

January 11, 2007

Ms. Gloria Blue  
Executive Secretary, Trade Policy Staff Committee  
ATTN: Section 1377 Comments  
Office of the United States Trade Representative  
600 17th Street, NW  
Washington, DC 20505

**RE: TELECOM ITALIA Group reply to COMPTTEL statement on AUSTRALIA, CHINA, COLOMBIA, FRANCE, GERMANY, INDIA, ITALY, JAMAICA, JAPAN, MEXICO, SPAIN AND SWEDEN: WTO General Agreement in Trade in Services**

Dear Ms.Blue

We make reference to page 13 and 14 of COMPTTEL document related to alleged Italy WTO Violations to the Reference Paper and GATS Telecom Annex.

In particular COMPTTEL declares that the Italian regulator has failed to carry out the obligation of the Reference Paper with respect to:

- **ensuring that a major supplier provides interconnection on cost-oriented, non discriminatory terms and conditions and;**
- **high access charges and risk of margin squeeze and;**
- **lack of access to and discriminatory pricing and provisioning of leased lines.**

According to Telecom Italia Group, the Italian regulatory framework is fully compliant with Italian obligations specified in the Reference Paper and GATS Telecom Annex and no violations could be identified against Italy in connection to interconnection, network access and provisioning of leased lines.

**1. Reply to COMPTTEL regarding network access provision at cost-oriented prices**

The Reference Paper specifies that interconnection with a major supplier has to be provided:

*...in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided..*

Therefore the Reference Paper leaves to each signatory party to the GATS Agreement the execution of said principles into National laws and regulations.

In Italy, the execution of the above mentioned obligations is granted, on the legislative ground, by the legislative decree n. 259 of 1<sup>st</sup> August 2003 that has implemented all the European Union Directives of the 2002 Regulatory Package including the Access Directive ("Communication Code").

Based on the Communications Code's requirements, the Italian Regulatory Authority in the Communication Sector - (AGCOM) - has finalised the market analysis on each market identified in the Commission Recommendation on relevant markets (other than market 18 on Broadcasting transmission services to deliver broadcast content to end-users); AGCOM has identified Telecom Italia as operator having Significant Market Power in each fixed telephony market and has accordingly adopted "remedies" to ensure compliance *inter alia* with the Reference Paper in the markets related to the subject matter identified by COMPTEL.

According to the principles of the Reference Paper, Italy is fully entitled to implement the regulatory framework by applying the remedies that result from each market analysis. The EU regulatory framework, as implemented by the Italian Communication Code, includes all the controls and safeguards necessary to verify the correct application of the rules on access and interconnection (see *inter alia*, Framework directive, art. 6 and 7).

With reference to access and interconnection, Telecom Italia was designated as having SMP, *inter alia*, in the wholesale markets of:

- Call origination and termination on the public telephone network provided at a fixed location (markets 8 and 10);
- Transit services in the fixed public telephone network (market 9),
- Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services (market 11),
- Wholesale broadband access (market 12), and
- Wholesale terminating segments and wholesale trunk segments of leased lines (markets 13 and 14).

In all the above mentioned markets Telecom Italia has to comply at the non-discrimination, transparency, **cost orientation/accounting separation and price control obligations**.

Accordingly Telecom Italia has implemented AGCOM decisions in the following manner:

1. For market 8, 9, 10 and 11, Telecom Italia published on October 31, 2006 the new Interconnection Offer for 2007. Pursuant to AGCOM decisions, wholesale prices were defined not only to reflect past incurred costs but also efficient prospective costs. Therefore, a number of network cap rules were defined according to Long Running Average Incremental Costs (LRAIC). This is particularly the case for prices for call origination and termination and for transit services which were determined according to the network cap<sup>1</sup>, and prices for unbundled access to metallic loops<sup>2</sup>.
2. For market 13 and 14, Telecom Italia submitted to AGCOM an Offer, currently being evaluated, according to Order 45/06. It is important to underline that according to Order 45/06 and AGCOM's guidelines, prices are to be based on the 2004 cost trend and 2005 provisional costs. It is expected that Agcom will approve the Offer by January 2007.

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<sup>1</sup> defined in article 12 of the Agcom Order 417/2006

<sup>2</sup> determined according the article 36 of the Agcom Order 4/2006



3. For market 12, Telecom Italia submitted to AGCOM an Offer due to be approved shortly. According to Order 34/06 and to AGCOM's guidelines, prices are to be based on the 2004 cost trend and on a "forward looking cost model" which has to take into account "efficiencies of scale". This model is based on the efficiencies that will be obtained by Telecom Italia on the increasing number of customers that will take up its services in the years to come. This decision is based on the assumption that unit costs will diminish whilst the number of customers increases, as the initial fixed investments costs will be distributed on a larger customer base.

Moreover on December 15, 2006 AGCOM set out the requirements for the Incumbent new wholesale line rental (WLR) Reference Offer. Telecom Italia is due to launch WLR within 12 months of AGCOM's decision.

*Inter alia*, AGCOM's decision provides specific terms and conditions for processing orders (20,000 WLR orders must be processed per day) and for the activation of WLR. For an active subscriber line the time limit for WLR activation is seven working days for the request and, in case of a non-active line, this period is extended by the time taken by Telecom Italia to activate its own retail customer line, minus 20 %). Moreover, the non-voice spectrum band of the local loop remains available for broadband services provided either by Telecom Italia, the WLR operator, or a third party operator.

Contrary to COMPTTEL unproven allegations, the Italian and EU regulatory framework, as briefly described above, are fully compliant with the obligations on interconnection undertaken by Italy under the GATS and Reference Paper.

Moreover, it should be stressed that the Italian regulatory framework in general and the interconnection regime in particular have been positively commented by the European Commission in the 11<sup>th</sup> Report on European Electronic Communications Regulation and markets 2005 (issued on February 2006).

In particular the EU Commission stated concerning access and interconnection: that Telecom Italia interconnection charges are lower than the 15 European Union countries average for local and single transit (peak charge). Peak double transit, which is marginal, is only slightly above average<sup>3</sup>. Thus, COMPTTEL statement that access charges remain extremely high compared to other countries is incorrect.

Regarding COMPTTEL statement that market access problems depend mostly from the regulator's failure to implement an appropriate cost model for Telecom Italia and that the current RIO is based on old audited accounts, it must be clarified that:

1. For most of the regulated wholesale services, AGCOM decided to impose to TI a cost orientation principle; i.e. prices are not to be based on past incurred costs but on prospective efficient costs, to be evaluated according to LRAIC cost models;
2. In addition, Telecom Italia has already communicated to AGCOM its regulatory accounting figures until the year 2004. Moreover, in the course of the market analysis or during the process for the approval of Wholesale Offers, Telecom Italia has submitted to AGCOM its 2005 provisional figures.

As recognised by the EU Commission in the 11 Report when analysing the state of the auditing procedures, "*the delay of the proceeding has been partly caused by the complexity of the analysis (historical and current costs for the incumbent's costs) and by the very strict criteria for selecting the independent auditor..*"

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<sup>3</sup> 11 Report, Annex - Volume 1 page 159

In view of the explanation provided as to the level of access charges and the mandatory requirement for cost orientation, it is Telecom Italia's belief that the risk of margin squeeze – not substantiated by COMPTEL- is very low.

As to the allegation whereby Telecom Italia could decide whether to allow competition either through Local Loop Unbundling (LLU) or other wholesale access services is totally unfounded. In fact, the opposite occurs: the geographical areas which have to be opened to LLU are defined by the competing operators and not by Telecom Italia. Indeed, these operators are entitled to send to AGCOM the list of the local Main Distribution Frames (MDFs) which they want to use. Then, Telecom Italia must mandatorily and speedily make these MDFs available for LLU. Therefore, when some areas are not yet available for LLU and consequently other Wholesale access services are used it is the result of the competitive operators' decision not to invest in those areas with their own access infrastructures. Consequently, the power to "pick and choose the kind of competition" is driven by the competitive operators' investment decisions and not by Telecom Italia.

In light of the above-mentioned description of the current regulatory framework and its application in Italy, neither AGCOM nor Telecom Italia can be accused of failing to implement their WTO obligations.

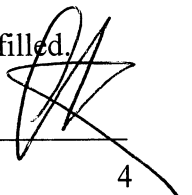
## **2. Reply to COMPTEL regarding lack of Access to and Discriminatory Pricing and Provisioning of Leased Lines**

According to COMPTEL, *Telecom Italia provides poorer quality service guarantees for its wholesale xDSL services than it provides to its retail customers, and therefore, ..This discriminatory behaviour violates Italy's obligation under Section 5 of the GATS Telecom Annex to provide access to lease lines on non-discriminatory terms and conditions.*

Section 5 of the GATS Telecom Annex 5: "Access to and use of Public Telecommunications Transport Networks and Services" states that:

- (a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule.*
- (b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, ...that such suppliers are permitted:
  - (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;*
  - (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and*
  - (iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.**

According to the Italian Communication Code all the above mentioned obligations are fulfilled.

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With specific reference to the principle of non-discrimination of access, art. 47 of the Communication Code, implementing Art. 10 of the EU Framework Directive, states the following:

1. The Authority may, impose obligations of non-discrimination, in relation to interconnection and access;
2. **Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other operators providing equivalent services, and provides services and information to others under the same conditions and under the same quality as it provides for its own services, or those of its subsidiaries and partners.**

With specific reference to wholesale xDSL offers AGCOM concluded its analysis on the market of Wholesale Broadband access (market 12 of the EU Recommendation on Relevant Markets) on January 2006 and required the operator notified as having Significant Market Power to offer wholesale broadband access over copper and fibre loops at various network levels. AGCOM decision contains also specific provisions designed to ensure that alternative operators using Telecom Italia wholesale offers can replicate Telecom Italia retail broadband access offers.

On December 2006, with Order 643/06, Agcom has also defined stringent Service Level Agreements for wholesale xDSL services Assurance and Provisioning. By way of example, AGCOM has imposed that an error made at wholesale level be solved within 4 hours, while Telecom Italia according to its own retail obligations solves its own retail errors within 36 hours.

Therefore, as the regulation in place is fully compliant with the non-discrimination principle of the GATS Telecom Annex and the Reference Paper as specified above, COMPTEL allegations are incorrect.

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As stated above, Telecom Italia believes that the Italian legislative and regulatory framework implementing GATS obligations is fully in place. The same can be said of the EU regulatory framework on access and interconnection, as recently recognised by the European Commission in the 11 Report.

Sincerely,



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