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THE URUGUAY ROUND**

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Group of Negotiations on Services

WORKING GROUP ON TELECOMMUNICATIONS SERVICES

Note on the Meeting of 10-12 September 1990

1. The Chairman opened the meeting and called attention to the decision by the GNS on the plan of future work on sectoral annotations/annexes. A representative of the secretariat presented the text of the decision and noted that it invited the sectoral working groups to complete their work and report conclusions to the GNS by 20 October 1990. The Chairman then called for a review of telecommunications-specific issues introduced in previous meetings and proposals put forward by delegations, in light of the developments in the framework as contained in MTN.GNS/35. Noting that the checklist of issues and synoptic table of submissions prepared by the secretariat could serve as a guide to discussions, he opened the floor to discussion of the issues related to scope, definition and coverage.

2. The representatives of the European Communities, Canada, Japan and Australia noted that there was no consensus in the working group on the idea that the operation of the public telecommunications network/infrastructure might lie outside the scope of the agreement. The representative of the European Communities noted, however, that his delegation agreed that there should be no obligation that would require a party to authorize persons of another party to operate a public telecommunications network.

3. The representative of the United States noted that her delegation's interpretation of the concept of maintaining the "viability" of the public telecommunications network referred to technical viability.

4. The representative of Sweden, on behalf of the Nordic countries, said that while telecommunications services provide essential support to virtually all service sectors, services providers could not rely on telecommunications services alone for the delivery of services. Telecommunications services should not, therefore, be regarded as a mode of delivery but as a factor of production. The objective of the annex should be to facilitate the provision of public telecommunications services on an open basis. The provision of such services was often restricted through monopoly, dominant position, or restrictions and regulations. Further, it was not necessary to distinguish between the network and the services it provided.

5. The representative of Australia suggested that not only should there be no obligation that would require a party to allow persons of another party to operate a public telecommunications network, but there should be no such obligation with respect to any public telecommunications services.

6. The representative of Canada said that the issue of allowing or not allowing persons of other parties to operate public networks, as distinct

from the services, raised issues related to commercial presence or investment. In the view of his delegation, the issue of "viability" of the public telecommunications network, which should be taken into consideration in the annex, related not only to technical harm but also to geographical by-pass.

7. The representative of Morocco said that there was need for a common understanding of the definition of public telecommunications services. Nevertheless, his understanding was that provisions of the framework would enable any country to reserve on all or part of a given service; thus it would not be necessary to remove the public network from the scope of the framework.

8. The representative of the European Communities noted that the Community did not employ the terminology of "basic" or "non-basic" with regard to telecommunications services.

9. The representative of India said that it was important to maintain a distinction between telecommunications services per se and telecommunications as a mode of delivery because liberalization of telecommunications services should not lead to autonomous liberalization in service sectors in which a market access commitment had not been negotiated. A differentiation between basic and non-basic services would become meaningless because what was offered would depend on the market access commitment, the conditions attached to provision of the service subject to those commitments, and the country's own conception of basic services as offered to domestic service providers.

10. The representative of Sweden said that in some countries virtually all telecommunications services would be open to competition, but in other countries some or virtually all services would be restricted and might be provided only by a monopoly provider. It should be left to each party to decide what would be open to competition. Therefore, the term "reserved" more clearly reflected this situation than the term "basic".

11. The representative of Japan said that it had proposed a definition of basic services in the annex, with the intention of ensuring the use of such a telecommunications service for service providers in every sector. There was no intention to exclude basic services from coverage by the agreement or to impose an obligation to grant market access on a basic service. Whether or not market access would be granted for the provision of a basic service would be determined in negotiations under the framework.

12. The representative of Korea noted that whether or not they were called "basic", some services would be very important to the ability to provide enhanced services. These kinds of services were the main concern for which guidelines would be needed.

13. The representatives of Australia and the United States said that terms reserved services and basic services were not synonymous and that the term reserved services did not reflect the distinction between market access and access to use. The two delegations noted that guidelines would be needed.

14. The representative of the European Communities said that there seemed to exist a measure of agreement that a distinction for those services that served as transport service, or underlying mode of transport, should be sought.

15. The representative of Hungary recalled the dual nature of telecommunications as a service sector and as a mode of delivery and said that the distinction was not unique to telecommunications. Mode of delivery was an issue that would have to be resolved in the GNS.

16. The representative of Mexico agreed that guidelines might be useful, but that the services a party considered basic should be stated in its schedule.

17. The representative of the United States said that the purpose of the definition of a public telecommunications transport service contained in the proposed US annex was to describe those services for which a party would be obligated to grant access and use, not those to which parties would be obligated to grant market access. The issue of the competitive provision of services would be addressed under the framework. The definition would serve as a guideline.

18. The representative of India said that if the reason for defining basic services was linked to making reservations about access to and use of these services in the national schedules then the determination by each party of such services in its schedule could be part of negotiations. If the objective was to define transport services that should apply to other market access commitments once they have been negotiated, then the concept of basic services could be addressed through the national treatment provision. A party should supply the same basic services to foreign service providers that it provided to domestic providers.

19. The representatives of the European Communities and the United States agreed that the reason to make a distinction between kinds of services was to describe which services a provider would want to have access to and use of once a market access commitment was made. It did imply a commitment to liberalization.

20. The representative of Poland said that distinguishing basic services was more related to ownership and operation of the system that provided them. These were part of an infrastructure, and the general desire of most parties, each for different reasons, was to secure a degree of control over the ownership and operation of the basic services.

21. The Chairman opened the floor to discussion of the concept of transparency in light of any specificities in the telecommunications sector.

22. The representative of Canada said that the applying of transparency obligations to telecommunications monopolies should be addressed, especially in cases where the monopolies had regulatory or self-regulating functions.

23. The representative of Egypt said that the concept of transparency had two perspectives, the laws governing the sector and the obligations of service providers. Whether or not the framework provisions on transparency would be adequate in this sector could not be fully decided until agreement was reached in the GNS on this issue.

24. The representative of Morocco said that there could be legal difficulties with the publication of all administrative actions. He agreed with the suggestion for a contact point for the purpose of providing information.

25. The representative of Sweden said that transparency should include the publication of tariffs. However, transparency rules should not apply to service providers, or to services sold by monopoly operators, in a competitive environment. It should apply to reserved services.

26. The representative of the United States said that transparency requirements referred to government regulations. There should not be transparency requirements imposed on private providers of a basic service. The annex should make it clear that the transparency obligation applied to government regulations governing access and use of telecommunications transport network.

27. The representative of Canada said that the transparency provision in the EC proposal mentioned publication of tariffs, but it was unclear whether the provision would apply only to monopoly service providers. Transparency should not apply to common carriers or value-added service suppliers who were operating in a competitive environment. The provision of the EC on technical interfaces had a bearing on issues of protection of intellectual property which might not be an issue that this group should address.

28. The representative of Korea said that any providers of basic services that were not open to competition should be required to abide by the transparency provision.

29. The representative of the European Communities said that the transparency provision should not only apply to governments but also to non-governmental agencies that were authorized to issue regulations. The signatories undertook the commitments. It would be acceptable if signatories could assure transparency without imposing obligations on certain firms. However, if the government needed to impose obligations on such firms to meet its transparency obligation, then the government should do so. If the supply environment were not competitive, transparency obligations related, for example, to tariffs should apply.

30. The representative of Japan said that the transparency provision of the framework addressed a different issue than that proposed for the annex. The former addressed regulations related to foreign entrance into the market for service providers, but the latter related to access and use of the basic network by users. Therefore, a provision on transparency was necessary in the annex. Such a provision should be applied equally to

government-owned or private companies providing basic services, whether or not in a competitive environment. It should apply to enhanced service providers.

31. The representatives of Poland and Canada said that the framework provision could satisfy requirements in the telecommunications area. Transparency should be applied to all measures or actions taken by governments.

32. The representative of Canada said that details of the volume of business done on a bilateral basis between two common carriers, subscriber information and many other kinds of commercially-sensitive information, particularly in a competitive environment, should be considered to be confidential information in the telecommunications sector.

33. The representative of the United States said that U.S. tariff orders were an example of information that might be made publicly available rather than published. The extension of regulations and requirements placed on monopoly providers to competitive providers would create rigidities and inefficiencies.

34. The representative of Australia said that from the discussion it appeared that where a market was openly competitive transparency obligations should not apply. But in many competitive markets, the question arose as to how competitive the market really was. He wondered whether the market for mobile cellular telephones was a duopoly, rather than a fully competitive environment.

35. The representative of the United States said that there was a duopoly for cellular telephone services and that the publication of tariffs was not required in this area in order to foster competition. However, the regulatory agency had, and would maintain, the authority to determine whether or not to require the publication of tariffs.

36. The Chairman opened the floor to discussion of domestic regulation.

37. The representative of Morocco said that non-discriminatory access to public networks was already addressed in the International Telecommunications Convention. If the annex was intended to accomplish another objective, this needed to be spelled out.

38. The representative of Australia emphasized the importance of the application of access and usage conditions on a non-discriminatory basis.

39. The representative of India said that the supply and use of public telecommunications network services was closely linked to market access commitments. Hence, the conditions that would be applied to supply and use could be addressed through market access negotiations. These issues were important in dealing with telecommunications services as a mode of delivery for other services.

40. The representative of the United States said that there should be only very limited conditions placed on use which should be spelled out in the annex. Any licensing conditions that exceeded minimal requirements could be considered to impede market access. Issues related to inter-corporate communications were also important. There was a need to spell out the kinds of usage problems that firms in both telecommunications and other services encountered.

41. The representative of Japan said that if the conditions of supply and use of public network services were to be addressed in the annex, this did not, in his view, represent an annotation to article VII of MTN.GNS/35 on domestic regulation. The telecommunications annex should not apply in an area where market access had not been granted.

42. The representative of the United States said that current usage problems, addressed in article 3.6 of the annex proposed by his delegation, included resale or shared use, attachment of customer-premises equipment (also referred to as terminal equipment), connection of leased circuits with other leased circuits, attachment and use of switching equipment in relation to interconnected leased circuits, connection of leased circuits with public switched networks and freedom to move information across national borders. Market access commitments would not be meaningful unless these problems were addressed.

43. The representatives of Korea, Sweden, United States and Japan said that they assumed that the leasing of lines was considered a public telecommunication transport service.

44. The representative of India said that although there was little substantive disagreement, the question remained whether the issues under discussion needed to be addressed in a sectoral annex or in the context of market access negotiations.

45. The representative of Australia said that it would be intolerable if, every time a country wanted to negotiate a market access commitment, it was also necessary to negotiate the types of telecommunications services that providers could use. At a minimum, access to such services should be the same as that of national firms. However, the detailed list of usage commitments outlined by the United States would be difficult to accept.

46. The representative of Canada said that non-discriminatory access to and use of telecommunications services or networks was the key issue. This would include both national treatment and m.f.n. treatment. Telecommunications was not a separate mode of delivery any more than postal services would be.

47. The representative of Australia said that the annex should help to achieve a guaranteed minimum level of access and use of telecommunications services for service providers that are granted market access.

48. The representative of the United States said that if the annex did not include guidelines or criteria regarding the minimum level of usage, it

would not be clear to which regulations the access and usage obligations would apply.

49. The representative of the European Communities said that non-discrimination and national treatment were minimum requirements that needed to be included. A description would be needed to explain what was meant by access to and use of the network.

50. The Chairman felt that there seemed to be a general consensus on most of the points appearing under the heading "conditions of supply and use" in the secretariat's checklist of issues, subject of course to the inevitable terminological debates. He said that one of the main questions emerging on these issues was whether there was sufficient detail to make an annex truly meaningful.

51. The representative of the United States reiterated the importance her delegation attached to providing greater detail on conditions of supply and use, adding that the notion of fair and reasonable conditions of access would not be adequate in a final agreement to achieve significant liberalization.

52. The representative of Korea wondered how the group would define terms such as "reserved services" or "third parties". He asked whether services could be characterized as being reserved when they were provided only among users with closed relationships, noting that in his delegation's view telephone services were inherently reserved irrespective of who used them. He felt that a definition of "closed relationships" was very difficult, as was that of the "general public". Too loose a definition of such terms might result in de facto liberalization in the telecommunications services sector through the annex. This he felt was not the purpose of the group's work. The use of a financial return criteria was also a complicating factor. The identification of services for which firms made such returns could be fairly difficult, particularly as services tended to be offered in packages. Many would claim that unless firms provided reserved services as a business, there should be no serious harm to common carriers or infrastructural service providers. Yet, because of the difficulty of distinguishing so-called business from simple (or non-business) users, such a claim may be oversimplified. For this reason, his delegation felt that unless a market access commitment was made, non-business users should not be allowed to provide reserved services.

53. The representative of Japan said that his delegation did not object to the idea of setting a minimal level of usage conditions but wondered what precisely was meant by the words "minimal level". While most delegations appeared to agree that m.f.n. and national treatment were necessary elements in regard to minimal usage conditions, articles 11 and 12 of MTN.GNS/TEL/W/2 appeared to involve departures from the unconditional application of both principles. He doubted whether the group could agree to anything beyond m.f.n. and national treatment as usage conditions and noted that as envisaged in article 3.8 of his delegation's non-paper, such conditions should remain fairly general in nature. Indeed, in view of the

great diversity of views found in the working group, he doubted whether there was enough time left to develop detailed and specific usage conditions in an annex.

54. The representative of Thailand, referring to article 3.7 of MTN.GNS/W/97, wondered if it was in contradiction with the assertion in the checklist that "it might be appropriate for parties to apply conditions of use to ensure that end-users of leased lines did not use the lines to offer telecommunications services to third parties in the absence of an appropriate market access commitment."

55. The representative of the United States said that article 3.7 in his delegation's proposed annex related to services provided by using the transport services of another party. The article did not state that such a provider should be allowed to provide a reserved service on any basis. Article 3.6 of the proposed U.S. annex stated that any of the conditions of supply contained in its sub-parts should not be read as authorizing a provider to engage in the offering of a reserved service. Article 3.6, as opposed to 3.7, was the relevant part of the U.S. annex in regard to the checklist's treatment of conditions of supply and use.

56. The representative of Korea said that there were two areas in regard to which the proposed U.S. annex explicitly mentioned the issue of monopoly or exclusive providers of public telecommunication transport services. One such area related to the issue of cross-subsidization while the other was linked to the provisions under article 3.7. Noting that a company such as AT&T was neither a monopoly nor an exclusive provider, he asked whether this meant under the proposed U.S. annex that AT&T could impose restrictions such as those under consideration in article 3.7.

57. The representative of the United States said that AT&T could not impose conditions in conflict with article 3.7. It was prevented from doing so both by U.S. domestic law as well as by the realities of the marketplace, as any competing firm would gladly pick up the traffic which AT&T would be forsaking by imposing onerous restrictions. In a competitive marketplace, it was not necessary to have provisions such as article 3.7. These, he noted, were needed in areas where there was little or no competition and hence few supply alternatives.

58. The representative of Singapore felt that the information exchange system on, inter alia, conditions of access and use being set up by the ITU secretariat (and described in the ITU's informal information note to the working group) should be borne in mind when the group considered the issue of meeting transparency obligations in the sector. It was important in his view that a duplication of efforts in this area be avoided.

59. The representative of the European Communities recalled that the absence of technical criteria on which to base a distinction between so-called basic and enhanced services had led his delegation in its internal market endeavours to adopt an approach based on the reserved/non-reserved dichotomy. Such an approach allowed in his view the

greatest flexibility in deciding what was and wasn't subject to competition.

60. The representative of India felt that a basic consensus was emerging about the flexibility required by individual participants in a future services agreement in deciding which services provided on a universal basis might not be opened up to competition. One problem however was to translate this reality into a legal provision in an agreement. He noted that the sponsors of MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2 had come to the conclusion that it should be left to national governments to decide what constituted basic and non-basic services. He felt that a positive list approach was better suited to the task of delineating what could be liberalized from what couldn't.

61. The Chairman opened the floor to a consideration of issues related to standards and the attachment of equipment.

62. The representative of Japan said that if the "public telecommunication network" encompassed leased circuits, his delegation would prefer to see the words "if appropriate standards exist" inserted at the end of paragraph 3 on page 6 of the secretariat's checklist. He suggested as well to replace the words "value-added networks" by "value-added services" in the two following paragraphs.

63. The representative of the United States said that his delegation generally agreed with the material contained in paragraph 1 of the checklist's section on standards-related issues, noting that international standards were important and should be promoted. His delegation had some problems with the frequent use of the words "mandatory standards" in the section's other paragraphs. The United States did not support mandatory standards for anything beyond the attachment of equipment to the network and the establishment of a physical interface as part of an attachment. His delegation supported the approach of the CCITT, which developed voluntary standards for public switched networks and public networks, as well as the approaches taken within ETSI in the European context and those in use in the United States in regard to public network standards. He felt as such that it was not accurate to state that there was a shared view that mandatory standards were necessary or desirable for public telecommunications networks.

64. The representative of the European Communities emphasizing that her delegation felt strongly that international standards did facilitate trade, agreed that the wording in the checklist might need to be somewhat more nuanced with regard to the standards applied to public networks. She recalled that most countries currently applied CCITT Recommendations, which were of a voluntary nature. On the suggestion that parties not employ proprietary standards in their public telecommunications services, she felt that the emphasis should be placed on the areas of interfaces/interoperability in networks. On the issue of mandatory standards for terminal equipment, her delegation shared the views expressed earlier by the U.S. delegation and noted that such standards should be strictly based on a number of limited requirements that were necessary in

the terminal equipment area to ensure interoperability and associated objectives. On the issue of whether the annex should permit parties to apply mandatory standards to value-added networks, her delegation was interested in seeing technical characteristics and interfaces based wherever possible on existing international standards. Such standards should deal with functional requirements between systems and services and shouldn't really be concerned with the internal working of systems as such. Her delegation supported the development of standardized technical interfaces and service features in the relevant standardization bodies; such standards should be of a voluntary nature. She noted that the Community approach in this regard emphasized the presumed compliance of users with those public telecommunication network and service requirements which were necessary, such as network security and integrity. Her delegation felt that both agreed and proprietary standards could and should co-exist in regard to value-added networks but emphasized the importance of both open access to networks and international standards.

65. The representative of Poland felt that while the word "mandatory" might seem too rigid, there was nonetheless a need for mandatory standards in regard to public networks. As well, in the case of value-added or closed networks, he agreed that the emphasis had to be placed on the need for mandatory standards governing technical interfaces so as to promote network interoperability.

66. The representative of Thailand recalled that most suppliers/manufacturers of telecommunications equipment relied on CCITT standards, although standards which had not been developed within international bodies were also in use. A second group concerned with technical standards consisted of users. Whenever smaller developing countries such as his tried to develop a network with a view of providing and satisfying universal service requirements or to upgrade to value-added services, they invariably looked to standards - typically CCITT norms - that had already been accepted by the leading users in the world. Firms which intended to offer services into developing countries would first need to look at what was available internally and thus comply with nationally-adopted standards. In looking at the issue of standards members of the working group should rely on the technical capabilities of existing standards-making bodies. He wondered whether it was truly feasible to view standards as applying differently to basic and value-added networks, noting that in many countries, particularly developing countries, networks were designed to provide both universal/public service offerings as well as value-added services.

67. The representative of India said that his delegation largely endorsed the comments made by the Thai delegate and noted that there existed particular types of constraints in developing country markets which could warrant the use of mandatory standards. His delegation would not subscribe to a view which would prohibit the use of such standards and was wedded to the idea of the active involvement of the ITU and other technical bodies involved in the development of standards.

68. The representative of Sweden, on behalf of the Nordic countries, felt that it was appropriate to address the issue of standards in the context of a services agreement in view of its importance for the functioning of global networks. His delegation supported the use of international standards wherever these existed. He supported the EC assertion that it was the interfaces of different services that was of interest in looking at standards-related issues. Whenever mandatory standards were in use, these should preferably be global in nature.

69. The representative of Australia said that her country promoted the use of standards that were set in the ITU and other international fora so as to ensure domestic and global compatibility and interoperability of telecommunications services. She sought a clarification from the EC delegation on its policy of presumption in regard to entities using standards. She recalled the differences of views on whether a no harm criteria should be the only permissible one, noting that the GNS process offered an opportunity to establish technical standards that related to environmental, non trade-distorting matters. If a no harm criteria was the only permissible one, the annex would in effect reduce the scope for making genuine environmental regulations in the telecommunications area. He believed that there existed some consensus among telecommunications experts that certain types of environmental regulations should be permissible, e.g. in regard to electro-magnetic interference.

70. The representative of Mexico said that his delegation fully supported the use of international standardization as a means to promote international trade in services. It was clear in his view that public telecommunications networks needed to be standardized in a more rigid way than other services. He felt that the coexistence of mandatory and proprietary standards was worth considering, noting that in due time many services tended to become universalized and thus subject to internationally-agreed standards.

71. The representative of Hungary agreed with the EC delegation that a voluntary approach to standardization was the best route to follow and emphasized the importance of standards in securing network interoperability.

72. The representative of Japan was unsure which types of standards were the object of the group's discussions. In regard to standards for networks, he felt that the ITU was doing quite well and questioned the need for the working group to address this issue. He recalled that what group members should be focusing on was a minimal level of usage conditions for users of telecommunications services. He suggested that the only standards that were of interest related to the relationship between networks and terminal equipment, noting that a no harm criteria was of great importance in this regard. The principle of no harm to the network would need to be extended further in a digitalized environment.

73. The representative of Morocco said that his delegation fully supported what had earlier been said by the delegate of Thailand. It was his understanding that the word "mandatory" could only make sense in the

context of a formal treaty. It would as such need to appear in the annex. Were such an understanding correct, he wondered what the minimal level of standards needing to appear in the annex should be and who should be responsible for developing such standards. He suggested that the notion of internationally-accepted standards could replace that of mandatory ones.

74. The Chairman said that the word mandatory aimed to capture the notion of regulations made by governments that would make compliance with a particular type of standard compulsory. The working group should not therefore see the development of mandates as part of its mandate in trying to devise a telecommunications annex.

75. The representative of the European Communities said that interconnection with the public network was of central importance to value-added service providers. As such, it was essential to ensure that certain requirements be fulfilled, e.g. in regard to network security or integrity. Whereas the fully-fledged imposition of mandatory standards could prove inflexible, her delegation believed that those who followed internationally-agreed standards would be presumed to fulfil the necessary requirements. Her delegation could see instances where standards could be made mandatory with a view to enhancing interoperability and freedom of choice objectives and promoting more generally the interests of users.

76. The representative of Austria said that his delegation, like others, recognized the importance of a harmonized acceptance of standards but felt that greater precision would be needed in regard to the notion of "internationally-accepted" standards.

77. The representative of Korea felt that the group had not devoted sufficient attention to whether or not the treatment accorded to various classes of users, e.g. telecommunications services providers vs. providers of other services, could differ. He agreed that the issue of interfaces was of great importance but wondered who would be providing interfaces if two different standards were being used.

78. The representative of the European Communities said that it was necessary that interfaces be sufficiently open and not represent barriers to trade. To ensure this, he felt that international standards were needed.

79. The representative of the United States said that the annex that could emerge from the group's deliberations would be an integral part of the framework agreement on trade in services. Therefore, provisions in the framework relating to the ability of parties to regulate domestic activities and to take actions to protect the environment, public morals, safety, etc., should give parties reasonable opportunity to take measures designed to achieve such objectives. Such provisions could to some extent address standards-related issues. This he felt was quite different from an annex which would validate derogations from general provisions and allow governments to impose mandatory standards in whatever circumstances. The telecommunications operators of public networks from most of the countries in the room would be somewhat upset to see their governments mandate their own operating standards. They would in his view also be upset at seeing

governments mandate interface standards, as changes in the existing situation would necessarily involve a governmental process. He recalled that the people that established domestic and international standards were typically the providers and users of public network services as well as the manufacturers of equipment operating over such networks. The standards that emerged from their interaction were ones that all could support and were useful for the operation of the network. Were the annex to adopt the concept of mandatory standards as a permissible activity without restrictions, this would derogate from the domestic regulation and exceptions provisions of the framework which guarded against measures which were potentially trade-inhibiting. The scope for standards becoming disguised barriers to trade was lessened whenever consensus standards were used, except perhaps in the very limited circumstances of the establishment of a physical interface.

80. The Chairman wondered whether article VII:2 of the draft framework might not adequately cover the concerns of delegations, noting that all that might be needed would be for the annex to state that telecommunications standards should not be used to distort international trade.

81. The representative of the European Communities noted that recourse to the words "fair and reasonable" were not enough, adding that to avoid an excessive recourse to dispute settlement procedures, it was essential to ensure that annexes to the framework be as precise as possible.

82. The representative of the United States agreed that it was necessary to make specific reference to standards in a telecommunications annex rather than rely on the language contained in the draft multilateral framework. He noted that most delegations had acknowledged that a difference existed between standards applied to public services such as basic telephony and telex and standards applied to value-added services. This was in his view a further reason for the annex to address standards-related issues. His delegation would take a stronger view than other delegations on the issue of the imposition of mandatory standards in regard to public networks but he agreed that the differences in views on this issue were not so great. He did nonetheless attach importance to the difference in degree which existed on the issue. Proprietary operating protocols in the area of value-added services should be guaranteed to the extent possible. New services should be allowed to mature before subjecting them to standardization procedures.

83. The representative of India said that his delegation was not yet fully convinced that telecommunications standards had to be covered in an annex. This was not meant to deny the peculiarities of standards-related issues obtaining in the sector. His delegation was not prepared to see the ability of national governments to set standards curtailed by the operation of a telecommunications annex, at least not beyond the accepted need to ensure that standards did not have trade-distorting effects.

84. The Chairman opened the floor to a discussion of matters relating to pricing.

85. The representative of the United States said that his delegation believed that some reference to pricing was needed in an annex so as to reflect the dual character of telecommunications services and bring out the central importance of pricing to the establishment of market access commitments for services which used telecommunications as an underlying transport means. It was indeed essential to ensure that the pricing of telecommunications services did not distort trade in telecommunications-dependent services. His delegation felt that the annex should thus deal with the issue of the pricing of basic telecommunications services.

86. The representatives of Chile, Yugoslavia and India said that their delegations saw little need for an annotation to deal with the issue of pricing as it was adequately dealt with through the non-discrimination and national treatment provisions contained in the draft framework agreement. The latter two delegations emphasized the necessity for pricing policies to take into account the developmental, regional and other socio-economic policy objectives which countries often pursued in the telecommunications area.

87. The representative of Singapore pointed out that article VII (domestic regulation) in the draft framework agreement did not cover pricing-related matters. He felt that any pricing provision to be contained in an annex should limit itself to the kind of language found in the first paragraph of the checklist's section on pricing.

88. The representative of Canada felt that pricing was mainly a national policy issue. Provisions in the annex should ensure that conditions of access and use of telecommunications services were applied on a non-discriminatory basis and under transparent conditions. For this reason, he doubted whether a specific provision on pricing was required in an annex.

89. The representative of the European Communities said that there seemed to be a consensus among those delegations which had made submissions to the working group that pricing matters warranted an annotation. The pricing of telecommunications services could in some instances be so high as to nullify the benefits of a market access commitment. This could be the case even where the principles of national treatment and m.f.n. applied in full. A pricing provision should focus on the principles which countries should follow in setting tariffs rather than on the level of tariffs themselves. He agreed that there should be a nuanced approach to pricing matters given the socio-economic realities typically associated with telecommunications policies.

90. The representatives of Sweden, on behalf of the Nordic countries, and Switzerland, said that pricing was important because of the reliance of providers of competitive services on network-based services which were typically supplied by monopoly or exclusive providers. As there were often no alternatives for choosing among such services, their pricing became as essential as any condition of access. Both delegations felt that there was need for an annotation covering pricing so long as the draft framework did not contain provisions addressing this matter specifically. Pricing-

related matters were important as well in view to their links to the issue of transparency.

91. The representative of Australia thought that a pricing provision was not necessary in a telecommunications annex as it was adequately covered by the framework itself. She felt nonetheless that some middle ground could perhaps be sought on the issue, noting that her delegation would see no harm in incorporating a provision stipulating that tariffs should be cost-oriented and unbundled to the extent necessary to encourage the use of all available public basic services.

92. The representative of the United States was not certain that national treatment and m.f.n. on pricing within a national jurisdiction were sufficient to secure fair competitive conditions or translate into meaningful market access commitments. It was for this reason, among others, that his delegation felt that a provision in an annex dealing with tariff principles should be included.

93. The representative of India recalled that sectoral annexes should not impose obligations that were not envisaged in the framework itself.

94. The Chairman opened the floor to a discussion of information-related issues.

95. The representative of Chile stressed the importance of continuity of access to information but felt that the issue should best be addressed at the level of the framework agreement. He suggested that article V of MTN.GNS/35 could contain an additional paragraph spelling out the importance which developing countries attached to the issue of access to information.

96. The representative of the European Communities recalled that his delegation's submission to the group had, like some other submissions, addressed matters relating to the protection of privacy. He felt that such an issue should be treated in a telecommunications annex. He agreed that measures to protect privacy might be necessary at the national level and should be considered in the light of the broad principles found in the first indent on information-related issues in the checklist.

97. The representative of Singapore questioned the usefulness of discussing the issue of information in the annex.

98. The representative of the European Communities was unsure that the draft framework addressed the issue under consideration. The issues of access to information and the protection of privacy were closely linked to that of market access, a reality which his delegation's draft annex had highlighted in its Chapter 2.

99. The representative of Canada, supported by the delegation of the United States, suggested that a provision in the annex make reference to the importance of moving information across borders, including the need for prior consultation before taking any action that might result in the denial

of access to information. Such measures should be limited to governmental measures, and not to the activities of private information suppliers. While the issue of privacy was becoming increasingly important, his delegation's view was that the protection of personal information could be adequately covered through existing contractual arrangements between individuals and legal entities rather than through legislative solutions. He wondered whether there was truly a need for a privacy exception in either the framework or a telecommunications annex.

100. The representative of the European Communities agreed that privacy-related issues were an increasing concern in many countries, noting that such concerns grew in parallel with the pace of technological change in the sector. He recalled that article XIV of MTN.GNS/35 foresaw the need for exceptions to protect public morals, order, safety, health, etc. The need to specify the nature of such exceptions was to minimize the scope for disputes among parties. He saw no reason not to apply a similar logic in regard to privacy-related matters in a telecommunications annex.

101. The representative of the United States said that group members had expressed at their July meeting a marked preference for seeing privacy issues dealt with in the framework agreement as opposed to the annex. For this reason, his delegation supported the fourth indent under information-related issues in the checklist. Nothing in the annex should prevent any party to legislate domestically for the protection of privacy. The issues of privacy and data/information protection were viewed in the United States as content issues which were not specific to the telecommunications sector only.

102. The representative of the European Communities felt that the current discussion had shown that information-related issues should be addressed within the framework agreement.

103. The Chairman said that an annotation on information-related issues would only seem necessary if the framework agreement did not deal with such matters. This did not imply however that an annotation would necessarily be required if it were not dealt with in the framework. Given the strong views of some delegations on the matter, he felt that the possibility for an annotation should perhaps be left open. He sought further views of delegations on the issue of access to information as it was addressed in some of the submissions before the group.

104. The representative of Singapore questioned the need for an annex to focus on privately and publicly-held information, as this could involve data and widely available information which might not relate to the telecommunications sector per se.

105. The representative of the United States recalled that her country did not legislate prospectively and sought concrete examples from the EC delegation to better understand the problems it foresaw in the area of privacy protection. She emphasized that her delegation believed that the issue under discussion was one of private contractual relations between a customer and an information vendor. It could as well be addressed through

adequate measures in the competition field. It was not apparent to her why an international agreement should enter into this area.

106. The representative of the European Communities recalled that there were economies of scale in the field of information and that numerous monopolies were handling such information. For these reasons, there might be a need to develop provisions in an annex to address privacy matters.

107. The representative of Canada said that the EC seemed to want to capture the activities of private operators through their provisions on information-related matters. He felt that such issues were more adequately addressed in article IX of the draft framework (behaviour of private operators). He agreed that domestic competition policy was the means by which to address the concerns voiced by the EC delegation.

108. The representative of India, supported by that of Cuba, recalled that MTN.GNS/W/101 made specific reference to the importance for developing countries to secure greater access to information networks and distribution channels. This objective was of importance for all service sectors, and not simply for telecommunications per se. He stressed that the better access of developing countries to information networks and distribution channels should not be made dependant on reciprocal concessions on their part.

109. The representative of Poland said that the ability to move information was an issue which went much beyond telecommunications per se and agreed that the scope for the monopolistic abuse of information should be circumscribed by domestic competition policies. He felt that the issue of privacy protection was general in nature and might not as such require a specific provision in a telecommunications annex.

110. The representative of Morocco said that a telecommunications annex should clearly indicate that telecommunication entities were responsible in matters of disclosure of information only from the viewpoint of the secrecy of the transmission of such information. He felt that all other privacy-related matters should be left to the framework agreement.

111. The representative of India said that article 3.2 of MTN.GNS/TEL/W/1 indicated that a telecommunications annex should not relate to the contents of information. He noted however that once it had been agreed that information could be transmitted over networks, access to such information should be permitted.

112. The Chairman said that the discussion of information-related issues did raise questions of content and he felt that delegations seemed unsure as to how to address such issues. The outcome of the GNS discussions would be conditioning the group's approach to privacy-related matters. As to the issue of improved access to information services, he suggested that the group give consideration to the possibility that only government measures might require prior notification or consultation.

113. The Chairman opened the floor to a discussion of matters relating to anti-competitive behaviour. He noted that two types of concerned had

surfaced so far on this matter: one related to the need to ensure conditions of fair competition where there was a monopoly or exclusive provider of telecommunications services which also operated in a competitive services market; the other related to the potentially anti-competitive conduct of private firms in dominant market positions. He felt that articles VIII and IX of the draft multilateral framework would be especially relevant to the group's discussion.

114. The representative of Korea said that article VIII of MTN.GNS/35 seemed elaborate enough to address the matter at hand but felt that the issue of firms in dominant positions needed to be addressed in further detail. He recalled that his delegation intended to include all reserved service providers under the relevant provisions as these were advantaged by their reserved status.

115. The representative of the European Communities felt that something was missing in MTN.GNS/35 in regard to anti-competitive matters, notably the issue of cooperation at the international level between authorities responsible for competition policy with a view to preventing the kinds of business practices referred to in paragraph 1 of article IX of MTN.GNS/35. There was also a need to have a specific provision in a telecommunications annex dealing with anti-competitive matters. One such matter related to the issue of non-differentiation between customers, which was taken up in article 7.2.4 of his delegation's non-paper.

116. The Chairman asked the EC delegation whether there would be a need for a provision on anti-competitive practices in a telecommunications annex if the GNS were to adopt a framework provision along the lines of what was suggested in MTN.GNS/W/105.

117. The representative of the European Communities said that if all the necessary ingredients on anti-competitive practices were not provided for in the multilateral framework, it would be necessary in his view to address them in a telecommunications annex. This was all the more important given the kinds of market structures which applied in the sector.

118. The representative of Sweden, on behalf of the Nordic countries, felt that the title of article IX in MTN.GNS/35 was somewhat misleading. His delegation would have preferred a wording which made no reference to "private operators", since the key question to address under this provision was that of competitive environment as opposed to that of ownership. Some clarification on what was meant by "private operators" could be made in the annex. This clarification would stipulate that, regardless of ownership, telecommunication service providers shall be regarded as private operators whenever they offered services that were not covered by exclusive or special rights.

119. The representative of Australia said that her delegation was reasonably satisfied with article VIII of MTN.GNS/35; in her view the framework was the proper place to address matters relating to anti-competitive practices. Her delegation had not heard any convincing evidence suggesting that telecommunications services warranted particular

provisions under this heading. The provisions found under article IX should be re-written to take into account the point made earlier by the Swedish delegate. There was no consensus in the GNS on the idea of promoting international cooperation among competition policy authorities. It was her delegation's understanding that article IX of the draft framework would allow countries to apply their own competition legislation and thus institute regulatory safeguards to prevent an overseas carrier from establishing a dominant position in the domestic market through predatory pricing or inequitable traffic arrangements.

120. The representative of Canada said that the provisions contained in MTN.GNS/35 seemed generally adequate, all the more so as article IX did call for cooperation among authorities handling competition policies.

121. The representative of the United States said that the matter under review should be left to the GNS for decision. His delegation remained sceptical of policies that extended monopoly protection beyond what was already envisaged in anti-trust laws. Whenever monopolies or entities enjoying special operating rights existed, it was appropriate to have competitive safeguards.

122. The representative of Poland felt that the issue under discussion was fairly generic in nature. The area of concern in this regard was not so much that of dominant positions per se but rather that of the potential abuse of such positions. Whereas this was an inherently difficult area to look into, it did not appear to be specific to telecommunications as such. There might nonetheless be some need to soften somewhat the framework provisions dealing with anti-competitive practices in the case of public telecommunications services, particularly in regard to cross-subsidization issues. The cross-subsidization inherent in universal service provisioning was a reality which needed to be acknowledged.

123. The representative of the European Communities felt that while it was generally agreed that cross-subsidization was a normal practice in regard to monopoly areas, it should not be possible for monopolies to cross-subsidize services offered in a competitive market with revenues generated from its protected market. While there should not be a possibility for providers with exclusive or special rights to abuse their dominant positions, there remained nonetheless a need to balance the liberalization and harmonization aspects of telecommunications.

124. The representative of India recalled that the framework provision dealing with subsidies did not prohibit their use, particularly for developing countries, so long as these did not have trade-distorting effects. Therefore, in looking at the issues of subsidies and cross-subsidization in the telecommunications sector, delegations should not envisage obligations which would go beyond those found in the multilateral framework.

125. The representative of the European Communities said that paragraph 2 of article VIII in MTN.GNS/35 adequately covered the concerns of his delegation in regard to matters relating to subsidies.

126. The representative of India recalled that MTN.GNS/35 was not yet an agreed text in the GNS, all of its provisions remaining subject to negotiations.

127. The Chairman felt that were the framework to be perceived as dealing adequately with anti-competitive behaviour, there might not be a need for an annex provision on it. He saw merit in the drafting suggestion made by the Swedish delegation on behalf of the Nordic countries in regard to article IX of MTN.GNS/35 as this would avoid the need for an annotation in the telecommunications sector. It seemed clear that were an annotation required on this issue, it probably would not need to be detailed.

128. The Chairman opened the floor to a discussion of the increasing participation of developing countries.

129. The representative of Egypt said that the increasing participation of developing countries was of great importance to trade in services in general and in telecommunications services in particular, taking into account the weakness of developing countries in this sector. He recalled the proposals included in MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2 as well as MTN.GNS/W/101 submitted to the GNS. Improving the telecommunications infrastructure in developing countries was an essential precondition for the export of telecommunications services.

130. The representatives of the European Communities, the United States and Sweden, on behalf of the Nordic countries, said that they supported efforts by relevant international organizations, such as the ITU, the World Bank and others, to improve the telecommunications infrastructure in developing countries.

131. The representative of the European Communities said, regarding the proposal on cross-subsidization by telecommunications operators in developing countries, it was important to bear in mind that if tariffs were too high, future developments in the telecommunications sector would not be fostered because demand would be discouraged. High tariffs for telecommunications services in developing countries would also be detrimental to other economic activities.

132. The representative of India said that the increasing participation of developing countries was linked to a number of provisions of the framework and to any future annexes, including one on telecommunications. Issues related to definitions and coverage, market access concessions, conditions of qualifications for entry and operation, access and use of public telecommunication networks, subsidies, behaviour of monopoly suppliers, anti-competitive practices, payments and transfers, and domestic regulation all had a bearing on the increasing participation of developing countries. Given the asymmetry in the development of the telecommunications sector in particular, the flexibility required by developing countries made it necessary that all aspects should be discussed with a view to their increasing participation, if there was to be a sectoral annex.

133. The representative of Morocco supported the principles contained in MTN.GNS/TEL/W/1 and MTN.GNS/TEL/W/2. The question was how to give effect to the principles contained article V of the framework. Within the ITU it had been recognized that telecommunications were essential to development. The annex should recall the conclusions drawn in the ITU. The framework and annex, however, opened up a new perspective on telecommunications. Privatization of telecommunications in industrialized countries had had a significant effect on developing countries. International cooperation in assistance to telecommunications was becoming fragmented and because of the large sums of assistance required, the programs needed to be consolidated and to draw upon private expertise and resources. The annex should recognize the role of telecommunications in the development of services and the implementation of the framework agreement and mention the need for the private sector to take an effective part in the development of telecommunications, either through bilateral agreements or under the auspices of ITU.

134. The representative of Canada said that his delegation did not envision the taking of blanket waivers with regard to obligations of the framework for any countries. Under the framework there might be special measures for least developed countries and there might be differential phase-in periods for the obligations of developing countries.

135. The representatives of Canada, the European Communities, Japan, Sweden, Australia, Switzerland, and the United States noted that technical or financial assistance for the telecommunications sector should be addressed in fora other than the services framework negotiations.

136. The representative of Japan expressed concern about the proposal in MTN.GNS/TEL/W/2 regarding the maintenance of differential tariffs and other fiscal measures by developing countries. This provision contradicted the principle of national treatment and also was not in conformity with the ITU convention.

137. The representative of Mexico said that there was a difference between the role of ITU and that of the GATT where access to markets was the main focus. Developing countries would also like access to markets. The annex should state the objective of encouraging the participation of developing countries in all aspects of trade in telecommunications in order to achieve balanced growth in the sector.

138. The representative of Switzerland said that it would not be appropriate for the framework or telecommunications annex to require certain kinds of assistance or activities by other organizations or by the private sector, however this might be encouraged.

139. The representative of the United States said that the need to assist in the development of telecommunications in developing countries should be addressed by the fostering of a liberalized trade and investment climate in which both developing and developed countries would benefit. A liberalized climate would result in an increasing transfer of technology and training.

140. The representative of Yugoslavia said that it was not clear that training, transfer of technology or development of the telecommunications sector would naturally flow from a liberalized environment. How to address the increasing participation of developing countries was still an open question in discussions on the framework and should remain under consideration in the annex discussions. ITU had its own mandate, but the principles and conditions relevant to trade in telecommunications were appropriate to address in this forum.

141. The representative of Morocco noted that no type of service or trade could be developed without an efficient telecommunications network. In order for the framework agreement to have effective results, it was essential to improve telecommunications network in developing countries. For this reason, the annex should explicitly mention that services could not be developed without an efficient telecommunications network; it should furthermore recognize the disparity between networks in developing and developed countries and state that need to help, by all means available, to foster the development of telecommunications networks in developing countries. To achieve this purpose, private entities should be encouraged to take an active part in this development. In spite of the activities of the ITU and the World Bank in this regard, developing countries still needed to make substantial efforts to develop their telecommunications network and this would require additional sources of funding.

142. The representatives of Jamaica, Cuba, Zimbabwe and Brazil said that concrete measures to facilitate the development of telecommunications infrastructure in developing countries and their participation in trade in services, including telecommunications services, should be set out clearly in the agreement and, as appropriate, its annexes. The representative of Jamaica added that it would not be reasonable to expect developing countries to assume obligations under the framework or annexes at the outset without a degree of clarity as to what specific measures in their favour would result from subsequent negotiations.

143. The representative of India said that there was an overlap between the issues of increasing participation of developing countries and those of technical cooperation. Part V of the framework contained specific provisions on technical cooperation and a reference to the activities of the ITU. These elements should be kept in view in the sectoral exercise. Regarding the observation that increasing investment would result in transfer of technology, the issue of investment and establishment was still an open discussion in the GNS.

144. The representative of Australia said that provisions of the framework were adequate to deal with the issues of increasing participation of developing countries.

145. The representative of Brazil said that participation of developing countries in telecommunications should not be centred only on aid and transfer of technology which could be accomplished through international organizations devoted to these objectives or through commercial agreements.

Specific conditions in the framework or annex should include subsidies and fiscal measures related to meeting internal development policies of developing countries.

146. The Chairman introduced the topic of the relationship to other international agreements and arrangements with regard to the telecommunications sector.

147. The representative of ITU said that the paper submitted by his organization was an information note prepared by the ITU General Secretariat and did not represent a formal ITU text. Since the telecommunications environment was changing rapidly, it was difficult to keep pace with all activities taking place. In this context, two important developments were the increased digitalisation of telecommunications and the convergence of communication and computer technologies. Regarding the institutional aspects, the telecommunications field, by its nature, now called for the interplay of activities in numerous and diverse institutions at global, regional and bilateral levels. Most of these institutions overlapped in various areas and cooperated in many different ways. At the global level, the ITU was recognized by the United Nations as the specialized agency responsible for telecommunications matters, evolving over 125 years of activity and having a membership of 165 nations. Its activities were primarily devoted to providing the common institutional, operational and technical arrangements necessary to support a global public telecommunications infrastructure. Membership in the ITU was restricted to states, but most of the activities undertaken were effected by a broad cross-section of public and private organizations and focused on regulatory, standardization and developmental activities related to implementing and operating telecommunications networks and the provision of telecommunications services. The ITU was evolving rapidly to support an increasingly greater diversity of telecommunications networks, applications and participants, taking into account the rapid changes in the field. There were a number of institutional distinctions between the GATT and the ITU that should be kept in view. First, the basic focus and purpose of the activities in the two institutions was different. The current Uruguay Round GNS efforts were primarily focused on access to and use of telecommunication capabilities for the purpose of encouraging and liberalising global trade. The focus of the ITU was on finding common solutions towards achieving a viable and efficient global telecommunications infrastructure. Although these functions of the two organizations were different, there was some complementarity. Second, the institutional approaches were different. The ITU relied on collaborative and mostly consensual activities in establishing arrangements and agreements that would promote inter-operability and inter-connectivity. These agreements and arrangements were effectively self-enforcing. Any problems or disputes were generally worked out among the administrations or parties operationally involved. Although the ITU had provisions in its Convention and Optional Protocol on the compulsory settlement of disputes, those provisions had only been used once in the ITU's history. The GATT relied essentially on trade-oriented frameworks and principles within a well established and frequently used legally binding dispute settlement process. Finally, as outlined in the ITU information note, there were

possible relationships between specific GNS concerns and ITU activities. These related to transparency, standards, pricing, telecommunications as a mode of delivery, conditions on access and use, access to information, information security including privacy, anti-competitive behaviour including treatment of firms in dominant positions, distinctions between basic and enhanced services, and increasing participation of developing countries. He said that the ITU stood ready to provide any further information or clarifications that the working group might require.

148. The representative of Canada noted that in the Tokyo Round Codes on technical barriers to trade and customs valuation, for example, there had been involvement of other international organizations such as the Customs Cooperations Council and the International Organization for Standardization. These bodies were apparently invited to participate as technical experts in the work of committees under these codes. It would be helpful for the Secretariat to provide information on this with a view to seeing how such cooperation had worked in the context of the Codes and what kind of precedent it could offer for area of telecommunications services.

149. The Chairman noted that such information might be relevant to other sectors as well and, if requested, the secretariat would be prepared to provide relevant information.

150. The representative of the European Communities asked whether, in any other sectors under discussion in GNS, the participation of international organizations had been mentioned with respect, for example, to the settlement of disputes. This would help to understand the sorts of issues that would be relevant in connection with relations with other international organizations.

151. The representative of Sweden said that the ITU was a unique asset for this sector. The ITU informal paper underlined the complementarity between the GATT and the ITU. Interfaces between GATT and the ITU could include drawing on the ITU's technical expertise. It would be premature now to try to foresee any differences in obligations of members of the ITU and the services agreement in the area of, for example, dispute settlement.

152. The Secretariat noted that international organizations that had been mentioned in the context of other sectors under discussion in the GNS included, for example, the World Tourism Organization, ICAO (International Civil Aviation Organization), the Liner Conference agreements of the UNCTAD (United Nations Conference on Trade and Development), the Bank for International Settlements Committee on Central Banking Supervision, and the OECD codes on capital movements transactions and invisible operations.

153. The representative of the European Communities said that his question was directed toward the possible role of other international organizations in the implementation of some of the articles of the framework, where such bodies could be used in an advisory capacity.

154. The representative of India said that there had not been a clear understanding in the GNS on how other international institutions would

interface with the GNS. One of the issues that was discussed was the possibility of input on technical aspects. There was no decision on how to avoid duplication between the sectoral annexes and the work of other relevant international organizations. The GNS needed to take a decision on whether to pursue some objectives through annexes or through strengthening existing international organizations.

155. The representative of the European Communities that said that the activities of the ITU were very important not only for developing countries but also for developed countries. The complementarity between the ITU and the services negotiations and the potential for cooperation was a point worth noting in the ITU informal paper. He asked the ITU secretariat whether transparency was one of the basic commitments embodied in the constitution of the ITU and whether ITU members were obliged to provide data or the ITU was required to gather information on conditions of utilization and access. The representative of Canada asked whether the technical expertise of the ITU resided in the secretariat or in its members.

156. Regarding technical expertise, the representative of ITU said that the output of all that was achieved in the ITU originated from the membership. The members brought together all the information regarding regulatory questions, standardization matters and developmental issues and achieved agreement among themselves in various organs of the ITU. In all of these activities, the ITU secretariat played a supporting role. Therefore, although the basic technical expertise sprang from the contributions of members, by association, the secretariat also had some technical expertise. It should be recalled that some activities included participation not only of member states but also of the participating private sector organizations. Regarding transparency, there was no explicit provision in the International Telecommunication Convention that went beyond stating that the ITU should collect and publish information concerning telecommunications matters (provision number 24 of the Nairobi Convention). Nevertheless, on the basis of this provision, various regulatory provisions and resolutions were adopted by administrative conferences of the ITU that called on member states to provide information that could be exchanged among the membership through the medium of the secretariat. He was not sure to what extent resolutions legally bound the members. However, there had seldom been a case where a member state had denied information to the ITU as concerned this kind of information exchange.

157. The representative of Yugoslavia said that outstanding questions in the GNS were whether specific international organizations needed to be specified by name and on how to deal with obligations that stemmed from some such organizations, including whether a grandfather clause would apply. There was agreement in the GNS that it should not duplicate the work of other international organizations. In technical terms, some duplication in this sector might relate to standards or to conditions of access and use. On pricing, the ITU laid down general tariff principles but regarded pricing as a national matter. This approach to pricing was still valid and should be kept in mind in the drafting of a telecommunications annex.

158. The representatives of the European Communities and the United States said that in the ITU note and in the annex discussions, a clear distinction was drawn between tariff principles, established on an international level, and prices, which were incumbent on the national authorities or national operators. The representative of the United States noted that although prices were a national matter, it was also a matter of concern to international trade to ensure that prices did not nullify or impair market access commitments.

159. The representative of the United States agreed that the work of the GNS and the ITU were complementary. There was not necessarily duplication between the work of this group, on standards or on conditions of access and use, and that of the ITU. On standards, the work of the ITU was fully supported by the United States. The role of this group was to recognize that standards should be set in an open process and that they should be, as in the ITU, voluntary standards adopted by administrations and operating agencies around the world. On conditions of access and use, this working group focused on those conditions that would be necessary and desirable for the promotion of trade in services. This would not necessarily compete or overlap with the work in the ITU which was examining such conditions with a view to the inter-working of infrastructures throughout the world and the provision of services on those infrastructures.

160. The representative of Japan emphasized the special roles played by INTELSAT and INMARSAT in providing telecommunications services to all countries and sought the views of other delegations as to how to refer in a telecommunications annex to such existing arrangements. He wondered as well whether article XIV of MTN.GNS/35 on exceptions would apply to parts of the telecommunications sector, noting that matters relating to telecommunications networks were closely linked to national security and public order. He noted that parts of the sector were exempted from the scope of coverage of the OECD codes on investment for reasons of public order.

161. The Chairman said that the situation was still unclear in the GNS on the issue of the relationship between a future trade in services agreement and existing international arrangements and disciplines. This was true both in terms of institutional and/or technical relationships as well as in terms of the possible overlap of obligations. It might be necessary in his view to revisit this issue in the light of progress made in the GNS on it. As concerned issues which the group had not yet focused on and which might warrant closer scrutiny at its next meeting, he noted that there had been little or no discussion of the possible implications of applying the m.f.n. principle in the telecommunications area.

162. The Chairman said that his assessment of the working group's discussions was that most of the issues that might need to be dealt with in a sectoral annotation appeared to have been captured by the informal checklist of issues prepared by the Secretariat. As noted earlier, there might still be some issues that had not been identified, for example how an m.f.n. provision may apply in the sector. He was also concerned that, on some issues, lack of detail might have covered up important differences of

views on some key questions. He felt that there was a consensus that an annotation would be necessary. The possible content of the Annex was less clear, but most of the principal issues to be addressed had been identified either in proposals or discussions. In some cases, the need for an annotation would depend mainly on the outcome of the GNS discussions. This would seem, in particular, to be the case for provisions related to: privacy-related concerns; the behaviour of monopoly or exclusive service providers; and the behaviour of private service providers. He noted that there was another group of issues on which views were clearly divided as to the possible need for an annotation. The issue here was not so much whether the framework agreement would deal adequately with the concerns of those delegations that had proposed an annotation; rather, the question was whether any reference was required in an annex. The issues falling into this category would include: pricing of telecommunications services and access to information services. Although there was no consensus on the need for an annotation in either of these areas, it might be prudent to develop an appropriate annotation. A final decision on the need to include them in an annex was not directly related to the framework discussions. With respect to the possible contents of the annotations. The Chairman summarized a number of points of discussion.

163. On pricing, there seemed to be a general view that prices for telecommunications transport services should not differentiate within classes of users, they should reflect the costs of supplying the services and they should not distort trade.

164. With respect to access to information services, apart from the special considerations that might need to be given to the needs of developing countries, any annotation would need to be limited to possible consultations between parties with respect to government measures that would adversely affect access to information services. He felt that such issues - monopoly/private operator behaviour, privacy, access to information and pricing of services - were probably manageable, in the sense that they were reasonably clear and self-contained.

165. Real difficulties arose with respect to some of the other issues which the group had discussed. Reaching any conclusions on these questions was difficult since they related to unfinished business in the GNS, particularly as concerned scope/definition and coverage. They reflected as well very different regulatory approaches in the telecommunications sector because of the very different levels of development of the telecommunications infrastructure between countries. Even here, however, he felt that the group had made real progress in understanding respective interests and concerns, the special nature of the telecommunications sector and its relationship to national trade policy and development objectives.

166. There was now a common understanding of the dual nature of the sector. The term "mode of delivery" of course had important connotations in the GNS and was a source of controversy in other working groups. The fact remained, however, that most of the group's discussions had focused on telecommunications as an underlying transport means essential for the delivery of many services and, in particular, telecommunications services.

For many reasons, it was essential that group members kept clear in their minds this dual role - as a service sector, per se, and as a sector essential for the delivery of other services. He was however, less certain of the need to develop two annexes, instead of one, to deal with this duality.

167. Further, it seemed to him there was a consensus on two key points: the annex should not result in liberalization in any sector, including the telecommunications sector, without a negotiated commitment having been made in the GNS; and the annex should ensure that conditions relating to access and use of public telecommunications transport services should not in practice impair a market access commitment once it had been made.

168. On the question of coverage, decisions would need to be taken in the GNS as to whether any sectors were to be excluded from the coverage of the framework agreement and, by implication, the annex. Nonetheless, the group's discussions would seem to indicate that there was a consensus that in developing the annex it should be assumed that all telecommunications services, including the operation of the underlying telecommunications transport network, would be covered by the Agreement.

169. He noted that parties would be free in their national schedules to not make liberalization commitments, or to make reservations, relating to the operation of network facilities and the provision of services. The group's understanding of the approach being taken in the GNS on this question had helped to clarify several matters. In particular, it had helped in avoiding the difficult question of drawing a distinction between so called "basic" or public telecommunications transport services and "non basic" services. However, he felt that there would still be a need to develop a definition of what was a "public telecommunications transport service" for the purposes of the annex. This definition would, in effect, set out a guideline to establish a common understanding of which services were to be made available to users. It would, however, be the specific market access commitments made by parties that would ultimately determine how particular services were classified. There appeared to be a consensus that public telecommunications transport services, including leased lines, should be made available to users on a non-discriminatory basis, i.e. on a national treatment and m.f.n. basis. Further, it might be appropriate to describe in the annex minimum conditions to be observed by suppliers to ensure access to users. There was a consensus that any terms and conditions attached to the use of public telecommunications transport services should be reasonable. Much of the discussions had focused on what, in fact, "reasonable terms and conditions", meant. In particular, group members had discussed this question in terms of the requirements that might be placed on the use of such services in order to protect the technical integrity and public service functions of the network, including the extent to which specified standards might need to be observed, and the transparency of regulations and other conditions relating to use of the network. The objective of the annex should be to ensure that such terms and conditions were spelled out to the extent necessary to ensure that market access was guaranteed for those services, including telecommunications services, for

which market access concessions have been made. He noted, however, that the objective was not liberalization, per se.

170. The annex should not result in the liberalization of the provision of any services where market access commitments had not been made in national schedules. There appeared to be a consensus that the annex should not contain any obligations which would require parties to take, or abandon, measures that would threaten the viability or integrity of their public telecommunication transport network. In particular, there was a consensus that when leased circuits were used by a telecommunications service provider, parties should be able to apply conditions of use to ensure that such provider did not offer other services for which no market access commitments had been made. Similarly, parties should be able to apply conditions of use to ensure that "end-users" of leased lines, e.g. for inter-corporate communications, did not use the lines to offer telecommunication services to third parties in the absence of an appropriate market access commitment.

171. With respect to the use of standards as a condition of access to and use of telecommunications he noted that there was a consensus that international standards were important in the telecommunications sector. It was also agreed that parties should continue to promote and formulate such standards through relevant international bodies such as the ITU and to apply them in their national telecommunications systems. It was agreed that, in general, standards were important to ensure the safety, integrity and interoperability of telecommunications systems and equipment, although parties might interpret the scope of these terms differently. Although there clearly were differences of view on some points, the general view appeared to be that: as a condition of access, standards could be made compulsory for the establishment of interfaces to public telecommunications transport networks, generally for the purpose of preventing technical harm; standards and protocols could also be established for network operability. Such standards should not preclude the co-existence of private proprietary standards and protocols; standards for the interoperability of value added services could also be established, but only in exceptional circumstances.

172. On transparency, he noted that the general view was that the provisions in MTN.GNS/35 generally were satisfactory, but that there may also be a need for an annotation to clarify how these provisions would apply in the telecommunications sector. The group's intention should not be to expand the kinds of obligations set out in MTN.GNS/35, which dealt with the publication of government decisions, regulations and other measures. Rather its objective should be to elaborate on these obligations by clarifying what kinds of measures they would apply to publication of tariffs of monopoly entities and of other entities when required by national governments; and publication of access interfaces to public telecommunications transport services.

173. Finally, although the group had had some discussion of the issue of increasing participation of developing countries, it was still not possible to reach any conclusions on how the annex might best deal with the question. There was a consensus, however, that irrespective of any need

for a specific annotation, the approaches taken in all other annotations would need to reflect the need to assist in increasing the participation of developing countries in telecommunications services trade. He felt that the group might need to devote further attention to the issue of existing internal arrangements and disciplines. A key challenge in drafting the annex was to ensure that it contained enough to clarify and avoid misunderstandings without being unduly detailed. This was all the more important in view of the rapid evolution of the telecommunications sector. He intended to submit a draft of his report to the GNS before the next meeting. He indicated that, in drawing up this report, he intended to consult as widely as possible during the period leading up to the group's next meeting, particularly with those delegations that had made submissions in the working group. He could envisage an open-ended meeting with interested delegations ahead of the next meeting to assist in the drafting of his report. He hoped that group members would be in a position to make final decisions at the next meeting.

174. The representative of India said that his delegation broadly supported the Chairman's proposed course of action. He felt that group members could attempt, without prejudice to the issue of whether or not an annex would ultimately be required in the telecommunications sector, to develop some drafting language to serve as a basis for the group's discussions at its next -and final- meeting. He remained somewhat unsure as to what could be achieved on issues in regard to which clear divergences of views existed within the group. It was far from clear, for instance, that the pricing of telecommunications services was an issue that should be addressed in an annex. His delegation felt that issues relating to market access, to minimum conditions of supply/use and to terms and conditions attached to services fell within the ambit of the GNS discussions. The working group should not aim to impose, through a sectoral annex, additional obligations on parties to a services agreement. It was important that the working group perform its mandate and stay clear of issues which fell outside its mandate. In this regard, he felt that the group had not yet reached a stage of discussions allowing any semblance of a consensus on matters of pricing, on the definition of public telecommunication transport services and its linkages to the issue of market access, on the minimum conditions of supply/use, on the terms and conditions attached to services, as well as on a provision guaranteeing access to public telecommunications networks and services in those sectors where market access commitments were made. Until some degree of consensus began to emerge on these issues, his delegation found it difficult to envisage how to proceed in the working group.

175. The representatives of Korea and of the European Communities felt that the Chairman had faithfully stated the current state of play in the group after three meetings. The Chairman's proposals for furthering the group's work were acceptable to their respective delegations. The representative of the European Communities felt that the Chairman could resort to brackets in highlighting issues which did not yet command widespread support in the group.

176. The representative of Japan felt that in view of the 20 October deadline imposed by the GNS, the Chairman's proposal for moving things

forward was the only meaningful option available to group members. He agreed that what was not agreed to at the next meeting could be put in brackets and left to the GNS ad hoc working group to take final decisions.

177. The representatives of the United States and of Australia said that they fully supported the Chairman's summing up and felt that it was a sound basis on which to proceed in the Group. Both pledged their delegation's assistance in helping the Chairman meet the October 20 deadline.

178. The representative of Poland said that his delegation was still unsure as to whether the duality of the telecommunications sector could be addressed under one annex, particularly as the characteristics of the sector appeared to suggest the need for a sectoral annex to contain obligations. He urged group members to focus more narrowly on the needs of the sector, suggesting that it was possible in some respects that the framework agreement adequately addressed issues of relevance in the telecommunications area. He cited the concept of transparency as one example in this regard.

179. The Chairman felt that although there were clearly issues in regard to which the positions of delegations remained sharply divergent, there were other issues where divergences might be more apparent than real. He suggested that a text would in any event help in clarifying some issues and assist the GNS in moving forward. He recognized that pricing was one of the five issues in regard to which the need for annotations remained unclear. He stressed that were his draft report not to satisfactorily portray the views of various delegations, the group's meeting scheduled for the week of 15 October 1990 would provide an opportunity to clarify any differences in views.