

WTO Telecommunications Negotiations: How Should SADC Countries Respond?

Telecommunications services are an important focus for most industrial countries in the current round of trade talks in services. Initial negotiating positions and country requests by these industrial countries all call for full liberalisation of the sector. James Hodge reports that SADC countries have already embarked on reform in telecommunications but few have made commitments in the WTO and almost none propose going as far as full liberalisation in the foreseeable future.

Introduction

Negotiations on the liberalisation of telecommunications form an important part of service negotiations in the Doha Round. The negotiations cover all aspects of the telecoms sector, including fixed line public networks, mobile networks and the full range of value-added network services (VANS) such as Internet and virtual private networks. Liberalisation of trade in these sub-sectors involves removing entry barriers into the market (market access) and any discriminatory practices against foreign operators (national treatment). It applies to all forms of operations – whether it is a commercial presence in the host country or offering a cross-border service such as international voice or data traffic. Liberalisation does not include privatisation (public companies can continue to exist in a competitive environment) and does not eliminate ability to regulate the industry in a fair and impartial manner. In fact, negotiations in telecoms include a Reference Paper that lays down principles of fair regulation that countries can be asked to commit to. The Reference Paper covers regulatory principles in competitive safeguards, interconnection regulation, the allocation of scarce resources (like spectrum), universal service obligations, formation of an independent regulator and the public availability of licensing criteria.

What is being requested of SADC countries?

The initial request/offer phase in service negotiations will draw to a close in March 2003 and most countries have by now received some requests in telecommunications. It is evident that there is strong interest in pursuing the liberalisation of the sector by both developed and middle-income countries. The reason for this is threefold: First, to gain market access for their telecoms firms that are seeking to make-up for domestic market share losses in the face of liberalisation at home and to seek further growth opportunities. Second, competition in foreign markets will bring down settlement rates for international calls made domestically, benefiting the home consumers. Thirdly, competition in foreign markets will lower the operating costs and competitiveness of multinationals operating in these markets.

As most industrial countries have fully liberalised their telecoms sector and middle-income countries are already far down that path, there are no domestic reform limits that are holding back requests. These countries are generally asking for full liberalisation and the adoption of the Telecoms Reference Paper as their opening move in the negotiations. There have also been numerous negotiating proposals seeking to broaden the scope of negotiations by updating the service listing (Switzerland, Australia, Norway) or negotiating an e-commerce cluster (USA, Chile); and strengthening the Reference Paper by enhancing the regulatory independence provision (Australia), ensuring competitive mechanisms for allocating limited licences (Switzerland) and limiting the licence/universal service fees (Japan, EU).

Where are SADC countries in the reform process?

Only four SADC countries have made any telecoms commitments in the WTO during the previous Round of talks. These are Lesotho, Mauritius, South Africa and Zimbabwe. However, the commitments made offer little in terms of liberalisation of the sector and are more a binding of monopolistic market structures outside of the value-added services (the exception being South Africa that pre-committed to a duopoly in fixed line and three licences in mobile).

However, the actual status of reform differs markedly from the bound commitments (or lack of them). Most SADC countries are pursuing a 'managed liberalisation' strategy

in telecommunications that is proceeding at different speeds in different countries. This approach is advocated by the Telecommunications Regulators Association of Southern Africa (TRASA) in their model telecommunications policy. In the fixed line sector, the 'managed liberalisation' approach has involved:

- establishing a regulator,
- corporatising the public operator,
- granting an exclusivity period to the public operator of around five years coupled with finding the operator a foreign strategic partner to assist in building competitiveness and financing the rolling out universal access infrastructure. Exclusivity on voice traffic usually implies the outlawing of Voice-Over-Internet Protocol (VOIP), the need to direct all international traffic through the public operator or lease their facilities (including mobile and VANS operators).
- introduction of a second national operator (SNO) to provide facilities-based competition for another exclusive period
- introduction of voice resale competition and broader facilities-based competition

	FIXED LINE			MOBILE		
	Introduction of SNO	Voice Resale Competition	VOIP allowed	No. of Operators	Foreign Ownership Restrictions	Review of no. of Operators
Botswana	2004	Domestic only	No	2	49%	2003
Lesotho	Not set	No	No	1	None	
Malawi	2008	No	No	3	None	
Mauritius	2004	No	No	2	Yes	2004
Mozambique	2003	No	No	2	yes	
Namibia	2004	No	No	1	49%	2002
South Africa	2002	No	Rural only	3	49%	2005
Tanzania	2004	No	No	5	None	
Zambia	Not set	No	Rural only	4	60%	

Sources: SATRN researchers, ITU, national legislation

All SADC countries have completed the first two stages and began the exclusivity periods. Table 1 shows the years that SADC countries intend introducing the SNO. Some countries have already liberalised certain aspects more rapidly. For instance, Tanzania and Botswana allow voice-resale competition, Malawi and South Africa permit local district facilities competition in rural areas, while South African and Zambia permit VOIP in rural areas with low teledensities only. Namibia is planning to break the mould and move directly to a more competitive environment in 2004.

In mobile the approach has been more liberal from the start, with most countries initially licensing two operators with a limited exclusivity period before an additional

operator is introduced. Table 1 provides the current status of the number of operators and when the next review period is in each country. In both Zambia and Tanzania there are no legal restrictions on the number of operators but rather spectrum limitations. In many countries there are foreign ownership limits that are considered market access limitations in terms of the WTO negotiations. This may be explicitly legislated or form part of the licence tendering requirements.

In value-added network services, all countries have adopted a very liberal approach with the only limitations being those implied by the monopoly in fixed line – restrictions on building their own networks and on VOIP. As competition is introduced in fixed line, these will fall away.

Finally, all countries except Namibia have legislation and regulatory practices that put them in line with the general regulatory principles encompassed in

SUB-SECTOR	MARKET ACCESS	NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
Fixed Line voice telephony	1) Supply through duopoly 2) none 3) Supply through duopoly Foreign investment up to a maximum of X% Resale is/is not permitted 4) Unbound, except as indicated in the horizontal section	1) none 2) none 3) none 4) Unbound, except as indicated in the horizontal section	Reference paper in full
Mobile Cellular	1) Supply through fixed line duopoly 2) none 3) Supply limited to X number of firms Foreign ownership limited to X% 4) Unbound, except as indicated in the horizontal section	1) none 2) none 3) none 4) Unbound, except as indicated in the horizontal section	Review additional licence in 200?
Value-added services	1) No bypass of the duopoly 2) none 3) No bypass of duopoly 4) Unbound, except as indicated in the horizontal section	1) none 2) none 3) none 4) Unbound, except as indicated in the horizontal section	

the Telecoms Reference Paper.

In conclusion, SADC countries could commit to the type of schedule outlined in table 2 if they were to bind their current reform programme until the deadline for negotiations to end in 2005.

What commitments should SADC countries consider?

The SADC countries are in the position where autonomous liberalisation has proceeded significantly further than any commitments they have made in the WTO in telecoms. The negotiating strategy question is firstly whether they should bind the existing reform (as with table 2), and secondly whether they should consider using the WTO negotiations to commit to more rapid reform. There is a very strong case for SADC countries to at least bind their current reform programme in the WTO. The rationale is four-fold:

- By making commitments in telecoms where reform has already proceeded takes some negotiating pressure off other sectors where SADC countries have less intention of reforming. In terms of Article XIX of the GATS, developing countries should be given the flexibility to open fewer sectors - telecoms could be one of them.
- Domestic reform in telecoms is already strongly bound by the fact that investors have sunk large amounts into infrastructure, making reform reversal extremely costly by destroying investor confidence. Binding in the GATS does not make the reform any less reversible.
- There are no additional implementation costs of binding this reform because the regulatory institutions are already established. This may not be the case in other sectors where regulators do not currently exist.
- Most SADC countries will have their telecoms sectors fully liberalised by the time the next negotiating Round takes place in the WTO (at the earliest by 2010), which implies that this is the last chance to get credit for autonomous liberalisation.

However, there is also a strong case for SADC countries to use the negotiations to accelerate reform in the telecoms sector. The case rests on the fact that more reform offers greater negotiating credit to SADC countries in line with the reasoning above, but at no significant cost to their development strategy for the sector. There are a number of reasons why one would not expect much additional cost from an acceleration of reform in the telecoms sector:

- SADC countries have incurred most of the adjustment costs in terms of employment losses and rate rebalancing already - or will do so before an SNO is introduced anyway. These are considered the primary adjustment costs of reform and also impose the political barriers. The result of going gradually also implies that countries incur many of the costs of liberalisation

without enjoying the benefits - price reductions stemming from competition!

- The dramatic success of mobile phones has lowered the need for fixed line to be the provider of universal access. This implies that there is less need to protect the revenues of the public fixed line operator through limitations on competition and to provide exclusivity to roll out 'universal access' infrastructure. Infrastructure that has been rolled out under the protection of exclusivity periods has often proved socially wasteful because consumers are demanding mobile and not fixed line. A case in point is South Africa that rolled out 2.7m lines only to find 2m disconnected by the end of the exclusivity period. The success of mobile is built on its prepaid tariff structure that has no monthly charges albeit at the cost of higher usage charges. This makes it far more affordable to get connected (see table 3 below) and makes it cheaper for usage too if the consumer is a low-usage subscriber such as low-income households are (table 3 demonstrates that the monthly cross-over point below which mobile is cheaper to use ranges from \$4-9 per month in SADC countries). The result of greater affordability is that subscriber numbers have already outstripped fixed line consumers in all but Namibia and infrastructure has been rolled out rapidly beyond any initial licence obligations (see table 3).
- The success of mobile has also brought de facto competition to the public fixed line provider with all the implications for revenue and subscriber loss, making their continued protection more of an illusion than a reality. In addition, VOIP telephony is impossible to monitor and therefore enforce any ban on its use, further eroding the legislated limitations on competition. The upshot of these developments is that continued protection of the fixed line operator from serious competition is probably only hurting the business user of high bandwidth lines without offering any significant benefits to the operator itself.
- A gradual liberalisation approach was also rationalised on the basis of limited regulatory capacity and the need to build this over time. However, all regulators in the region have already made extensive use of outside consultants to supplement their limited capacity, making this less of a concern. Clearly there is still a need to develop more capacity inside the regulator, but this will not happen rapidly and should not impact the quality of regulation in the meantime.

If the negotiations are used to make a more liberal offer, this does not preclude SADC countries from using the opportunity to still impose some development support in this sector. Countries that have the depth of domestic capital to exploit the opening of this sector should still

Table 3: Affordability and Penetration of Fixed Line and Mobile in Selected SADC Countries (2002)

	AFFORDABILITY			PENETRATION		
	Fixed Line annual access fees as a % of GDP p/c	Mobile annual access fees as a % of GDP p/c	Mobile-fixed Monthly crossover Point (US\$)*	Fixed Line teledensity	Mobile teledensity	Mobile lines as a % of total lines
Botswana	1.3%	0.4%	4.52	8.64	14.24	66.1%
Lesotho	10.1%	2.7%	6.04	0.99	2.43	71.1%
Malawi	12.0%	7.1%	2.82	0.56	0.59	51.3%
Mauritius	0.8%	0.3%	NA	23.42	10.33	51.6%
Namibia	3.3%	0.6%	9.21	6.0	4.32	46.7%
South Africa	2.9%	0.4%	8.73	10.95	25.00	69.1%
Tanzania	22.9%	4.2%	9.78	0.45	1.01	74.0%
Zambia	5.3%	3.6%	3.36	0.82	1.18	59.0%

*Point of communication spend at which fixed line becomes the cheaper option
Source: SATRN researchers, ITU telecommunication indicators

consider keeping foreign ownership limitations that can be phased out in 5-10 years (there will always be limited operators and so once domestic capital is established in the sector, there is no longer a need for these requirements). It is also a good opportunity to demand technical assistance for building the capacity of the regulators as this will be an ongoing requirement.

How should SADC countries respond to other negotiating proposals in telecoms?

Most of the additional negotiating proposals pose little concern to SADC countries because they will already be in compliance. These include specifying the specific functions of the regulator and the Minister (SADC countries follow best-practice), adding new services that have arisen (these are generally VANS that are open to competition in SADC), and adopting a broad e-commerce cluster approach.

However, a few of the proposals may be problematic. First, the current definition of independence of the regulator is that they are independent of any telecoms supplier. However, given that they are not independent of the government, and the government often owns the dominant operator, there may be a move to eliminate this indirect link between regulator and supplier. However, removing this link implies privatisation, which is not considered to be part of the GATS agreement and so should be resisted. Second, the proposal that the allocation of scarce resources be done more competitively, implies the use of auctions to allocate licences and spectrum. No SADC country currently uses auctions, but rather a public tender process using numerous criteria often referred to as a beauty contest. Although auctions can be an efficient means of allocating licences, they are also not always efficient if there are a small number of bidders (and the opportunity for collusion to rig the auction exists) or if there is considerable uncertainty over the value of the licence (arising from either demand, political or exchange rate uncertainty). Given these conditions exist in many developing countries, it is not advisable to have an auction as the only

option open to countries to allocate licences. Thirdly, some countries are looking to impose limits on licence fees and universal access fees. Given the greater universal access needs in SADC countries, any limits set need to account for these greater needs. Also, given the large fixed cost component of running a regulator and the small telecoms markets in many SADC countries, licence fees as a percentage of turnover tend to be higher in SADC out of necessity to cover regulatory costs. Again, limits imposed on these fees must take this into account.

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