

The Australian Department of Foreign Affairs and Trade

# APEC Symposium 'Good Policy and Regulatory Practices for Facilitating Trade and Investment in Telecommunications and ICT Services'

Good Practices Report



## APEC SYMPOSIUM

### GOOD POLICY AND REGULATORY PRACTICES FOR FACILITATING TRADE AND INVESTMENT IN TELECOMMUNICATIONS AND ICT SERVICES

Manila, Philippines, 9-10 December 2014

#### **Background**

The APEC symposium, 'Good Policy and Regulatory Practices for Facilitating Trade and Investment in Telecommunications and ICT Services' was held in Manila, the Philippines, on 9-10 December 2014. The symposium was hosted by Australia and attended by regulators, trade officials and private sector representatives from thirteen APEC economies (Australia; Chile; China; Hong Kong, China; Indonesia; Mexico; Papua New Guinea; the Philippines; Singapore; Chinese Taipei, Thailand; Vietnam and the United States). Participants were provided with a training manual, prepared by the facilitator and circulated in advance, covering recent developments in telecommunications and ICT services and regulatory policies and practices, to help them to participate actively in the symposium.

The symposium provided opportunities to share experiences and helped build the capacity of participants in considering possible measures for their respective economies to promote open, accessible trade and investment flows and services provision in the region. It helped strengthen linkages and networks between policy makers, regulators and academics in participating economies and across the region.

Symposium discussion was set against the background of the high degree of convergence occurring across telecommunications and ICT services. Previously separate telecommunications and ICT service providers are each developing overlapping and, therefore at times, either competing or complementary services. As a result, communications markets are much more contestable and regulation more complex and cross-sectoral. The growth of Internet-based networks and applications, access to mobile broadband networks and new technologies (e.g. smart phones, tablets and related apps) and communications services delivered via the Internet are all impacting on the way users interact and businesses operate. In this highly competitive environment, established (former monopoly) telecommunications service providers are under immense pressure, not only from successful start-ups providing new services (such as cloud computing or VoIP), but also from existing media companies, infrastructure content providers, other 'over the top' (OTT) service providers, software suppliers, data storage and processing specialists, and computer hardware/device manufacturers. Many legacy telecommunication services providers have to reinvent themselves and develop new business models as services and sectors converge.

Digital connectivity in APEC is growing strongly and mobile penetration is very high among the APEC economies participating in the symposium (90 per cent). However, the same is not true for internet access, where some 1.25 billion people in the economies are still not online. Participants acknowledged that priority needs to be given to the 'unconnected', and that APEC members need to take action to improve accessibility and affordability of broadband internet services. Removing regulatory barriers to international trade and policies that promote and facilitate open markets, trade and foreign investment can do much to bridge the digital divide.

#### **Key Themes of the Symposium Discussions on Good Practices**

This report summarises the key symposium outcomes, including common themes arising from the discussion of good practices to guide policy makers and regulators in adopting and maintaining open and transparent telecommunications and ICT sectors. They draw on speaker presentations, Q&A and panel and break-out sessions.

#### ***Policy Objectives in Converging Communications Markets***

Participants were asked to identify some broad policy objectives against which to frame regulatory principles. Participants underlined that each economy needs to set its own regulatory path, depending on its individual circumstances. As such, both objectives and regulatory principles set out below are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to an economy's policy making or its positions in the WTO or regional and bilateral free trade agreement (FTA) negotiations. Participants agreed an economy's key objectives could include:

- fostering innovation by developing internationally competitive telecommunications, ICT and Internet/Cloud services in a converging environment;
- meeting universal service obligations by providing affordable national communications services access and infrastructure across all communities, both urban and rural;
- ensuring consumers are well informed, have more options and are adequately protected;
- developing human capital by investing in digital literacy and digital skills;
- identifying and improving e-government services;
- fostering strong economic growth and use ICT to benefit community welfare without compromising social and cultural values.

### **Regulatory Principles**

Participants considered the following regulatory principles important in guiding telecommunications and ICT policy-making in their APEC economies:

#### ***Regulatory intervention***

- *Regulatory intervention* - regulation should be based on clearly defined policy objectives and be the minimum necessary to meet these objectives in the least trade restrictive way;
- *Regulatory transparency* - provide as much certainty as possible on why and how regulatory instruments are to be applied:
  - publication - relevant information must be easily accessible. Third-party tools, such as the APEC Services Trade Access Requirements (STAR) Database can improve regulatory transparency;
  - certainty - telecommunication and ICT service providers are more likely to supply services or invest in another economy if they have confidence that regulatory settings will not become more restrictive. Commitments under the WTO GATS and in free trade agreements can “lock in” certain existing regulatory settings and reassure investors;
  - cooperation - where possible, regulations should be aligned with global good practices and international standards. Communication and cooperation among regulators, relevant government ministries and agencies, both domestic and regional, can promote regulatory consistency, and can help build the necessary confidence to develop cross-border trade and investment in telecommunications and ICT services.
- *Regulatory flexibility* - provide regulators with appropriate flexibility to introduce changes in areas such as licensing and spectrum allocation. Regulators should only intervene when necessary and in accordance with national policy objectives or for safeguard and security purposes;
- *Regulatory approvals/decisions* - should be timely and transparent. Decisions should be criteria-based and where discretion is used the regulator should explain the decision. Unnecessary delays in regulatory decisions impose costs on business. Decisions should be finalised within established and transparent time frames. Such an approach builds confidence in the regulatory system and acts as a strong incentive for investment in these sectors;
- *Regulatory enforcement* - enforcement of regulations is essential in order to give effect to those rules necessary for maintaining confidence and integrity across telecommunications and ICT services. The benefits of good regulations can be eroded by poor enforcement.

#### ***Market access and national treatment***

- *Open markets* - avoid regulations that restrict foreign equity and adopt a regulatory framework that eliminates barriers to new entrants;
- *Scope of communications services* - in a converging telecommunications and ICT environment, businesses must be able to supply a full range of communications services to customers. Governments should avoid regulations that preserve the provision of some services for domestic providers as this can raise costs, discourage investment and affect the provision of efficient communication services;

- *Licensing regimes* - adopt administratively simplified and flexible licensing models (such as introducing unified licensing and minimising the need to renegotiate individual licenses or authorisations). Licenses should be granted according to established criteria. Regulation should avoid discrimination between foreign and domestic telecommunications and ICT service providers; be independent of the operators being licensed; be transparent; clearly define licensed activities and keep administrative cost to a minimum;
- *Movement of business persons* - avoid regulations that require foreign telecommunications and ICT service providers to hire local operators or nationals.

#### ***Pro-competitive environment***

- *Competitive environment* - foreign market participants should have the opportunity to compete equally with domestic market participants and, as far as practicable, not be treated less favourably than like domestic counterparts. Telecommunications and ICT service providers should be able to access critical infrastructure-related services on reasonable and non-discriminatory terms;
- *Competitive neutrality* – maintain a level playing field. Regulation should be by reference to function or service, not by industry category, firm type, or business model;
- *Interconnection* - consistent with the GATS Telecommunications Annex's access and use provisions, governments should ensure that interconnection to the networks of major suppliers is provided in a timely manner and at rates that are reasonable, non-discriminatory and transparent;
- *Interoperability* - governments should promote the interoperability of services and technologies, where appropriate, by supporting a global voluntary system for Internet standard setting;
- *Spectrum availability* - governments should effectively and efficiently manage spectrum as a precious, finite resource. The aim should be to extend the footprint of mobile broadband access through flexible spectrum management;
- *Regulatory body* - establish (or maintain) a communications regulatory body that is separate from, and not accountable to, major suppliers.

#### ***New ICT services***

- *Regulatory forbearance* - governments and their regulatory agencies should review regularly and systematically whether or not regulation is necessary or relevant. Having criteria/policies in place to determine when they will refrain from applying regulations is particularly important for new ICT services, and would support the emergence of competition in these markets;
- *Establishment of new services* - limit measures that restrict the widespread diffusion of communications technologies and services under conditions of technological and competitive neutrality. Businesses need flexibility to adjust quickly to rapid technological innovation to meet clients' needs. If required, timely approval for new services should be granted if the service does not require adoption of new laws or changes to existing legislation;
- *Flow of information* – recognising the increasing importance of information flows to consumers and business of all sizes, economies should avoid restricting the cross-border transfer of information. Where regulation is required, policy makers and regulators should consider how to achieve public policy objectives in the least trade restrictive way, as well as exploring other options which do not require government intervention.
- *Localisation requirements* – recognising the rapid growth of new ICT services (which are often not part of telecommunications regulatory regimes), governments should avoid introducing requirements to use local infrastructure, or establish a local presence, in order to supply services in an APEC economy. For example, service providers should have relative flexibility to locate and operate (and scale) data centres, which are often substantial investment decisions. Where regulation is required, policy makers and regulators should consider how to achieve public policy objectives in the least trade restrictive way, including whether such objectives could be achieved without direct government regulation.

**Other**

- *Empowering women* - while gender equality and diversity in APEC remains a sensitive cultural issue, governments need to do more to empower women to be more fully engaged in business and economic activity in their economies;
- *Privacy* - acknowledge emerging international discussion on high level, compatible principles for strengthening privacy. National privacy rules should be anchored in globally recognised principles such as those developed in APEC's ECSG on Cross-border Privacy Rules (CBPR) and APEC's Cross-border Privacy Enforcement Arrangement (CPEA);
- *Empowering the consumer* – recognising the role of appropriate regulation in encouraging the continued expansion of new ICT services among consumers and businesses, economies should maintain measures to protect consumers and the privacy of personal information.
- *Consultation* - Ongoing consultation with industry, regulators and trade negotiators is vital, both to ensure stakeholders' interests are properly represented, but also to seek to stay relevant across telecommunication and ICT services, where new technologies and new services are emerging very rapidly;
- *Capacity building for developing economy regulators* - Capacity building is essential to enhance the capability of policy makers and regulators from developing APEC economies to implement good regulatory practices and policies. Lack of capacity and knowledge can impede the process of opening up communications services markets. APEC can play a strong role in regional capacity building.