



Trade & Telecommunication

A primer

The Background



Relevance in the International Economy

Maitland Committee Report - The Missing Link:

In 1982, the ITU Plenipotentiary Conference held in Nairobi, Kenya

Independent Commission for World-Wide Telecommunications Development.

Officially titled The Missing Link, the Maitland Report or the Report of the Maitland Commission, the report drew international attention to the huge imbalance in telephone access between developed and developing countries and concluded that this imbalance was intolerable.

It underlined the direct correlation between the availability of, and access to, telecommunication infrastructure and a country's economic growth, and it proposed concrete solutions to fix the missing link.



What is the available framework?

The trade rules that apply to telecommunications services include the framework articles of the General Agreement on Trade in Services (GATS), which contain the principles for trade in all services.

GATS contains an Annex on telecommunications whose rules apply to all World Trade Organization members.

The WTO has also notably issued a "*Reference paper*" crystallising the best-practices in International Telecommunications as a binding guideline upon all its member governments.



The GATS Annex

The document defines Telecommunications as: *the transmission and reception of signals by any electromagnetic means*, along with a handful of relevant definitional provisions.

The paper, further, lays down briefs on Transparency, and the Access to and use of Public Telecommunications Transport Networks and Services.

The document solicits technical co-operation in between member-nations, especially in developing economies around the world.



The WTO Reference Paper

The paper touches on *competition and anti-trust* safeguards, focuses on the interconnection between service supplies and the general public and lays open equitable principles such as fair and non-discriminatory access, Transparency in interconnection agreements, etc.

The paper also stresses the necessity to make available to the public: licensing criteria, wherever applicable, and terms and conditions thereof, in context of telecommunication services.



Commitments

Post the Uruguay Rounds that brought in 123 member states of the WTO-GATT *framework*, new members joining the organization make commitments to the telecommunication guidelines, or, states make individual commitments - of their own will.

- 123 WTO members have made market access and national treatment commitments on trade in telecommunications services.
- These include commitments to allow the establishment of new telecom companies, foreign direct investment in existing companies and cross-border transmission of telecom services.
- 105 members have committed to the regulatory principles spelt out in the Reference Paper.



Doha Rounds Inclusion

Telecommunication was explicitly included as subject of negotiated services in the *Doha Round* of 2000s.

- The Round witnessed the improved market opening and new commitments to "bind" more recent reforms in telecommunications were under negotiation.
- 39 members had offered to improve their existing commitments or to commit for the first time in the sector.



The Legal Regime

Article II of GATS specifies that the governments of each WTO member *must accord to service suppliers based in other member states*, treatment (in terms of effective access to compete in the national market) *"no less favourable"* than the treatment it accords to "any other country".

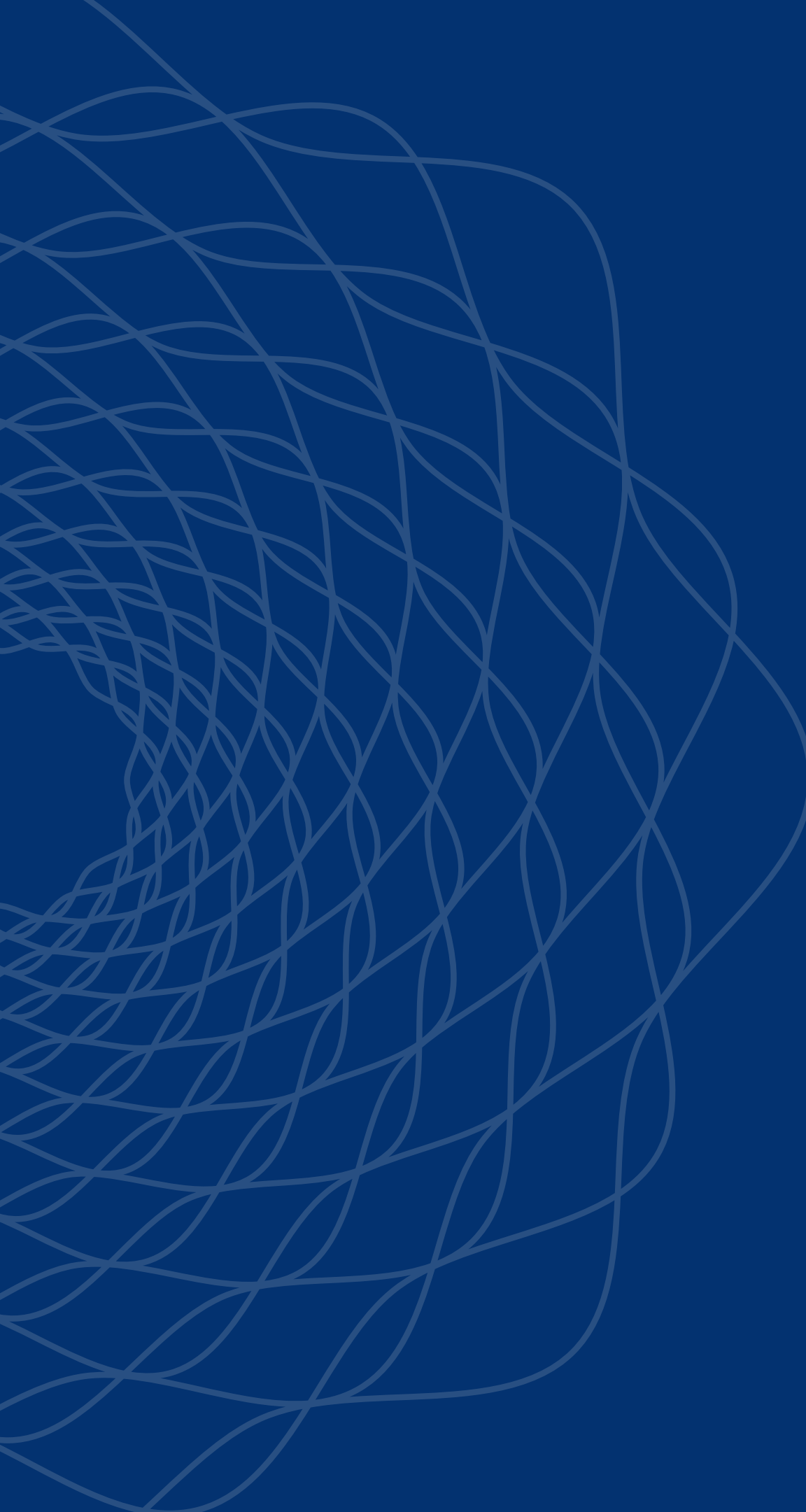
This provision, long-established in international agreements concerning trade in goods, would have far-reaching implications if applied to telecommunications.



Most-favourable
Nation Status



Indian Overview



Pre-LPG reforms of the 90s - The Indian Wireless Telegraph Act, 1933 dealt with the possession of wireless telegraphy by a person.

It allowed for a licensing mechanism - to be issued by the telecom authority, levying penalties if any wireless telegraphy apparatus was held without a valid license.

Post-Reforms - The Telecom Regulatory Authority of India (TRAI) was set up in 1997 and this reduced the interference of the government in deciding tariffs and policy making

Regulatory Evolution

In exercise of power conferred by proviso (k), Section 2 of the TRAI Act, the Central Government notified broadcasting and cable services to be telecommunication services, in early 2004.

The TRAI (Amendment) Act, 2000 brought a reconstituted vigour to the authority.

Dispute Settlement Mechanism: TDSAT, Telecom Dispute Settlement and Appellate Tribunal, was established as an Appellate Tribunal established by the Central Government in May 2000 to adjudicate between a licensor and a licensee between two or more service providers or service providers and a group of consumers and to hear and dispose of appeal against any direction, decision or order of the Telecom Regulatory Authority of India and thus the Tribunal exercised both original and appellate jurisdiction.

Governmental Control

Apart from the same, there is overarching control from the Central Government on Telecom matters within the limits of permissibility provided by the *Section 25 of the Act*:

Central Government can issue binding directions to TRAI for the following :

1. *India's sovereignty and integrity;*
2. *State security;*
3. *Friendly relation with foreign states*
4. *Public order;*
5. *Decency; and*
6. *Morality.*

The Central Government has also, from time to time, come up with policies setting the course of action for the Telecom Sector in India, namely:

1. *National Telecom Policy 1994;*
2. *New Telecom Policy 1999;*
3. *Broadband Policy 2004;*
4. *National Telecom Policy 2012 (NTP 2012); and*
5. *National Digital Communications Policy 2018.*



Policy Directions

Draft Indian Telecommunications Bill, 2022

The most recent telecom bill, notified in 2022, is intended to replace the Indian Telegraph Act, which has, since 1885, regulated most aspects of telecommunications in the country

Latest Advancements



Thank You