

15 February 2013

Really Good Friends* – Meeting of 18 March 2013*Plurilateral Initiative on Trade in Services****Submission by Switzerland:****Provisions on trade-related principles for Information and Communication Technology Services (ICT principles)****Objective**

The following submission, dated 15 February 2013, from the delegation of Switzerland is being circulated to the Members of the *Really Good Friends* with the aim of contributing to discussions on trade-related principles on ICT services, as part of the ongoing Plurilateral Initiative on Trade in Services, including the December's Submission by the Delegation of Japan. The provisions set out below could form part of a [Text] on ICT principles.

Proposed Provisions:**1. Promotion of ICT principles and cooperation**

Parties affirm their intention to:

- (a) promote the trade-related ICT principles referred to in paragraph 2 in order to contribute to the expansion and spread of ICT Services;
- (b) work together and cooperate in international fora to increase the level of digital literacy and to reduce the global digital divide;
- (c) cooperate with third countries with a view to enhancing national regulatory capacity and to contribute to the spread of ICT Services, which are powerful tools for promoting economic development.

2. Trade-related principles for ICT Services¹

Governments seeking to enhance their national regulatory capacity and to support the development of ICT Services should embrace the following principles and, as appropriate, work towards integrating them into bilateral and multilateral trade disciplines:

2.1 Transparency; Regulatory Authorities; Authorizations and Licenses

- (a) Governments should ensure that all laws, regulations, procedures, and administrative rulings of general application affecting ICT Services and trade in ICT Services are published or otherwise made publicly available, and, to the extent practicable, are made subject to public notice and consultation procedures.
- (b) Governments should ensure that relevant regulatory authorities are legally distinct and functionally independent from any ICT service supplier, and have sufficient legal authority and adequate resources to perform their functions effectively.
- (c) Governments should ensure that regulatory decisions and procedures are impartial with respect to all market participants.
- (d) Governments should ensure that regulatory decisions regarding ICT Services, and the results of appellate proceedings regarding such decisions, are publicly available.
- (e) Governments should authorize the provision of competitive telecommunications services, wherever possible, on simple notification by a service supplier, and should not require commercial presence as a condition for the supply of such services. Licenses should be restricted in number only for the purpose of addressing a limited set of specified regulatory issues, such as the assignment of frequencies and other scarce resources.

¹ For the purpose of this [Text] 'Information and Communication Technology Services' is to be understood according to definition agreed by Parties.

2.2 Open Networks, Network Access and Use; Local Infrastructure; Use of Spectrum; Interconnection; Foreign Ownership

- (a) Governments, preferably through relevant regulators, should promote the ability of consumers legitimately to access, share and distribute information as well as running applications and using services of their choice. Governments should not restrict the ability to supply services over the Internet including on a cross-border and technologically neutral basis, and should promote the interoperability of services and technologies, where appropriate.
- (b) Governments should not require ICT service suppliers to use or establish any local infrastructure, as a condition for the supply of services. In addition, governments should not give priority or preferential treatment to national suppliers of ICT services in the use of local infrastructure, terrestrial spectrum or orbital resources.
- (c) Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable International Telecommunication Union Radiocommunication Sector (ITU-R) recommendations. The allocation of spectrum for commercial purposes should be carried out in an objective, timely, transparent, and non-discriminatory manner, with the aim of fostering competition and innovation. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.
- (d) Governments should, consistent with paragraph 5 of the GATS Telecommunications Annex, ensure that public telecommunications service suppliers have the right and the obligation to negotiate and to provide interconnection on commercial terms with other suppliers for access to publicly available telecommunications services and networks. In addition, in accordance with paragraph 2.2 of the GATS Reference Paper on Basic Telecommunications, governments should ensure that suppliers providing public telecommunications services are able to negotiate and obtain interconnection with major suppliers at cost-oriented, non-discriminatory, and transparent rates.
- (e) Governments should allow foreign participation in their ICT services sectors, through establishment or other means, without limitations of foreign capital participation.

2.3 *Cross-Border Information Flows; Consumer and Data Protection*

- (a) Governments should not prevent foreign ICT service suppliers, or customers of such suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored abroad.
- (b) Governments should have measures to protect consumers using ICT Services from fraudulent and deceptive commercial practices.
- (c) Governments should enhance their enforcement capacity to ensure that the applicable laws and regulations concerning the protection of data and privacy are complied with.

3. Cooperation

- (a) Parties will exchange information in the area of ICT Services. That may include information on, *inter alia*:
 - (aa) technological developments and research in the area of ICT Services;
 - (bb) commercial and technical aspects of the supply of ICT services through all modes of supply;
 - (cc) available possibilities for the exchange of ICT-related technology; and
 - (dd) applicable laws and regulations, legislative processes and recent legislative developments; applicable technical standards.
- (b) Parties will exchange views on developments related to ICT at the international level.

4. Relation to international agreements and domestic legislation

- (a) Parties confirm that those principles are without prejudice to their rights or obligations under bilateral or multilateral agreements, including the WTO Agreement and the exceptions contained in the General Agreement on Trade in Services (GATS).

- (b) The trade-related ICT principles referred to in paragraph 2 are without prejudice to the policy objectives and legislation of the Parties in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data, the protection of consumers and the protection and promotion of the diversity of cultural expressions (including through public funding and assistance) and fiscal measures.
- (c) The trade-related ICT principles referred to in paragraph 2 do not apply to financial services.

5. Review

Parties intend to review the trade-related ICT principles referred to in paragraph 2 from time to time, with a view to discussing their implementation and use and to further refining and expanding them, as appropriate.
