligible. The wider issue of global connectivity was important from the point of view of implementation of universal technical standards. For market access commitments on telecommunications services to be operative, it would be necessary to distinguish between the responsibilities of public telecommunications organizations, telecommunications service operators, and users. Among the purposes of the annotation, contained in article 1, were: to ensure that market access concessions did not conflict with the public service objectives or with the responsibilities of public telecommunications organizations; to ensure the expansion of participation of developing countries in the world market for telecommunications; to ensure conformity with existing inter-governmental disciplines and international arrangements; and to avoid a proliferation of unique standards. Article 2 contained definitions. Article 3 on scope and coverage specified that the annotation applied to trade in telecommunications services for which market access had been granted. Article 4 covered technical standards. Article 5 addressed the issue of ensuring access to information and distribution channels. Article 6 provided parties the ability to take appropriate measures to ensure the integrity and privacy of telecommunications. Other articles addressed transparency, market access, increased participation of developing countries and international arrangements.

34. The representative of Zimbabwe said that his delegation supported the the documents presented by Cameroon, Egypt, India, and Nigeria. The representative of Cuba said that his delegation supported the two developing country documents, but preferred to see the results of the

framework discussion prior to making formal comments on the sectoral documents. The representative of the European Communities said that he found some ideas consonant with ideas of his own delegation in the two documents presented by the developing countries, as well as some new and complex ideas. He noted that the documents referred to some concepts that would be contained in the framework. He asked how the documents would relate to the framework.

35. The representative of India said that a final decision had not yet been reached regarding the relationship of the documents to the framework. He recalled that the issue of mode of delivery would have to be tackled in the GNS, not only with respect to telecommunications but also with respect to movement of labour. Some concepts from the framework discussions were included in the documents to indicate the kind of conditions and qualifications that would be applicable to the telecommunications sector.

36. The representatives of Mexico, Argentina and Yugoslavia voiced support for the two documents presented by developing countries and noted that each of the two documents was intended to serve different purposes and that the distinctions were important from a methodological standpoint.

37. The representative of the United States said that most conditions for market access, national treatment and transparency were covered within the general agreement and did not require a separate annex; with one exception, the need to have access to, and use of, the public telecommunications transport service as the indispensable condition for providing many other services.

38. The representative of Sweden, speaking on behalf of the Nordic countries, said that it was difficult to make a clear distinction between mode of delivery and telecommunications services and that his delegation was not sure that the distinction was necessary. In view of rapid developments in the sector, he wondered about the exemption contained in article 1 of MTN.GNS/TEL/W/1 that said that nothing in this annex shall oblige a party to provide a public telecommunications network or public telecommunications service that was not available at the time of entry into force of the agreement. Would the annex apply to a network or service that became available after the agreement came into force?

39. The representative of India responded to the question from the representative of Sweden saying that the exemption did not imply that any services that were set up by a party would not be available for access by another party. It meant that a party would not be required to provide a service that was not available at the time of entry into force of the agreement. Where, for example, the telecommunications infrastructure of the party was not adequate, a party would not be expected to upgrade its infrastructure.

40. The representative of Canada said that papers before the working group indicated a fair degree of convergence and progress in the discussions. He asked for clarification regarding the operation of

Articles 9 and 10 of the sectoral annotation proposed by the developing countries.

41. The representative of Nigeria said that his delegation viewed telecommunications as one of the most important service sectors. Telecommunications had a growing importance as a mode of delivery. Discussion in the working group of the differentiation between telecommunications as a service sector and as a mode of delivery would help contribute to GNS discussions on the framework.

42. The Chairman opened the floor to a discussion of pricing and recalled that one delegation had at the group's last meeting queried the need for a telecommunications annex to address tariffication issues. He invited those delegations which had made reference to pricing in their submissions, to explain what their thinking was on the issue. He felt that, with one possible exception, there seemed to be a consensus that pricing would normally be applied on a non-discriminatory basis. He noted that several delegations had made use of the term "reasonable" when discussing pricing issues and that references had been made to the basis upon which leased circuits should be priced (cost-based, cost-oriented, flat rate, etc.). Reference had been made as well to situations in which users might request special access to services, and to the ability to charge the reasonable cost of special construction relating to such services.

43. The representative of the European Communities said that the objective within the Community was to look for a policy of more transparent tariffs. In no way however were attempts being made to harmonize tariff levels across member states. The essence was to derive and agree to common tariff principles. Cost-orientation was the first of such principles. Cost orientation should not hinder the objective of universal service provision. His delegation was not looking for individual cost-pricing of all services, but rather emphasized the need for averaging, whereby the total cost of providing a network or a certain service should be reflected in the tariffs applying to users. Cost orientation did not preclude a proper consideration of the social dimension of telecommunications. Flexibility was necessary to ensure that groups such as handicapped or elderly people enjoyed proper access to telephone services. His delegation had included in its non-paper the notion of a reasonable degree of unbundling of offerings in telecommunications. This meant that users should enjoy reasonable freedom of choice in regard to the elements of services and access to networks which they really needed. There should not be unjustified tying conditions between different aspects of offerings unless such conditions were justifiable on grounds of cost calculations. He emphasized that the pricing of leased circuits was an important and fairly delicate issue in a number of countries and noted that his delegation had no final position on the matter. For the normal type of leased lines, his delegation felt that flat rate tariffs went in the direction of cost orientation. He did not feel, however, that it was appropriate at this point in time that flat rates be considered as the only possible way of tariffing leased lines. In this respect, it would not be correct to pre-empt developments in technology and networks by making services available to users only on a

flat rate basis. He cited the examples of permanent virtual circuits and of leased lines provided over ISDN networks in this regard, noting that users might find it attractive in certain circumstances to have services charged other than on a flat rate basis. His delegation believed that, in justifiable circumstances, special pricing provisions could be envisaged at the request of users.

44. The representative of the United States said that his delegation's proposed annex included a reference for private leased circuits to be priced on a cost-based, flat rate basis. The terms "cost-based" and "cost-oriented" were essentially the same in the view of his delegation. Although the United States placed a great deal of emphasis on basing prices on cost, it did not expect the price of a specific service on a specific route to be identified and charged on a cost-based basis. His delegation also recognized the need for pricing to reflect social policy concerns such as universal service provision. Cost and pricing conditions varied greatly across a country as vast as the United States. Although cost-based in the main, the pricing of services reflected the need in some instances to average costs between rural and urban areas. The pricing of services also had to take into account the situation of people with limited economic means. The pricing of inter-state and international services which came under the jurisdiction of the Federal Communications Commission (FCC) specifically recognized the necessity for cross-subsidization between rural and urban areas as well as between long-distance and local services. The FCC also had regulations in effect which provided for cooperation with state regulators in providing assistance to economically disadvantaged customers. On private line tariffication, he noted that the reference to cost-based pricing in his delegation's proposed annex was specifically related to the pricing of private leased circuits. His delegation believed that private line tariffs should be available on a flat rate basis, inasmuch as the costs of providing private leased circuits were largely non-traffic sensitive. The United States had adopted as a general principle of rate setting the concept that non-traffic sensitive costs should be recovered as much as possible from flat rate charges, whereas volume sensitive charges should be used for those costs that did vary in accordance with the volume of traffic. His delegation recognized that common carriers did offer, in addition to flat rate private leased circuits, volume sensitive tariffs for some circuits. It was acknowledged that volume-sensitive pricing might be to the advantage of certain categories of users. As well, his delegation recognized that changing technology could make other forms of private leased circuit tariffing desirable, a possibility which its proposed annex provided for. Finally, he noted that a provision on reasonable charges for the cost of special construction had been included in his delegation's proposed annex to reflect long-standing provisions in the tariffs of US common carriers. Such provisions allowed common carriers to charge customers the reasonable cost of facilities that were constructed specifically to serve them. The FCC and the regulatory authorities of states reviewed proposals for such charges to ensure that they were reasonable and did not unfairly burden a particular customer. In addition to these specific provisions on cost-based pricing, the proposed annex also contained a general provision on pricing which emphasized that

the price of telecommunications services that were needed by providers of covered services should not be used or have the effect of nullifying a country's market access undertakings.

45. The representative of Japan felt that there was commonality between his country's proposals on pricing and those put forward by the delegations of the European Communities and the United States. He recalled that three issues were taken into account on pricing matters in his delegation's non-paper: first, parties should ensure non-discrimination treatment among end-users in regard to the conditions of use of infrastructural/basic services offered to the public; second, the price of leased circuits should be cost-oriented and generally on a flat rate basis. His delegation preferred the term "cost-oriented" as it better reflected the need for some flexibility in the pricing of services in view of universality considerations. He recalled that the issue of pricing was addressed in his delegation's non-paper only in connection with leased lines. Third, his delegation shared the views of the EC and US delegations on the issue of charges relating to the cost of special construction.

46. The representative of Singapore said that pricing was in the view of his delegation a process wherein the service provider made an important decision taking into account, among other things, the needs of the market, the positioning of his product or services, the expected return on his investment, his marketing strategy, etc. in deriving a price level which in his opinion would maximize both his customers' and his company's needs. He wondered how signatories which in most instances were not providers of telecommunications services could comment on behalf of their operators on the issue of pricing. In regard to the notion of cost-based pricing, he said that his delegation had tried to obtain some clarifications from an accounting expert and had been confronted with numerous definitions of costs. He suggested that group members free themselves from the complex and foreign issues of costs and pricing and focus instead on more familiar issues. He emphasized the need to ensure pricing was done on a non-discriminatory basis.

47. The representative of Switzerland said that his delegation fully endorsed the principle of non-discriminatory pricing and agreed that prices should to the greatest extent possible reflect costs. He stressed that cost orientation was often desired by telecommunications users but noted that attaining the objective of universal service provision required some flexibility in regard to the pricing of services. He recalled that a country's basic network infrastructure had to be financed by the services provided over it. This often involved recourse to cross-subsidization between rural and urban areas. Switzerland's pricing policy aimed at being as independent as possible from geographic considerations. As to the pricing of leased circuits, his delegation supported the notion of flat rate tariffs. He agreed as well to the need for reasonable charges in regard to special construction costs.

48. The representative of Korea said that while there seemed to be a consensus in favour of cost-based tariffs, there were nonetheless difficulties in setting tariffs for individual service offerings. In other

words, a rigorous application of cost-based tariffs might not in practice be always possible. It was important to bear in mind, nonetheless, that deviations from cost-based pricing involved problems of resource misallocation and potential trade distorting effects. Pricing was a particularly difficult issue to confront in the area of basic services given the need for universal service offerings. A rapid movement towards cost-based pricing might prove difficult for many countries, emphasizing the need for such an objective to be framed in a long-term perspective while relying initially on a best endeavours approach.

49. The representative of Mexico said that his delegation endorsed the principle of non-discrimination in pricing matters. It was appropriate for tariffs to be cost-oriented but it was difficult to base the prices of all services on costs because of geographical or developmental considerations. The specific needs of all regions within a country had to be taken into account in determining tariff levels in relation to universal service offerings. He emphasized that the long-term distortions created by significant departures from cost-based pricing should not be underestimated. It was important to provide for reasonable charges in the case of special constructions costs as such developments may be expected to gain in significance in the future.

50. The representative of Austria said that his country basically followed a policy of cost orientation with flat rate charges. Given the country's geographical characteristics, it was necessary to resort to a policy of internal subsidization; this was done only in regard to basic service offerings.

51. The representative of the European Communities felt that the working group should deal with pricing matters given the fundamental role played by telecommunications in economic development and as an underlying transport mode for the provision of services. He recalled that article 7.2.4 of his delegation's non-paper emphasized the importance of the non-discrimination principle. He asked the Japanese delegation what it meant when talking of non-discrimination among end-users of telecommunications services, wondering whether some forms of discrimination might be foreseen between providers and end-users or between service providers themselves.

52. The representative of Japan said that in article 3.7 of his delegation's non-paper, non-discrimination applied between end-users of all countries. In article 4.2.4 of the non-paper, his delegation had foreseen that article 3 would not prevent a party from making a distinction between conditions for the use of end-users and providers of superstructural enhanced services so far as such a distinction did not result in trade distorting effects. This meant that there might be competition between infrastructural service providers and superstructural enhanced providers and it might be necessary to treat end-users somewhat differently from superstructural enhanced service providers, implying in such cases departures from the principle of non-discrimination.

53. The representative of the United States recalled that his delegation's proposed annex had foreseen that the price, terms and conditions of telecommunications services made available under the annex should be reasonable and non-discriminatory. The principle of non-discriminatory pricing was important both between countries and customers, a feature which was enshrined in the United States' Communications Act. He agreed that the question of pricing discrimination between end-users and providers of telecommunications services was important and had to be addressed, noting that his delegation saw no need for discrimination in this regard.

54. The representative of Switzerland said that the issue of subsidies was linked to that of non-discrimination, recalling that in article 13 of MTN.GNS/W/102, his delegation had proposed the banning of subsidies applicable to internationally traded services.

55. The representative of Korea said that his delegation had not in its non-paper drawn a distinction between end-users and providers of covered telecommunications services. As well, article 4 of the non-paper foresaw that no discrimination be possible between domestic and foreign users, the latter term encompassing both simple end-users and covered telecommunication service providers. The premise of his delegation's non-paper was that the distinction between users and providers of telecommunications services was becoming increasingly difficult to make. Distinctions in his view should not be made, all the more so as they allowed for regulatory discretion.

56. The representative of Australia said that his delegation was sceptical of the need to address pricing issues in a telecommunications services annex. His country strongly endorsed the principle of non-discrimination but believed that pricing matters ought to be left to individual signatories on a national basis. There appeared in his view to be a consensus over the need for prices to reflect costs to the greatest extent possible, subject to the need for cross-subsidization in some instances and for pursuing social/universal policy objectives. Cost was a very flexible word, one whose meaning varied in different settings. It was thus far from clear that pricing matters should be addressed in an annex, particularly as there was a possibility of contention over the level of particular costs. His comments should not be interpreted as putting into question the importance of cost-based pricing. On the pricing of leased lines, while Australia practised a policy of cost-based, flat rate charges in the domestic context, it did not want to see such an option adopted in a multilateral treaty. Other pricing options could be envisaged, for example in an ISDN environment, but he emphasized once more his delegation's scepticism at seeing sectoral annexes containing such a degree of detail. He asked the delegation of the European Communities to clarify its intentions under article 10 of its non-paper when it spoke of the unbundling of tariffs.

57. The representative of Sweden, on behalf of the Nordic countries, said that his delegation firmly believed that telecommunications should be produced at the lowest possible cost to the national economy and believed

that cost-based tariffs facilitated the attainment of such an objective. Cost-based tariffs were also very important for trade and investment purposes. If tariffs for a certain service were artificially high, it could encourage investors or users to bypass the existing network and/or service. He agreed that the provision of universal services imposed particular costs in regard to rural or outlying areas and recognized that it was difficult in such circumstances to determine what the exact cost of providing a given service might be. This did not, however, detract from the importance of pursuing, to the greatest extent possible, a policy of cost-based pricing. So long as the regulation of tariffs was not addressed in the multilateral framework, he was in favour of addressing the issue in a telecommunications annex.

58. The representative of the European Communities said that competitive service operators, among others, might need to address in providing new types of services requirements for specific features which in many cases went together with the basic access to the network but were not necessarily part of one undividable offering. His delegation was looking for basic access to the network in accordance with international standards providing minimum guaranteed access to networks and services. In addition, and of particular relevance in the evolving digital network environment, there were options which were of vital importance to users and value-added service providers. In the area of telephony, one could think of a feature like international reverse charging whereby a service operator was able to obtain facilities for charging transport over telecommunication networks to his users. In data networks, there were similar arrangements whereby international standards such as X-25 provided basic access but also specified the possibility of operating an international closed-user group. It would not be justified in all cases to offer such special features, which were essential to users and service providers, in a fixed packet together with the basic access. Options for specific use should thus to the extent necessary be tariffed separately from basic access charges, i.e. be unbundled. More of these features would develop with the gradual introduction of the intelligent network concept in public networks.

59. The representative of Canada agreed that there was not much reason in a telecommunications annex to get into too much detail on cost orientation beyond the principle of non-discrimination. The transparency element of pricing had not received sufficient attention. He wondered to what extent pricing policies and practices should be subject to transparency requirements. As well, the issue of pricing as a potential barrier to trade needed to be looked at more carefully.

60. The representative of the United States agreed that the unbundling of service elements was generally a good idea, one which had long been followed in the tariffication of common carrier services in the United States. An elaborate program of unbundling known as Open Network Architecture (ONA) had recently been introduced with a view to provide service operators with the kind of access to public telecommunication transport services that they required. While the proposed US annex did not contain a provision directly related to ONA or to unbundling, his delegation nonetheless felt that it was an important concept for the

efficient use of telecommunications services and the efficient production of covered services which use telecommunications services. He wondered in regard to the unbundling provision contained in the EC non-paper who would decide what degree of unbundling was necessary, noting that his delegation was unsure whether it would want to turn the question of unbundling over to customers as seemed envisaged in the EC non-paper. He recalled that the US proposed annex contained a specific provision dealing with the potentially trade distorting effects of pricing and agreed that the issue warranted grater scrutiny on the part of group members.

61. The representative of the European Communities recalled that the second part of article 6 of his delegation's non-paper addressed the issue of transparency in regard to tariffs. As well, on the issue of the trade-distortive effects of pricing, his delegation's non-paper had as one of its objectives that the provision of services be done on reasonable and equitable terms. If tariffs were cost-oriented, it was unlikely that they could become obstacles to trade.

62. The Chairman felt that delegations might want to reflect more on whether a telecommunications annex would require the elaboration of a specific provision on pricing matters. His sense of the discussions was that a fair number of delegations felt that the issue was sufficiently important to warrant a specific provision, although some delegations questioned the extent to which it might be dealt with. If there was to be a pricing provision, he felt that the central issue touched on was that of non-discriminatory treatment, both between domestic and foreign customers as well as among all foreign providers. He noted however that there was at least one delegation that felt that some differences in treatment might be envisaged in some circumstances. There seemed to be a general agreement that tariffs should be related to costs, the debate seeming to centre on the extent of detail of provisions dealing with the issue of cost orientation. Similarly, the issue of flat rate pricing for leased circuits appeared to raise few difficulties, although delegations had indicated a willingness to leave the door open to other pricing options. On the question of unbundling, he felt that the main issue was once more that of the degree of detail of such provisions, noting that delegations who had addressed the issue had emphasized its importance. If a consensus were to emerge on the need to elaborate a pricing provision, the group should not encounter too much difficulty in drafting a provision that would be generally acceptable. This of course could depend on the degree of detail of a possible pricing provision.

63. The representative of the United States noted that there was a frequent practice in some countries of applying surcharges to the price of private leased circuits when these were used by providers of enhanced services as opposed to entities making use of such circuits for intracorporate purposes. This practice was often described as constituting an access charge. The United States' definition of access charges differed from the concept of a surcharge applied to the leasing of private circuits by one particular class of customers. Access charges in the US referred to charges imposed for the use of the public switched telephone network and to providers of telephone services who had to use local

exchange facilities to originate and terminate inter-exchanges of communications. The application of access charges was done on the basis of cost-based pricing and such charges were adjusted annually to reflect changes in the costs of providing access to local exchange facilities. His delegation believed that all customers using leased circuits generated the same kind of costs for the provider of private leased circuits. There was as such no justification for a larger price for any particular category of customers.

64. The Chairman opened the floor to a discussion of matters relating to conditions of supply/use of networks. He said that it appeared difficult to make a clear demarcation, on the basis of the submissions before the group, between the conditions governing the supply of services on the one hand and those governing the use of such services on the other. There were several proposals that dealt with questions relating to the supply of services and to the ability of customers to have access to services. The main focus of discussions on this issue might then be the conditions that might be required in making available a variety of telecommunications services. Alternatively, one could look at the conditions affecting the ability of users to choose among a variety of service offerings. Numerous provisions contained in the various proposals dealt with conditions that could be placed on users who had leased such services. Such conditions seemed to distinguish between the use of private leased circuits by companies for their own internal purposes and by customers who leased such circuits with a view to offering services to third parties. There seemed to be a general consensus that any conditions governing the supply and use of networks and services should be applied on a non-discriminatory basis.

65. The representative of Korea recalled that one of the major features of his delegation's non-paper was to treat users and providers of telecommunications services alike in terms of conditions of access to -and use of- basic telecommunications services. The non-paper made it clear that users should not provide to third parties services which were not covered. There should be no restrictions on the use of leased lines that were used for intracorporate purposes. In the case of different legal entities, as long as there was no interconnection between leased lines, there should be no concern over the possibility of providing services to third parties. Were a wider range of uses to be allowed, there might be difficult definitional problems over the precise meaning of intracorporate communications or closed user groups.

66. The representative of Japan said that rules concerning the conditions of end-use were spelled out in article 3.8 of his delegation's non-paper. As the development level of countries' telecommunications sectors varied greatly, his delegation felt that only general rules should be envisaged for inclusion in an annex. Reaching a consensus on detailed provisions on this matter would prove most difficult. Concerning the treatment of end-users and of enhanced service providers, article 4.2.4 of Japan's non-paper proposed that superstructural enhanced service providers should in general be treated equally with end-users. Such treatment might differ in very limited cases. For example, the price of leased circuits for enhanced service providers could be slightly higher than for end-users.

Conditions applying to end-users should be the same regardless of their nationality.

67. The representative of the United States said that the conditions of supply were the focal point of her delegation's proposed annex. Article 3 of the annex provided considerable detail on the conditions of supply or the obligations imposed on the provider of public telecommunication transport services. In discussing the obligations of providers of public telecommunication transport services, her delegation did not in any way wish to restrict the scope of services that such providers could supply. The annex did foresee in article 3.3 that when a public telecommunication transport service provider did offer competing services, it had to make the underlying transport service available to enhanced service providers on the same terms and conditions as it them made available to itself or to its affiliate. The US annex contained relatively few usage conditions, i.e. conditions imposed upon customers. There were nonetheless three such conditions: first, in article 3.6, the annex foresaw that the simple resale of public telecommunications transport services should not be permitted; second, attachment of customer premises equipment to the network would be subject to a "no harm" standard; and third, users of public telecommunication transport services should use standards and protocols establishing interfaces to public switched telecommunications transport networks. Her delegation's proposed annex did not make any distinctions between classes of customers and she wondered what reasons could be invoked for making them.

68. The representative of Australia said that most telecommunications administrations, including his own, made distinctions for certain purposes between classes of customers. For instance, a distinction was typically drawn between residential and business customers in setting tariff levels. Similarly, special conditions applied to customers that were hearing-impaired or geographically disadvantaged. He hoped that agreement could be reached on a wording that would allow telecommunications administrations to continue to apply limited forms of discrimination between classes of customers, noting that different considerations would per force apply to discriminatory practices in regard to surcharges for enhanced service providers.

69. The representative of the European Communities recalled the essential points made in Articles 7 and 8 of his delegation's non-paper. Where usage conditions were necessary, they should constitute a minimum set with minimum restrictions on users, adding that usage conditions should in fact be expressed in such a way as to promote market access. He emphasized the need, spelled out in article 7.2.3, for maximum user choice in regard to the different means of access to networks. This did not refer only to leased lines but also to the public telephony network, public data networks, ISDN, etc. With regard to restrictions that were necessary and justified, he categorized them in two parts. First, it was important to ensure that the exclusive and special rights which have been deemed as necessary were being respected under the usage conditions. Second, there were a number of objective criteria which any user of the network had to adhere to. These so-called "essential requirements" had to be defined at a

minimum level but preferably in a harmonized way. The general principles applying in his delegation's non-paper to usage and supply conditions had to be transparent and non-discriminatory. He agreed with the Australian delegate that all countries had policy objectives whose pursuit should not be hampered so long as they did not distort trade, recalling that article 5 of the EC's draft framework proposal in MTN.GNS/W/105 addressed this very issue. He asked the Korean delegation whether excluded telecommunication services (ETS) users could provide ETS services if they didn't do so for reasons of financial compensation. He asked as well how article 6 of the Korean non-paper articulate itself with access to and use of ETS. He indicated, finally, that the last paragraph on page 2 of the Korean non-paper appeared to distinguish two types of users.

70. The representative of the United States said that distinctions were also made in his country in setting tariffs for local services between residential and business users, but noted that no such distinctions applied in the case of inter-exchanges or long-distance charges nor in that of private leased circuits. The current discussions dealt mainly with the use of public telecommunications transport services for various kinds of business users and he noted that discriminations against enhanced service providers, particularly in regard to pricing, could have the effect of nullifying the benefits of an agreement on trade in enhanced services. The issue of privacy was not specific to the telecommunications sector and should be addressed in the framework.

71. The representative of Korea said that ETS providers could not sell ETS services to third parties even if they didn't receive financial compensation. The reason for this was that while they could not receive financial compensation for the provision of telecommunications services, they could nonetheless receive compensation for other types of services. This issue was linked to th third question which the EC delegate had raised. He noted the difficulty of distinguishing clearly the origin of a firm's financial compensation. Article 6 of his delegation's non-paper did not address market access conditions for ETS providers but only for covered telecommunications service (CTS) providers.

72. The representative of the European Communities suggested that the term "non-differentiation" be used instead of non-discrimination given the latter term's connotations in the trade field. The former term related merely to potential differences in treatment among different users. While agreeing that privacy matters were not specific to telecommunications, this was true as well of other issues which the group had addressed, such as cost-orientation. Lack of sectoral specificity was not a reason for not looking at a particular issue in the working group. There were aspects of privacy which were in fact specific to the telecommunications sector. He asked the Korean delegation whether there were special conditions of access covered by article 6 of its non-paper.

73. The representative of Cuba said that article 7.1 of the EC delegation's non-paper appeared to imply the granting of access to the markets for telecommunications services, an issue which in his view should be addressed by the multilateral framework itself. The proliferation of

new terms employed in the submissions before the group introduced difficulties which could be minimized were an attempt made at agreeing to common language. He asked for instance what the EC delegation meant by the term "private service operators" in article 7.2.3 of its non-paper. He asked as well what the exact scope of article 3.3.1 of the proposed US annex was. The practice in Cuba was to draw distinctions between amongst various users depending on whether they had licences, were private, etc. While this involved differences in treatment and tariffs, he was unclear as to whether it could be seen as a discriminatory practice.

74. The representative of Korea wondered whether the EC delegate had in mind special conditions which would not be covered by a provision in the framework. The reason for including article 6 in the Korean non-paper related in fact to the absence as yet of an agreed and clear multilateral framework; some revision to the non-paper would be done in the light of a finalized framework text.

75. The representative of the European Communities said that article 7.1 in his delegation's non-paper aimed at explaining the philosophy which should prevail for access and usage conditions. More specifically, this philosophy aimed at facilitating market access, both for telecommunications and all other services. As to definition of private service operators, reference to the term "private" was not made in regard to the ownership of an enterprise but to encompass more than simply public network operators. Reference was made in the article to suppliers of telecommunications services that did not provide reserved services.

76. The representative of the United States said that article 3.3.1 of his delegation's proposed annex might be referred to as an equal access provision and related to instances of discrimination between the provider of public telecommunications transport services and its customers when the former was itself engaged in the provision of competing services. It complemented article 10.2 of his delegation's draft framework proposal (in MTN.GNS/W/75) which related to competitive safeguards. Article 3.3.1 would come into play only when the provider of public telecommunications transport services chose to enter into competition for the provision of a covered service and would relate only to the services that the provider used in the provision of a covered service. He recalled that a covered service was one which fell under the general framework and for which a party had made a market access commitment.

77. The representative of India said the question of conditions of supply and use of networks was closely linked to that of market access. He recalled that market access commitments in regard to a specific telecommunication service had to be negotiated under the general framework. Market access negotiations would also specify the conditions of entry and operation as well as the use of networks. Once market access had been granted on the basis of agreed conditions of entry and operation, the principle of national treatment would apply. National treatment in the services sector could not however be seen as an obligation which contracting parties would have to take upon entry into force of the

framework. His delegation preferred the notion of cost-oriented, as opposed to cost-based, pricing in the telecommunications area.

78. The representative of Cuba asked what the scope of the term "resale" was in article 3.6.1 of the United States' proposed annex. He also sought clarifications on the scope of article 3.7.4, in particular the terms for obtaining licences.

79. The representative of the United States said that the reference to resale in article 3.6.1 was not an unlimited permission to engage in the resale of public telecommunications transport services. Rather, it was a recognition that the telecommunications regulations of many countries contained restrictions on resale and shared use which were at times used to prevent the provision of other services, such as enhanced services. The reference to resale was intended to make clear that providers of covered services, including providers of enhanced telecommunications services, may use public telecommunications services and in particular private leased circuits to provide their services without being barred from doing so on the grounds that the use of private leased circuits or other services constituted a resale. Article 3.7.4 provided that parties should not, after having granted market access to a telecommunications service provider, impose a separate licence for the use of the network as distinct from the licence governing the provision of a service nor impose a licensing requirement that would render both the market access commitment and the use of the network meaningless.

80. The representative of India felt that there were many common points between article 3.6 of the United States' proposed annex and the paper submitted to the working group by the group of four developing countries. He sought a clarification on the link between article 8.1.2 of MTN.GNS/W/75 and Articles 3.1 and 3.6.1 in MTN.GNS/W/97.

81. The representative of the United States took note of the question and indicated that a response would be given after consultations with her delegation's general services negotiators. She asked the EC delegation to elaborate on article 7.2 of its non-paper, which spoke of reasonable conditions of access and usage.

82. The representative of the European Communities said that there had been extensive discussions within the EC on the issue of the extent to which supply conditions could or should be specified with regard to specific parameters of provision. Attempts had been made at determining what parameters could be specified and applied, for example, to delivery times for access to the network, subscription to a public switched telephony network or to a leased line and to repair times. It was useful to identify those parameters that were vital for allowing users to gain access to the network, without however going into details of establishing, for example, delivery times for the subscription to a service. Differing circumstances across countries and regions within countries, as well as between various types of service offerings, did not usefully permit the harmonization of supply parameters. It was important to define the criteria which applied to the provision of services and ensure that such

provisions were published in an appropriate manner so as to be transparent and easily accessible by users. As well, his delegation felt that it was justified to ask public operators to publish statistics on their performance over time.

83. The representative of Canada did not see why a distinction needed to be made between users of telecommunications for intracorporate purposes and users for purposes of providing enhanced telecommunications services in regard to conditions placed on them. Value-added service providers were not licensed in Canada and were not imposed discriminatory charges.

84. The representative of Sweden, on behalf of the Nordic countries, said that his delegation believed that liberal market conditions were the best means of achieving cost-effectiveness in the provision of services. He understood that some countries found it necessary to retain monopolies and allow for the possibility to restrict the provision of certain services. He understood some of the submissions before the group as allowing for this possibility, as opposed to requesting it.

85. The Chairman indicated that one of the questions before the group concerned the extent to which any sectoral annotation should contemplate the ability to impose restrictions on access and usage conditions. He noted that in view of the different regulatory approaches taken in the sector, some countries might well wish to impose restrictions on the use of leased lines with a view to protect certain reserved or basic services from competition by third party service providers. Other countries might presumably take a different approach and choose not to licence enhanced service providers, i.e. impose no conditions on such providers. Some restrictions could nonetheless be placed on private operators who leased lines in order to protect a monopoly or reserved service for public voice communications. He understood references to licensing in various submissions as reflecting the willingness of some countries to impose licensing conditions. He wondered whether the ability to impose such conditions should be subject to any disciplines, for example the need to apply such requirements on a non-differentiated basis.

86. The representative of Sweden, on behalf of the Nordic countries, indicated that his previous statement referred to all telecommunications services, including basic services.

87. The representative of the United States said that her delegation's proposed annex recognized that some countries might feel the need to licence access and use of a network. However, such licensing should, if deemed necessary, be of a minimal nature. As regarded conditions of licensing applying to enhanced service providers, such an issue should be addressed in the general services framework. The proposed annex did not refer to the licensing of any services. Rather, licensing matters were referred to in the context of access and use of networks. She indicated that the United States did not impose licensing requirements on enhanced service providers. It would be useful to know more precisely from other delegations who would be responsible for carrying out the licensing, what

kind of information would be required in a licence, what would be the time involved in responding to a request for a licence, etc.

88. The representative of Japan said that there were no real barriers to the entry of superstructural enhanced service providers into Japan's market. Notification or registration was required in Japan for entry purposes but this could not be described as a barrier to entry. Notification was required when the capacity of the network was below a certain limit and registration became necessary when capacity levels exceeded a given limit. Distinctions between end-users and enhanced service providers might be necessary in some instances to maintain the economic viability of infrastructural service providers. He stressed that such distinctions were made in only very limited cases and noted that his delegation's non-paper proposed that any such differentiation be made so long as it did not have trade distorting effects.

89. The representative of the European Communities said that article 3 of his delegation's non-paper dealt specifically with the issue of licensing and referred to Articles 5 and 6 of the EC's draft framework proposal. Article 5.1(a) said that regulations, norms and qualifications necessary for the supply of services in the territory of a party must be based on objective criteria. Licences in the Community had to be issued by regulatory bodies which had to be different from the operators. Such a provision had not been introduced into his delegation's non-paper. His delegation felt that this issue could nonetheless be contained in an annex were a consensus to emerge in the group. Reference to "reasonable" conditions was enough for the purposes of the annex, all the more so as it was difficult to distinguish between what should be harmonized on the one hand and what should form part of general conditions on the other.

90. The representative of Sweden, on behalf of the Nordic countries, said that countries who wished to allow the simple resale of leased lines should not be prevented from doing so as a result of the provisions of an annex.

91. The representative of the United States said that article 3.6 of the proposed US annex had been drafted so that a country would not be obliged to accord use to a customer that wished to provide public telecommunications transport services. There was nothing in the document however that would prevent a country from permitting a customer to use the basic service if it wished to provide public telecommunications transport services.

92. The Chairman said that a question confronting group members related to the degree of specificity that might be required if a provision dealing with licensing matters was deemed as worthy of inclusion in an annex, noting that the submissions before the group dealt with licensing matters in fairly general terms. He invited group members to address the issue of the kinds of conditions that might legitimately apply to the use of telecommunications networks and be referred to in an annex. An alternative would be to adopt a fairly general wording which would acknowledge that

some conditions could be imposed and applied wherever possible on a national treatment and non-discriminatory basis.

93. The representative of India recalled that the conditions of entry and operation, as well as of access and use, would have to be negotiated in respect of particular telecommunications services. For this reason, he was not sure that licensing matters needed to be addressed in a sectoral annotation.

94. The Chairman said that he did not detect many differences in the various approaches taken on the issue of access and use conditions. When such conditions were to be applied, one should expect them to be reasonable, transparent and accorded to all parties on the same terms.

95. The representative of India said that once a party agreed that telecommunications was a mode of delivery for a particular service, the conditions of licensing should be such as to not impair market access benefits. However, licensing conditions relating to the provision of telecommunications as a traded service per se should be negotiated separately under the general framework rather than being addressed in an annex.

96. The representative of the United States felt that the discussion might be covering some fundamental differences of views on access and use conditions. Her delegation's proposed annex dealt in a quite specific way with usage conditions, and she recalled that three specific conditions were imposed on customers in regard to access and use of the network. The proposed annex focused as well on conditions of supply so as to ensure businesses engaged in the provision of covered services with the ability to use public telecommunications transport services for that purpose. Her delegation had found from practical experience that unless the conditions of access to such services were made very specific, there could in fact be no access at all.

97. The representative of Japan said that his delegation's non-paper did not refer to licensing conditions. His delegation nonetheless felt that licensing requirements should be kept to a minimum. His delegation supported the approach taken in article 3 of the European Communities' non-paper.

98. The representative of Mexico said that licensing matters had to be dealt with in an expeditious manner within specified time limits. Licensing requirements had to be reasonable so as to allow enhanced telecommunications services to enter markets without delays and play their vital role in stimulating economic efficiency and competitiveness.

99. The Chairman asked the delegation of the United States to give examples of licensing conditions which could trigger the use of article 3.7.4 in its proposed annex.

100. The representative of the United States noted that enhanced telecommunications services were not licensed in the United States. She

said that her delegation could accept a "minimalist" approach to licensing, recognizing that many countries did licence such services. Her delegation would prefer the adoption of a simple registration procedure, where no propriety information was supplied and where a licence would be granted in an expeditious manner and on an automatic basis.

101. The Chairman asked whether it was correct to assume that one condition of licensing could be to prevent a licensed operator from moving into the provision of a public telecommunications transport service?

102. The representative of the United States said that his delegation's proposed annex would not extend to allowing customers to use telecommunications services for the purposes of providing public telecommunications transport services if the authorities of a given country did not wish to do so. His delegation did not find it necessary, however, to have a licensing regime for this condition to be effected.

103. The representative of the European Communities recalled that licences could be of a very different nature. In the case of value-added services, licences should refer to minimum requirements and restrictions and have the aim of promoting market access. His delegation had established that in order to have open and orderly market conditions, it was important that certain basic principles were adhered to. He cited the example of calling line identity and the privacy aspects that were related to it. If there were not a reasonable convergence, preferably on the basis of international standards, on the dissemination of information which could affect the privacy of users, it was unlikely that orderly market conditions would be secured for the provision of services.

104. The Chairman opened the floor to a discussion of basic and non-basic telecommunications services. He said that the reason for addressing this issue at this point of the meeting related to his hope that some of the meeting's previous discussions might lead group members to a consideration of basic and non-basic services. Delegations used many different terms in this regard: basic/enhanced; basic/value-added; reserved/competitive; infrastructural/superstructural; excluded/covered, etc. Without worrying too much about terminology matters, group members should consider whether some services, because they were provided (and likely to continue to be) on a monopoly basis or because they were so integral to the network facilities, might be less likely to be addressed in an annex, although the conditions governing access to and use of them was of key interest. At the same time, were there other categories of services - whether these were called value-added, enhanced, competitively provided or non-basic - in regard to which a consensus might be easier to reach in developing a telecommunications annex.

105. The representative of Korea said that there were proposals in the GNS to aim at a universal coverage of service sectors while allowing countries to lodge reservations in certain areas. He sought clarifications on the meaning of such reservations. For instance, would reserved areas be bound at some point in the future to be liberalized? Would countries have to write into their national schedules when particular sectors or sub-sectors

would have to be liberalized? He wondered if basic telephone services would be subject to reservations, hence be subject to future liberalization undertakings. He was unclear as well as to what reservations could be applied to, i.e. to all provisions of the general framework or only to some of them? On the issue of terminology, the distinctions that were found in the various proposals all seemed to pinpoint some types of services which would not be open to competition. His delegation made such a distinction by clearly referring to excluded telecommunications services. His delegation felt that services which parties did not want to open to competition were not covered by the framework. It was for this reason that specific provisions were required in a telecommunications annex. He wondered what would become of the annex provisions if so-called basic services were to be covered by the framework. Would these have to be re-written? If so, how and when?

106. The Chairman said that the Korean delegate's questions touched upon important areas where final decisions had yet to be taken in the GNS. While the issues which the working group could address were somewhat unclear, those that it couldn't address were fairly clear. Chief among these was the issue of determining the coverage of the services framework. It would not be up to the working group to determine which types of telecommunications would be covered by the framework. That being the case, the way in which the sectoral annotation was drafted might well determine the kinds of obligations that the framework would apply with respect to some services, for example enhanced services, as well as the obligations, if any, that might pertain to so-called basic services. Until the framework was finalized, there would be no entirely clear answers to most of the Korean delegate's questions.

107. The representative of Japan expressed concern over the issue of coverage. He agreed that the absence as yet of an agreed framework meant that the were no clear cut answers to the questions raised by the Korean delegation. His understanding of current GNS deliberations was that countries that did not intend to allow foreign market entry for a particular type of service could lodge a reservation on market access for that service. Such a reservation would be the object of negotiations regarding future liberalization commitments. In some areas of the telecommunications sector where national security concerns emerged, it might be impossible for a country to open a particular market segment to foreign competition. There should be limitations placed on market access in regard to infrastructural services. This could be done through recourse to a provision dealing with general exceptions. In view of the natural monopoly characteristics of telecommunications, it was necessary to regulate the ownership and operation of infrastructural facilities. The terminology adopted on page 17 of his delegation's non-paper was based on this notion and drew a distinction between basic and enhanced services, although there was no universally agreed definition of these terms. The non-paper also made a distinction between infrastructural and superstructural services. Based on these distinctions, the submission proposed the adoption of the terms infrastructural-basic services and superstructural-enhanced services. From a practical standpoint, differences in the terminology employed by various delegations were not so

great, the main intention of all countries being to secure access to and use of telecommunications networks and services under reasonable and transparent conditions.

108. The representative of Cuba agreed that there would be a need for greater clarity on the scope of the framework as it applied to the telecommunications sector and emphasized the desire of some countries to retain control of certain services, notably infrastructural-basic services. He asked whether the ITU could provide some clarifications in regard to the definition of some of the terms found in the various submissions before the group.

109. The representative of the ITU said that, as emphasized at the working group's previous meeting, the ITU had no provisions which distinguished between categories of services or facilities that were sometimes characterized as either basic or enhanced. Attempts to distinguish between these or similar differentiated telecommunications categories had not been feasible and were considered inappropriate on the basis of technological or operational characteristics. Furthermore, the use of all these terms so varied among different regulatory environments that compatibility had not been possible nor even regarded as desirable because of the pace of change in this field. Because there were no agreed international definitions on basic-enhanced distinctions, this subject was regarded as a national matter.

110. The representative of Chile said that her delegation sought a services agreement which covered all types of services, including all types of telecommunications services, whether basic or non-basic. Provisions on national treatment and market access should be applicable only to those sectors and/or modes of delivery which governments might want to include in a positive list of commitments. With such an approach, she questioned whether there was a clear need for a telecommunications annex, noting that most problems would be solved through negotiations on market access and national treatment taking place under the multilateral framework.

111. The representative of Korea questioned the need to distinguish between basic and enhanced services, wondering whether it was because of a general consensus that basic services should not be open to competition.

112. The representative of the European Communities said that his delegation favoured a services framework with universal coverage. The EC had confronted definitional matters internally and had come to the conclusion that flexibility was important given the pace of technological and regulatory change in telecommunications. The EC non-paper made a distinction between the operation and establishment of an infrastructure on the one hand and the provision of a service on the other. The EC Green Paper on the internal market for telecommunications made clear that a limited number of services could be of public interest. There could thus be good reasons to entrust such services to a national telecommunications organization and to provide a certain level of protection for the provision of such services. His delegation had never said that such an

approach should be pursued indefinitely nor that it should lead to fixed definitions. It was up to member states to decide how far they wished to go beyond the limits of what the Community's legislation would allow them to do in regard to reserved services. The most obvious area where there was a public interest in ensuring universal service provision was that of public data networks. It not always certain that universality objectives could only be secured through the granting of special or exclusive rights. In looking at the area of public data networks, his delegation had put much emphasis on the development and implementation of standards. If there were no standards in areas where interconnectivity and interoperability were considered important at the national level, it was unlikely that a reasonable level of interoperability could be secured at the international level.

113. The representative of Australia felt that the purpose of basic/non-basic distinctions was ultimately to clarify what services might be appropriate to reserve, restrict, authorize or licence operators and what services might be appropriate for provision by other means. It was her delegation's position that it was desirable to move directly to this question without first attempting to distinguish basic from enhanced services. In the GNS context, it should be open to parties to reserve such relevant services, such as public telephone or telex services, from the full application of certain framework principles. Australia saw value in listing in a positive way those services which could be considered for special treatment in terms of the conditions and restrictions of supply, leaving open all other services for general competition provisions. The underlying characteristics of the listed services that made them appropriate for special consideration would be enumerated.

114. The representative of the United States said that article 2.1 of her delegation's proposed annex spoke of its applicability in regard to access to public telecommunications transport services whether or not covered by the agreement. This remained an open issue, one which would have to be negotiated under the general framework. She noted however that, regardless of the outcome, the proposed annex could still apply. Another member of the US delegation said that the proposed annex put forward a definition of public telecommunications transport services that corresponded to the regulatory definition adopted in the United States in regard to basic services. The services that were not mentioned in the proposed annex were those which his delegation tended to view as enhanced services. The reason for not mentioning them was that the annex concerned the kinds of public services that providers of services needed access to in order to provide their own services. The proposed annex did not consider questions of market access for the provision of a service as these fell within the ambit of the general framework. The issue of distinguishing basic from enhanced services was perhaps less complex than often thought. The regulatory authorities of his country had found it possible to operate such a distinction for over a decade without encountering any appreciable difficulties. The definition retained in the annex was not particularly inflexible. Because it did not determine market access commitments, it did not raise the kinds of concerns which could come from a "reserved" services approach. His delegation's definition emphasized the fact that

there were some kinds of public services that were to be made available on a wide basis and that such services were to be used by the providers of other services.

115. The representative of the European Communities noted that the definition adopted in the proposed US annex referred to common carriers, a term which was not defined in the annex. Beyond definitional problems, his delegation broadly agreed that there were certain services available to the public and in regard to which certain obligations applied.

116. The representative of the United States agreed that a broad consensus appeared to emerge over the fact that some types of services ought to be made publicly available whereas other services might call for different treatment.

117. The Chairman wondered what this apparent consensus meant in terms of the possible contents of a sectoral annotation for telecommunications.

118. The representative of the United States felt that the main issue to address was not so much the definition of various types of service offerings but rather the conditions under which services could be used. Whereas some countries had alluded to the problem of so-called grey areas between basic and enhanced services, few problems of this sort had been encountered in the United States.

119. The representative of Korea wondered what would happen if the definition which might emerge from the group's deliberations was not to match the coverage of telecommunications services under the framework.

120. The representative of Malaysia said that his country did not allow operators of paging services who wished to gain access to Malaysia's market to be fully foreign-owned. Malaysia's policy did, however, allow foreign providers to access the domestic market if they operated on the basis of a joint-venture. He asked whether such regulations would be perceived as nullifying or impairing benefits as thus trigger the application of article 3.7.4 of the proposed US annex.

121. The representative of the United States noted that the question Malaysia had raised in this respect was an establishment issue which would be discussed within the GNS.

122. The representative of India said that the context within which basic and non-basic services were being examined should be clarified. If the idea were to exclude a certain set of services from any market access commitments, then the approach was not in accord with the GNS mandate. But if a positive list approach were employed, then it would be left to the parties to negotiate on the services in which they would grant market access, including public telecommunications networks. If the positive list approach were adopted, defining basic and non-basic services would not be necessary. However, once a market access commitment was made and telecommunications as a mode of delivery was granted then the issue with respect to basic public telecommunications services would be to ensure

that the value of the concession was not nullified. Public telecommunications services would be defined by each country with reference to that which was supplied to its own consumers. The definition used would determine the value of the doncession.

123. The representative of Korea said that if some very basic services like telephone were covered, even if market access and national treatment were limited, this meant that other provisions of the framework would apply. If such basic services were excluded through the reservations process, at some point they might be subjected to liberalization negotiations. This would not be acceptable from his delegation's point of view. Agreement on a distinction between basic and enhanced services could synchronise the scope of services open to liberalization and foreign competition. This question was an important methodological matter. Agreement on the distinction could be reached by consensus, left to each country to determine, or achieved by establishing a set principles and guidelines. If too much latitude were left to parties in making this distinction, problems related to discretion or arbitrariness could develop.

124. The representative of the United States said that the grant of market access regarding a service must include access to and use of public telecommunications transport services.

125. The representative of the European Communities said that many proposals before the group contained a number of common elements with respect to the definition of public telecommunications services. There was greater divergence if the definitions were read in light of commitments under the framework. It was important to define a certain number of obligations which were primordial to ensuring that services for which commitments had been made could actually be provided.

126. The representative of Sweden said that said that it would be helpful to arrive at a consensus on which areas of telecommunications could be liberalized immediately, but permanent exclusion of certain telecommunications services by means of the annex would be dangerous. Some services that might now be regarded as excluded by some countries, could be subject to liberalization in the future.

127. The representative of the United States said that the question of coverage should be handled in the GNS. She asked what was the distinction between the terms public telecommunications service and public telecommunications network as used in the EC proposal.

128. The representative of the European Communities said that regarding networks - telecommunications infrastructure and the physical means of transport - there were valid reasons for maintaining national control over their establishment and operation. Regarding the services provided over the networks, technology and regulations in this sector were constantly changing. Accordingly, a distinction between the network and the services would help clarify some issues. Nevertheless, certain services should at this time be entrusted to public operators who would be obligated to

provide these services, but might later be subject to liberalization. This would not be the case for the network itself.

129. The representative of the United States noted that the terminology "access or use of the network" could refer to access to information that the network operator might consider proprietary such as computer software, listing of telephone subscribers or billing information. For this reason, the U.S. text referred to access to the network services, rather than to the network itself.

130. The representative of the European Communities, referring to the proposed annex on mode of delivery, asked the representative of India whether a commitment for market access would require an additional specific commitment to the mode of delivery. He asked whether once a commitment to telecommunications as a mode of delivery were made, the annex on mode of delivery would then define the terms of what had been offered.

131. The representative of India said that access to the network as a mode of delivery would need to be clearly linked to a market access concession. A market access commitment for a particular service sector would need to be accompanied by an agreement to offer telecommunications as a mode of delivery for that service sector. He noted that the framework was likely to contain a list of modes of delivery which would be applicable to various service sectors for which market access had been granted. The issues relating to telecommunications as a mode of delivery were as yet unresolved, but until these issues were resolved the proposed annex would serve to help clarify discussions.

132. The representative of Canada said that the proposed annex on mode of delivery was helpful but noted that the relevant issues would need to be resolved in the GNS. Referring to a concern raised earlier by the U.S. delegation, his delegation agreed that intellectual property rights issues were not an appropriate subject of discussion of this working group.

133. The representative of the European Communities felt that the issue of interfaces was one which group members should bear in mind irrespective of the fact that aspects of it might be addressed in other fora. Although access had to be granted to both services and networks, a distinction could nonetheless be made between the two. When talking about access to networks, one had to talk about the fundamental right of access to a network termination point without which it was impossible to exchange information. When talking about services, one had to distinguish between services that were absolutely vital and came under universal service obligations and a multitude of other services that could be offered under competitive conditions. Great care had to be exercised in regard to access to so-called proprietary information. While information found in public data networks could be of great importance to value-added service providers, considerations of data protection and user privacy also had to be taken into account. Trying to establish in detail what types of access were justified and necessary at each of these levels was not a simple task

in an area as dynamic and technologically driven as that of telecommunications.

134. The representative of the United States said that the concept of access to the network was troublesome to his delegation, noting that he was unsure how one could separate access to networks from access to services under current conditions. He noted for example that when one had access to a network termination point, it was for providing a telephone service. One of the problems which the concept of access to information raised related to the possibility for customers to decide what services the network had to provide. What his delegation was seeking in the current negotiations was to identify those services that were offered to the general public and ensure that they were available for businesses to use, as opposed to providing customers with the right to tell the network what services it had to offer. The process of Open Network Architecture (ONA) was at an early stage of development in the United States. Regulatory authorities had at this stage left it to the Bell operating companies and to AT&T to decide the basic service elements that they would offer in taking on ONA obligations. Under this approach, customers could not require carriers to provide access to their networks on terms of their choosing.

135. The representative of the European Communities said that there were instances where a value-added service provider did use services that were provided over the network, citing the example of voice mail services. In other cases, competing service operators did require access to a number of network termination points in order to create their own virtual networks over the infrastructure. The distinction between networks and services need not be made in all circumstances. He emphasized that access to both were important and that a distinction could in some instances facilitate the achievement of a greater consensus on the types of access to networks and services that could be agreed to at the multilateral level.

136. The Chairman opened the floor to a discussion of access to information and privacy.

137. The representative of the European Communities said that her delegation had included a provision on privacy in its non-paper given its importance in regard to telecommunications networks and services, in particular its relation to the collection, storage and processing of personal data. Her delegation had addressed the issue as one aspect of the right to regulate. It was an issue that was likely to become increasingly important in a digital telecommunications environment. She cited the example of call data, noting that the large amount of call data that was automatically generated and recorded in a digital environment raised the issue of the extent to which such information needed to be protected. Privacy was an issue of growing importance in relation to calling line identification, unsolicited calls, the receipt of junk mail via facsimile, etc.

138. The representative of Sweden, on behalf of the Nordic countries, felt that the issue of privacy was fairly general in nature and should be

addressed by the framework itself. It would be important to look at what the GNS produced on this issue before deciding what to do on this issue within a telecommunications annex.

139. The representative of the United States said that her delegation regarded privacy issues in a far broader context than that of telecommunications and noted that such issues should be addressed in the wider setting of the GNS.

140. The representative of Switzerland supported the views of the two previous speakers on the issue of privacy, noting that the protection of data was a subject which concerned all segments of society and applied to all sectors. In dealing with this issue, it was important to derive general rules for data protection and to codify them if possible in a specific piece of legislation. He agreed that specific problems of data privacy emerged in the telecommunications sector and felt that it was important that the general framework - or, if necessary, a sectoral annotation - safeguard the ability of countries to take measures necessary to ensure the sufficient protection of data.

141. The representative of Canada said that the most appropriate context in which to address privacy-related matters was the general framework. The Canadian government had legislation relating to personal data contained in federal government files. Commercial contracts in Canada frequently contained provisions which were aimed at protecting the privacy of persons on whom data was provided and he noted that such private contractual arrangements were enforceable in the courts. In the area of telecommunications, there were commercial contracts for enhanced services which provided for the protection of privacy. As well, regulatory authorities set conditions for the protection of privacy by the network service providers. It was his delegation's view that private commercial contracts could afford adequate safeguards against abuse in this area and that legislation was not required at this time.

142. The representative of the European Communities said that his delegation shared many of the opinions which had just been expressed. He recalled that his delegation had addressed the issue of privacy in article 15 of its draft framework proposal before the GNS but nonetheless felt that it might be necessary to elaborate provisions on privacy-related matters which were specific to the problems encountered in the telecommunications field. If the public telecommunications network was excluded from the coverage of a services framework, it was important to ensure that any reservations or exclusions applied in the sector did not undermine the application of general rules in the sector, one of which might relate to privacy-related matters. Even in the absence of exclusions or reservations, his delegation felt that the issue of privacy was sufficiently important to warrant elaboration in a telecommunications annex. The new networks now being developed provided scope for potential abuse in regard to data privacy. The cross-border nature of mobile networks, which might be either publicly or privately operated, involved exchanges of information that might be vital in terms of user privacy. Based on the Community's experience, where the development of national

privacy legislation was not always convergent, his delegation felt that it would be useful in an annex to clarify what user privacy could specifically mean in a telecommunications environment.

143. The representative of Austria said that his delegation attached great importance to international discussions in the field of data protection, noting that his country's legislation in the area was so explicit as to create barriers to the development of the telecommunications market. As the country's legislation had to be changed, his delegation was most interested to know more precisely what the international environment looked like on this issue. He hoped that there could be a rapid worldwide harmonization of regulatory approaches to data privacy.

144. The representative of Chile said that it was important, from the point of users of telecommunications services, that there be assurances that information could be accessed continuously. Measures relating to access to information should be applied both to the provision of telecommunications services per se as well as when telecommunications was a mode of delivery for the provision of other services.

145. The representative of the United States said that his delegation endorsed the views expressed by the Canadian delegation on the issue of privacy. The United States had sought to achieve a balance of protection of privacy for the individual in freedom of speech under the first amendment of the country's constitution. Any proposal therefore that involved the dissemination of information would be scrutinized with a view to determining its effect on freedom of speech. It was widely known that his delegation's approach to privacy protection focused on the protection of information rather than on the technology being used. This explained why privacy matters were viewed in a broad context rather than looked upon specifically in the area of telecommunications. The United States did not legislate prospectively. Instead, in the area of privacy, the United States had developed legislation tailored to particular industry sectors which were primarily government health files. Private sector files were covered only to the extent that problems were found, such as in credit records. Citizens in the United States had the ability to have access to information on themselves and correct errors in name-linked data. In the governmental sphere, the Freedom of Information Act allowed citizens with access to federal information. There was, as well extensive self-regulation in the private sector. The United States did not legislate in an omnibus fashion and there was multitude of sources of privacy protection at both the state and federal levels. The United States questioned the need for omnibus data inspectorates but rather looked to the value of self-regulation and to various forms of codes of conduct that could be voluntarily subscribed to by private sector companies.

146. The representative of Australia said that his delegation shared the view that privacy was a general issue which covered a range of services and environments. He asked the EC delegation whether it considered that the authorization of domestic measures protecting privacy that was implicit in the general framework was not sufficient to address privacy

issues applying in the telecommunications area. In other words, what privacy matter was of such significance as to warrant elaboration in a telecommunications annex?

147. The representative of Cuba said that domestic regulations in his country addressed the issue of confidentiality of information and applied to telecommunications and to other sectors as well. He recalled that the International Convention on Telecommunications in the ITU also dealt with this question. He wondered whether the working group needed to go into the details of aspects that were already addressed in the national legislations of all countries. Mention of information-related matters could be envisaged in an annex given the importance which some delegations attached to them but this seemed to be an area where national and international regulations already existed.

148. The representative of the European Communities noted the increasing emergence in recent years of national legislation in the areas of data privacy and protection. Her delegation was concerned that new barriers to trade could be erected if the new body of national legislation took on widely different forms. Her delegation had the future telecommunications environment in mind when proposing that the specificities of privacy-related matters be addressed in an annex.

149. The Chairman felt that valid concerns had been expressed on issues relating to privacy but wondered once more how best to deal with them in a possible sectoral annotation. He felt that an issue that had not been addressed related to the ability to move, store and process information as well as the suggestion for improved cooperation among parties relating to access to information services.

150. The representative of the European Communities felt that it was important to ensure that access to information was lasting at the international level. Referring to article 5 of his delegation's non-paper, he said that information was an essential ingredient for economic wealth. As there was a market for information, it was vitally important that its freedom of movement be secured, an objective which a provision in an annex could help to achieve.

151. The representative of the United States said that the issue of access to information had been debated for a number of years in different fora. Her delegation did not understand what the problem really was in this area. She asked the EC delegation a number of questions so as to help clarify the latter's intentions in regard to access to information. She wondered whether the EC's concern over access to information was with publicly-held information, privately-held information, or both. If the concern related to privately-held information, she asked whether the focus was upon government constraints such as export controls or upon alleged private constraints. She asked whether problems relating to access to information were deemed to be widespread or isolated in nature. She sought some background information from the EC delegation on the previously reported difficulties of a European firm in obtaining information from the American Chemical Abstracts Company. She asked whether the EC delegation

believed that European consumers of American data and information services lacked adequate legal protection in European or US courts. Did the EC delegation believe that private contractual commitments to supply data and information were inadequate to protect consumers, including large business users? She asked, finally, whether current European legal protection for information users differed from American practices.

152. The representative of the European Communities said that his delegation had both privately and publicly-held information in mind in addressing the issue of access to information. His delegation was preoccupied by governments' export controls, although this issue potentially emerged in regard to both goods and services trade. The problems which had emerged to date in relation to access to information were fairly specific in nature and had been satisfactorily addressed but his delegation wished to ensure that a proper mechanism be in place to address future potential problems. The philosophical approach to legislation in the Community differed from that in the United States. His delegation's concern over future potential problems in the area of access to information had led to the proposal that appeared in its non-paper. The question of whether European consumers were better protected in EC or US courts was an open one and that the answer would no doubt vary depending on what one was talking about. He agreed that private contractual arrangements could handle a number of problems encountered in the area of access to information and should be encouraged to the extent possible but was somewhat unsure that they could be relied upon to solve all problems. This was one more reason which had prompted his delegation to address the issue of access to information in the context of a sectoral annotation on telecommunications.

153. The representative of Canada said that his country had entered into international commitments in the area of access to information in the context of the Canada-United States Free Trade Agreement (FTA), where national treatment was undertaken with respect to measures related to the movement of information across borders and access to data bases or related information stored, processed or otherwise held within the territory of a party. The FTA also provided for consultation relating to any measures affecting the operation of the agreement. He felt that the main difference between the EC proposal on access to information and the FTA provisions related to the issue of prior consultation and the provision of prior information. His delegation could envisage multilateral commitments in the area of access to information given its importance to international trade and in view of the country's existing commitments in the area.

154. The representative of the United States said that article 3.6.7 of her delegation's proposed annex referred to the movement of the customers' own information but did not discuss access to information held by another party. She said that the article had been included out of the recognition that a covered service provider could very well have access and use of a public telecommunications transport network's services but then be denied the ability to move his information either within a country or across borders. This could nullify the advantages of the framework and of market access commitments. She emphasized her delegation's belief that the

cross-border movement of information was an intrinsic part of access to and use of the services of the public telecommunications transport network.

155. The representative of the European Communities felt that the issue of data protection and privacy bore a strong link to that of the movement of information. He asked the US delegation to provide more information on the link between export embargoes and article 3.6.7 of its proposed annex.

156. The representative of the United States said that an export embargo that would be employed for national security reasons was an issue that would be handled in the general services negotiations. National security exceptions were not only invoked infrequently but represented an issue which parties might not fully control given the right of each party to judge its own essential security interests.

157. The representative on the European Communities said that he was not alluding to national security matters in relation to export embargoes but to more general restrictions placed for example on the exports of data banks.

158. The Chairman felt that further thought was probably required on the issues of privacy and access to information and suggested that the working group revisit such issues at a future meeting. He informed group members that the delegation of the United States would be circulating an information note outlining the main elements of MTN.GNS/W97. As well, the delegation of Japan would be circulating a note containing corrections to both MTN.GNS/TEL/1 and its revised non-paper.

159. The Chairman introduced the topic of anti-competitive behaviour. He noted that most proposals before the working group addressed this issue in some manner.

160. The representative of the European Communities said that the EC proposal for a framework dealt with the subject of anti-competitive behaviour under article IX on monopolies and article X on restrictive trade practices. In the view of his delegation that if the framework adequately addressed the topic there would be no need to reintroduce it into the telecommunications annex. Since the sector served as an underlying means of transport, the topic was particularly important. The objectives of the annex proposed by the EC stated that parties should ensure that market access be assured under conditions of fair competition. Annex article 7.2.4. dealt with the application of articles IX and X of the framework proposed by the EC to ensure that equivalent conditions and terms would apply to telecommunications. Cross subsidies and privileged access would not be allowed when public telecommunications services also provide competitive services. His delegation attached importance to these provisions. Article 9.2 in the EC proposal concerned the use of standards in this regard.

161. The representative of the United States said that his delegation was not offering a specific provision on competition safeguards for the

telecommunications sector at this time. Article 10 in the U.S. draft framework pertained to monopolies and might well suffice for this sector. Article 10.2, in particular, required that measures be taken to ensure that government-sanctioned monopolies not engage in predatory actions in any competitive sector in which they participated. This language was germane to the telecommunication sector where network monopolies would need to be constrained from giving their competitive services affiliates favoured access or internal subsidies. A debate of the merits of such provisions in the framework was better left to the GNS. The only competition policy issues that were clearly identified by GATT trade in services documents were those constraining "officially sanctioned monopolies," a term which was, however, subject to varying interpretations. He welcomed suggestions on how to define better the term and added that it could be useful for parties to identify those entities that should be covered in order to minimise ambiguity. For entities that were not covered, each country's national anti-trust and regulatory remedies would apply. In the United States, parties injured by anti-trust violations, including foreign citizens, could bring treble damage suits and injunctive actions in the U.S. courts. In other countries, private law suits were generally less available, but the right to request administrative measures, as was the case in the European Community, was usually helpful in this regard.

162. The representative of India noted that his delegation viewed anti-competitive practices as being negotiated or primarily in the context of the framework. In MTN.GNS/TEL/W/1, article 8.3 said that parties shall determine whether a dominant market position was held by any telecommunications service operator and shall take such steps, individually or jointly, as might be necessary to eliminate anti-competitive practices. This was a cross reference to the draft framework MTN.GNS/W/101 in article 13 which proposed that parties shall establish international standards and disciplines for the control of adverse trade effects of anti-competitive private sector behaviour and multilateral mechanisms to enforce such standards and principles. Although being negotiated in the context of the framework, this would be relevant also to the telecommunications sector.

163. The representative of Switzerland drew attention to article 13 of the Swiss framework proposal (MTN.GNS/W/102) that provided for the prevention of anti-competitive behaviour by monopolies or exclusive service providers. This provision would also apply to telecommunications.

164. The representative of Canada said that the U.S.-Canada Free-Trade Area (FTA) Agreement contained a provision relating to monopolies in the annex on telecommunications services as well as in the overall FTA agreement. For telecommunications, it was found necessary to tailor the overall provision to deal with the case of telecommunications monopolies that might compete in services outside of their monopoly area and to indicate that the parties could have safeguards against cross-subsidization, predatory conduct and the discriminatory provision of access to basic telecommunications transport facilities or services. This approach was relevant to the working group.

165. The representative of Korea said that his delegation's proposed annex also contained a provision on anti-competitive behaviour. He raised questions about the actual application of the provision: How could the provision be implemented in a country where the regulator and the provider were the same? For countries where the regulatory system was not adequately developed, how would the provision be implemented? Would it take such countries a long time period to implement? Korea would need time to implement the provision because it might, for example, have to revise the accounting system of the monopoly provider or change laws. For his country, developing an annex was difficult, whereas some countries with advanced regulatory systems could simply design an annex modelled after their current regulatory system. If such proposals were adopted, those countries would not need to conduct a major revision of their telecommunications-related regulations and laws. For Korea, changes would be required even if its own proposal were adopted because it had proposed a new regime that would better facilitate trade in telecommunications services.

166. The Chairman introduced the topic of increasing participation of developing countries.

167. The representative of Egypt said that his delegation, along with seven others, had presented a draft framework (MTN.GNS/W/101) to the GNS. article 8 of the draft framework related to increasing participation of developing countries. It covered imports, exports, and domestic performance of service industries in developing countries. On imports, the Montreal text provided for appropriate flexibility for individual developing countries for opening fewer sectors or liberalising fewer types of transactions. Also, there would be a longer time frame for phasing in of commitments by developing countries. Regarding market access, developing countries would be able to attach conditions such as limitations or requirements on the type of commercial presence, restrictions on operations in certain segments of the markets, restrictions on total volume or value of transactions, minimum requirements for training and employment, surcharges and different tax rates, local content requirements. Regarding exports, Egypt was unable to participate at this time because of the weakness of its telecommunications sector. Regarding domestic performance, he noted the weakness of the telecommunications sector in all developing countries and that the United States had more than 28 percent of total world telecommunications lines. Only 12 countries had more than 50 percent of all telecommunications lines. Domestic performance in developing countries must be addressed in the area of telecommunications. This would be carried out through preferences for domestic suppliers, incentives and governmental assistance to domestic suppliers, and securing a minimum level of domestic production. Egypt and other developing countries had presented proposals to the working group in MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2. In the first document, article 9 presented four proposals on how to implement the increasing participation of developing countries: financial and human resources to assist developing countries; priority to telecommunications needs of developing countries through multilateral and regional institutions; cross-subsidization by developing countries in public

telecommunications; strengthening the domestic telecommunications capacity by allowing obligations to be placed on foreign suppliers, especially with regard to transfer of technology. Articles 9 - 12 in the second document contained ideas concerning improving the telecommunications infrastructure in developing countries. These articles addressed, among other things, financial assistance, measures relating to under-capacity, and recognition that tariffs and other charges on telecommunications services were an essential source of income to help developing countries improve their telecommunications infrastructure. The working group would need to engage in a substantial discussion on these issues in this and in future meetings.

168. The representative of India supported the statements of the representative of Egypt and said that the elements for increasing participation of developing countries had been brought out clearly in the draft documents presented by the group of developing countries (MTN.GNS/W/101, MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2). The increasing participation of developing countries had a bearing on progressive liberalization under which developing countries would have the flexibility of opening up fewer sectors and liberalising fewer types of transactions. In order to ensure their participation in the services framework in general and in the telecommunications sector in particular, developing countries should be free to provide incentives to strengthen their domestic service capacities with a view to securing a minimum level of domestic operations. On safeguard measures, the proposal said that developing countries could apply safeguard measures to promote creation of certain service sectors, sub-sectors, or activities and to correct structural problems related to technological changes and trade imbalances. Developing countries should have the flexibility to regulate in situations where regulations were needed or non-existent. It would not be fair to freeze the regulatory situations in developing countries as they now stood. Initial commitments by developing countries would need to be viewed in the context of the developmental situation in individual countries. Article 8.4.d of MTN.GNS/W/101 was relevant to telecommunications where it stated that the developed countries shall not take measures which would limit or impede access to information networks and distribution channels for services. This point was related to the position that market access commitments shall not be made dependent on reciprocal concessions within the same sectors. In particular, reciprocity should not be expected from developing countries within the telecommunications sector. Also, transfer of technology was the only effective way to ensure the increasing participation of developing countries, not only in telecommunications, but in the general framework as well.

169. The representative of the European Communities said that one of the main questions was the relationship between the annex and the general framework. Article XX of the EC framework proposal said that each party would take into account the level of development and degree of liberalization both in general and in the various sectors. He emphasized that the objective on an annex was to promote effective access to markets, particularly in view of the fact that telecommunications represented an

underlying transport means. Market access in this sector would permit a wide range of exporters to have access to services which would improve their competitiveness. It would be desirable to assess whether the proposed provisions were relevant to the annex or to the framework negotiations. General provisions on transparency would help promote access by developing countries.

170. The representative of India said that the purpose of an annex was not to ensure market access but to interpret, elaborate or clarify any general framework principles in view of the peculiarities of the sector. Also, it was not necessarily a given that a sectoral annex would result from the meetings on service sectors. Depending on the results in the framework exercise, a sectoral annex might not be needed. Regarding the increasing participation of developing countries, the issues of pricing and standards were related to allowing flexibility for developing countries to cross-subsidize and encourage transfer of technology.

171. The representative of the European Communities said that the annex should deal with the question of market access. The commitments to market access and coverage should be negotiated in the GNS, while the annex would make market access effective with respect to telecommunications once access had been achieved in negotiations.

172. The Chairman summarized the working group's discussions thus far as having helped clarify a number of important issues. Most of the discussions had dealt with questions relating to the access to and use of telecommunications services in two different but related situations: one case in which the user of the services was meeting its own requirements and was using telecommunications services as a means of delivering other services; the other case in which access to and use of telecommunications services involved the use of the services for the delivery of telecommunications services to third parties. These situations related to the issue of mode of delivery. How this issue would eventually be dealt with would depend, as with many other issues, on the outcome of the framework discussions. All of the working group discussions had centred in some way on the government measures and/or other practices - the regulatory conditions - that related to the access and use of telecommunications services. Discussions on transparency had evoked general agreement that the regulatory environment relating to access and use must be transparent. The working group would need to engage in further examination to determine whether a specific annotation were necessary, and if so, in what level of detail. In discussing standards, the working group focused on the way standards were built into the regulatory environment and their effects on access to and use of networks, especially when such standards were mandatory. Discussions also revealed that pricing had important effects on access to and use of services. Some delegations were asking whether a provision on pricing should be in an annex, and if so, how would diverse interests be balanced, given the complexity and national character of pricing decisions. He observed a general view that prices should in some way reflect costs, but that the other considerations often built into pricing would need to be recognized. On conditions of supply and use of networks, there was a general view that

the networks should make their services available on reasonable terms and conditions and that users of the network should, in principle, be able to choose among the various public telecommunications services, including leased circuits, that were available. No consensus was reached about the kinds of conditions that might be associated with the use of network services. However, discussions on transparency, standards and pricing had been addressed, in part, with respect to their role as conditions of use. In discussing both privacy and anti-competitive behaviour, the relationship to conditions of use was pointed out. He observed general agreement that the conditions of use should be reasonable and should probably be applied in accordance with national treatment and non-discrimination. He noted that there were proposals before the working group indicating that, in some circumstances, developing countries might want to deviate from some of these obligations, in particular from the application of conditions of use on a national treatment basis. This issue would be dealt with further when the working group returned to discussion of increasing participation. During discussions of supply and use of networks, the issue of licensing and registration conditions arose. He noted the concern of some delegations about a need to distinguish between different uses that could be made of the telecommunications services with respect to the issuing of licenses. Various proposals addressing the resale of telecommunications services indicated that certain licensing conditions might be used to prevent a services provider that had obtained access to reserved services to provide value-added services, from engaging in the provision of the reserved services. Similarly, in the case of a user employing telecommunications services to provide for internal requirements, certain proposals suggested measures to ensure that the user did not abuse that privilege by becoming a supplier of telecommunications services to third parties. Regarding issues related to basic and non-basic services, there were many suggested approaches that were perhaps not all that far apart. While the difference between basic and non-basic services would be difficult to define precisely, there was a sense that there existed categories of services that represented basic (or reserved) services and categories that represented value-added or competitive services. Areas of disagreement were relatively narrow and addressed a gray area where the two categories met and where regulatory environments took different approaches. For future work, the group was faced with two conflicting requirements: a short time frame to arrive at details of an annex and remaining uncertainties such as the status of the framework discussions and further specification of the important telecommunications issues. The Chairman suggested that the working group propose to the GNS that it meet again in the second week of September. He also proposed devoting the September meeting to continuing discussions of special characteristics of the telecommunications sector that might need to be taken into account in a sectoral annotation in light of developments in the framework. The working group would need to determine which provisions of the framework might require annotation. To assist the working group in its analysis, the Chairman proposed asking the secretariat to develop a synoptic table of delegations' proposals before the group and to provide an informal checklist of issues, based on discussions at this and the June meetings of the working group. The checklist would serve as a guide to discussions.

173. The working group agreed to the proposals put forth by the Chairman.

174. The representative of India suggested that the agenda of the next meeting also include a discussion of the relationship between the obligations of parties to the framework and those of parties to existing international agreements and conventions.

175. The representative of Hungary requested, and the representative of Cuba agreed, that the material to be prepared by the secretariat should reflect issues relating to mode of delivery under separate headings so as to ensure the incorporation of concerns raised in the proposal on mode of delivery tabled by the group of developing countries.

176. The representatives of Korea and the United States, noting the heavy work load of the secretariat, offered to cooperate with and assist the secretariat in the preparation of the documents in any way that would be helpful.

177. The Chairman noted the comments and suggestions of delegations with regard to discussions for September and closed the meeting.