



# The Impact of Ethiopia's Accession to the WTO on its Telecommunications Services Sector

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## ABSTRACT

The very purpose of the WTO trading system is to keep away barriers to international trade in goods and services. The General Agreement on Trade in Services (GATS) is one of the WTO administered multilateral trading instruments, aimed at freeing trade in services by regulating government measures affecting trade in services. The WTO/GATS system provides varieties of obligations/conditions for countries wishing to join the system. Before joining the WTO countries are required to adjust many aspects their trading systems in the way that facilitate free trade in services. Members of the organization have also variety of obligations to be in existence as long as membership is not terminated. Thus, joining the WTO/GATS system has a huge impact on the service sectors of members. Accordingly, this impact is expected to happen on the telecommunications services sector of Ethiopia, on the process to accede the WTO since 2003. The current operation of the Ethiopian telecommunications services sector monopolized by an enterprise, Ethio-Telecom. Despite the law provides a possibility whereby investors (domestic or foreign) can invest on the telecommunications services sector jointly with the government, currently almost all activities in the sector are operated by Ethio-telecom. With these and many other situations in the sector Ethiopia is on the way to accede the WTO. This article is therefore devoted to scrutinize the impact of Ethiopia's accession to the WTO on its telecommunications services sector.

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## 1. Introduction

After the Second World War, the tendency was to establish international organizations in the search for a new kind of global economic stability and initially the idea was to establish three main international institutions, the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and an International Trade Organization (ITO).<sup>1</sup> These organizations were intended to promote economic development, the reconstruction of Europe and the expansion of world trade; and In particular, the IMF was to provide liquidity to countries running trade deficits so as to enable the ITO to work for the reduction of tariffs and other trade barriers.<sup>2</sup> The General Agreement on Tariffs and Trade 1947 (GATT) contained a series of rules that were intended to implement and protect the results of tariff reductions that had been agreed upon during the ITO negotiations.<sup>3</sup> It was expected

that the GATT would promptly be subsumed under the mantle of the ITO once it came into existence.<sup>4</sup> However, the effort of establishing the ITO failed and as a result the GATT was orphaned at the very beginning.<sup>5</sup> The US congress has opposed the ITO charter even though it was the leading mover of negotiations for the establishment of the organization. The greatest problem for Congress lay in granting authority to the proposed ITO, to make agreements, or impose sanctions, that might threaten US national interests.<sup>6</sup> The USA was specifically opposed to an international organization controlled by UN-type international democracy, with each nation-state having one vote, at a time when the USA considered itself to be far more than one country in terms of economic as well as political power.<sup>7</sup> With the failure of the ITO to get off the ground, governments reverted to the provisional agreement on trade and tariffs agreed to at Geneva in 1947 and signed on 15 November 1947 at the Havana Conference; and the Interim Commission for the International Trade Organization within the UN served as an

<sup>1</sup> Richard Peet, *Unholy Trinity: The IMF, World Bank and WTO*, 2nd ed., Zed Books Ltd, London, 2009, p.180. [Here in after Richard, *Unholy Trinity: The IMF, World Bank and WTO*]. p.180.

<sup>2</sup> William J. Davey, 'Institutional Framework', in Patrick, Arthur & Michael (ed.), *The World Trade Organization: Legal, Economic and Political Analysis Volume I*, Springer Science + Business Media, Inc., New York, 2005, p.53 [Here in after William, *Institutional framework*].

<sup>3</sup> William A. Brown, Jr., *the United States and the Restoration of World Trade (1950)*; Clair Wilcox, *a Charter For World*

*Trade (1949)*, p. 131–134, as cited by William, *Institutional framework*, p.53.

<sup>4</sup> William, *Institutional framework*, p.53.

<sup>5</sup> *Ibid.*

<sup>6</sup> Richard, *Unholy Trinity: The IMF, World Bank and WTO*, p.181.

<sup>7</sup> *Id.* P.182.

administrative body regulating the agreement over the next half century.<sup>8</sup>

In 1995 the WTO came in to existence pursuant to Article 1 of the Marrakesh Agreement (WTO Agreement) as an independent enforcing organization to the multilateral trade agreements. It was the result of the Uruguay round under the GATT, lasted from 1986 to 1994. The *raison d'être* of the WTO is to offer a mechanism to governments to reduce both their own trade barriers and those in foreign markets, and its primary functions are to be a focal point for the negotiation of binding agreements to reduce trade barriers and agree on disciplines for policies affecting international trade, and to provide a mechanism through which WTO Members can enforce these negotiated commitments.<sup>9</sup> As provided under article 2(1) of the WTO agreement the WTO is intended to provide the common institutional framework for the conduct of trade relations among its Members in matters related to the WTO agreements and associated legal instruments included in the Annexes to the Agreement, which contain substantive obligations and rights of the members. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (Multilateral Trade Agreements) are integral parts of the WTO Agreement, binding on all Members.<sup>10</sup> Annex 1 comprises the GATT, the GATS; and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), respectively. Annex 2 comprises the Understanding on Rules and Procedures Governing the Settlement of Disputes. Annex 3 contains the Trade Policy Review Mechanism (TPRM). The agreements and associated legal instruments included in Annex 4 (Plurilateral Trade Agreements) are also part of the WTO Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.<sup>11</sup>

The WTO agreement explicitly provides the following five functions of the organization under its article 3 with the ultimate view of ensuring liberalization of trade-freeing the movement of goods and services from government restrictions: facilitating the implementation, administration and operation, and further the objectives, of the WTO Agreement and of the Multilateral Trade Agreements; providing the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to the WTO Agreement; administering the Understanding on Rules and Procedures Governing the Settlement of Disputes; administering the Trade Policy Review Mechanism; and to cooperate with the IMF and the World Bank so as to achieve greater coherence in global economic policymaking.

Structurally, The WTO is headed by a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect; and shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member,

in accordance with the specific requirements for decision-making in the WTO Agreement and in the relevant Multilateral Trade Agreement.<sup>12</sup> Below the ministerial conference, there is General Council composed of representatives of all the Members, which shall meet as appropriate; and conduct the functions of the ministerial conference in the intervals between meetings of the Ministerial Conference apart from the functions assigned to it by the WTO Agreement.<sup>13</sup> The General Council also meets as the Trade Policy Review Body (TPRB) and the Dispute Settlement Body (DSB).<sup>14</sup> There are Councils for Trade in Goods, Trade in Services and Trade-Related Aspects of Intellectual Property Rights to oversee the functioning of the Multilateral Trade Agreements in Annex 1A, The General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights respectively.<sup>15</sup> There are also numerous specialized committees, working groups and working parties deal with individual agreements and other areas, such as the environment, development, membership application and regional trade agreements established pursuant to article 4(7) of the WTO Agreement. Lastly, Article 8 of the WTO agreement provides for the establishment of the WTO secretariat, headed by a director-general and a deputy director-general. The WTO Secretariat's job is largely to provide Members with technical and logistical support, including organizing meetings of governing bodies and preparing background documentation when requested by committees, working groups or negotiating groups.<sup>16</sup>

In the WTO decision making process particularly at meetings of the Ministerial Conference and the General Council each member state has one vote.<sup>17</sup> However, the matter at issue shall be decided by voting where a decision cannot be arrived at by consensus. Accordingly, such a vote has never been taken and decisions are made by consensus.<sup>18</sup>

## 2. The General Agreement on Trade in Services (GATS)

International trade in services is an increasingly important part of the global commerce and it is the advancement in information and telecommunication technologies that expanded the scope of services that can be traded cross-border.<sup>19</sup> In recognition of their rising role in international trade and the need for further liberalization, services were included in the multilateral trade architecture of the WTO in the form of the General Agreement on Trade in Services (GATS).<sup>20</sup> Now, GATS aimed at freeing trade in services, is one of the principal multilateral trade agreements under the administration of the WTO.

<sup>12</sup> Id. Article 4(1).

<sup>13</sup> Id. Article 4(2).

<sup>14</sup> Richard, *Unholy Trinity: The IMF, World Bank and WTO*, p.190.

<sup>15</sup> Article 4(5) of the WTO Agreement.

<sup>16</sup> Bernard, *The World Trade Organization*, p.22.

<sup>17</sup> Article 9(1) of the WTO Agreement.

<sup>18</sup> Richard, *Unholy Trinity: The IMF, World Bank and WTO*, p.190.

<sup>19</sup> Aaditya Mattoo and Robert M. Stern, 'Overview', in Aaditya, Robert & Gianni (ed.), *A Handbook of International Trade in Services*, oxford university press, New York, 2008, p.3[ Here in after Aaditya, overview on international trade in services].

<sup>20</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Bernard Hoekman and Petros Mavroidis, *The World Trade Organization*, Craig Fowlie, London, 2007, p.1 [Here in after Bernard, *The World Trade Organization*].

<sup>10</sup> Article 2(2) of the WTO agreement.

<sup>11</sup> Id. Article 2(3).

Paragraph 2 of the GATS preamble sets out the general objectives of the GATS and it establishes a hierarchy among goals of the Agreement. The ultimate objectives of the agreement are the promotion of economic growth of all trading partners and the development of developing countries.<sup>21</sup> The fact that economic growth is one of the two core objectives of the GATS proves the GATS to be an instrumental order, one that does not directly protect human rights, but is aimed at fostering human prosperity by way of increasing economic growth.<sup>22</sup> Unlike the WTO Agreement and GATT 1947 the GATS does not even mention the objectives of “raising standards of living” and “ensuring full employment”.<sup>23</sup> The establishment of a multilateral framework of principles and rules for trade in services is the means chosen to achieve the objectives of the GATS and it is a secondary objective by itself. This secondary objective reflects Members’ fears that without a multilateral agreement on trade in services the issue would inevitably be governed by bilateral and regional agreements only, threatening the world trade system.<sup>24</sup> And the GATS framework is established with a view to the expansion of trade in services under conditions of transparency and progressive liberalization. It is the expansion of trade in services that leads to stronger economic growth and two principles guide the process.<sup>25</sup> First, the GATS does not lead to immediate, full liberalization, but is aimed at the progressive liberalization of trade in services and such liberalization is expected to lead to an expansion of trade and hence to further growth.<sup>26</sup> The concept of progressive liberalization, one of the secondary objectives of the GATS, harks back to the GATT: the GATT process entailed the negotiation of further liberalization (with respect to tariff bindings) among other methods in successive rounds.<sup>27</sup> However, the GATS process differs significantly from the GATT process in that Members undertake market access and national treatment obligations only with respect to service sectors listed in their Schedules (the ‘positive list’ approach).<sup>28</sup> The second principle that guides the process is transparency. This principle requires Members to publish certain measures and to notify certain measures to the Council for Trade in Services (Art. 3 of the GATS).

Article 1(1) of the GATS stipulates that the GATS applies to measures by Members affecting trade in services. This provision makes it clear that the GATS is not an agreement regulating trade, but an agreement regulating government

measures affecting trade.<sup>29</sup> Before other GATS provisions be applied there must, firstly, be services which must, secondly, be objects of Trans boundary trade and, thirdly, a measure by a Member which, fourthly, affects this trade in services.<sup>30</sup> However, The GATS does not define the notion “services” as such, since the contracting parties could not agree a definition. Art. 1(3(b)) simply says that “services” include any service in any sector, which make clear that the scope of the Agreement is not narrow limited to certain types of services or to services in certain sectors. But, in literatures the service sector is defined as industries that provide time and place and form utility, while bringing about a change in or for the recipient of the service.<sup>31</sup> Furthermore, services are described as “immaterial goods” with a series of qualities like intangibility, invisibility, lack of suitability for storage, lack of transportability, and coincidence of production and consumption.<sup>32</sup>

Article 1(2) of the GATS defines “trade in services” as the “supply of a service”, which includes the production, distribution, marketing, sale and delivery of a service (Art. 28(b) of GATS) and, thus, all steps of the added value that the service goes through on its way from the producer to the consumer by the four modes of service supply. The four modes which cover all possible ways to supply a service<sup>33</sup> are: cross-border supply, consumption abroad, commercial presence, and presence of natural persons. As stated under Art. 1(2(a)) of the GATS “cross- border supply”, comprises “the supply of a service from the territory of one Member into the territory of any other Member”. In this mode, both the consumer and the service supplier remain in their respective territories, whereas the delivered service as such crosses the border.<sup>34</sup> The second mode of supply (mode 2) provided under Art. 1(2(b)) of the GATS, referred to as “consumption abroad” or “movement of consumers”, becomes relevant if there is a supply “in the territory of one Member to the service consumer of any other Member”.<sup>35</sup> Hence, it is not the service which crosses the border, but the consumer who moves to the territory of the supplier to receive services, for example tourism services, medical treatment in a foreign hospital, or educational services when studying abroad.<sup>36</sup> The third and the fourth modes of service supply concerned with transactions in services which involves the international migration of the service suppliers even though there is a difference in the kind/identity of the suppliers. Accordingly, the third mode of supply stated in Art. 1(2(C)), commercial presence, means any type of business or professional

<sup>21</sup> Contra *Krajewski*, National Regulation, 56, naming trade liberalization and expansion of trade in services as the main goals of GATS, as cited in Hestermeyer, ‘Preamble GATS’, in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands, 2008, p.22 [Here in after Hestermeyer, Preamble GATS].

<sup>22</sup> Hestermeyer, Preamble GATS, p.22.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> *WTO*, Guide to the GATS 2, as cited in Hestermeyer, Preamble GATS, p.22.

<sup>27</sup> Hestermeyer, Preamble GATS, p.23.

<sup>28</sup> *Molinuevo*, Article XX GATS, Para. 14, 26; *WTO*, Handbook, 16; *Footer & George*, in: *Macrory et al.* (eds), 799, 821, as cited in Hestermeyer, Preamble GATS, p.23.

<sup>29</sup> Zacharias, ‘Article I GATS’, in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands, 2008, p.37. [Here in after Zacharias, Article I GATS].

<sup>30</sup> *Zacharias*, *WissR* 38 (2005), 290, 292; see *Canada—Autos*, WT/DS139/AB/R, WT/ DS142/AB/R, para. 155; *Pitschas*, RIW 49 (2003), 676, 677, as cited in Zacharias, Article I GATS, p.38.

<sup>31</sup> *Zacharias*, Article I GATS, p.38.

<sup>32</sup> Ibid.

<sup>33</sup> *Barth*, *EuZW* 5 (1994), 455, 456; *Koehler*, 92; *Öhlinger*, 74; see also *UNCTAD*, 154, as cited in Zacharias, Article I GATS, p. 49.

<sup>34</sup> *Zacharias*, Article I GATS, p. 49.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

establishment within the territory of a Member for the purpose of supplying a service. The fourth mode provided under Art. 1(2(C)) of the GATS, presence of natural persons, refers to the crossing of the border by a natural person of one Member country for the purpose of delivering a service in the territory of another Member; thereby, the stay of the natural person is limited to the duration of the supply.<sup>37</sup>

The GATS contains both general and specific obligations/commitments for members. General obligations applies generally to all measures covered by the GATS irrespective of the question whether an obligation has been inscribed in a Member's Schedule, as is necessary under Part the Specific Commitments. The general obligations that Each Member has to respect regardless of the existence of specific commitments include Most Favored Nation treatment (Article 2), some basic transparency provisions (Article 3), the availability of legal remedies (Article 4(2)), compliance of monopolies and exclusive providers with the MFN obligation (Article 8(1)), consultations on business practices (Article 9), and consultations on subsidies that affect trade (Article 15(2)). In addition to the general obligations each Member is required to assume specific commitments relating to market access (Article 16) and national treatment (Article 17) in designated sectors. The relevant sectors as well as any departures from the relevant obligations of Articles 16 and 17 are to be specified in the Member's Schedule of Commitments. Now let's discuss some of the basic obligations briefly.

To start with Most-Favoured-Nation Treatment, Art.2(1) of the GATS provides that With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country. The MFN treatment clause technically constitutes a mechanism through which advantages granted by a state to a third state are incorporated into the relations with another state.<sup>38</sup> However, under the Annex on Article 2 Exemptions, there is a possibility for Members, at the time of entry into force of the Agreement (or date of accession), to seek exemptions not exceeding a period of ten years in principle. Some 90 Members currently maintain such exemptions, which are mostly intended to cover trade preferences on a sectoral or modal basis between two or more Members.<sup>39</sup>

Pursuant to Article 3, each Member is under obligation to publish promptly all relevant measures of general application that affect operation of the Agreement. Members must also notify the Council for Trade in Services of new or changed laws, regulations or administrative guidelines that significantly affect trade in sectors subject to Specific Commitments. These transparency obligations are particularly relevant in the services area where the role of regulation – as a trade protective instrument and/or as a domestic policy tool – tends to feature more prominently than

in most other segments of the economy.<sup>40</sup> Moreover, pursuant to Article 4(2), developed countries (and other Members to the extent possible) are to establish contact points to which developing country service suppliers can turn for relevant information.

Article 6 of the GATS contains obligations concerning measures of a domestic regulation. Four of the six paragraphs of this Article (Art. 6(1–3) and (6)) relate to the application, administration and review of measures and therefore provide procedural standards for regulatory measures; and the Two paragraphs (Art.6 (4) and (5) relate to the content of measures and are hence of a substantive nature.<sup>41</sup> Article 6(1) provides the general rule that all measures of general application affecting trade in services are to be administered in a reasonable, objective and impartial manner. This obligation embodies a fundamental standard of the rule of law and of good governance; and its main function is to ensure that trade in services is not impeded by the arbitrary and biased application and administration of domestic regulations.<sup>42</sup> This also contributes to the consistency and predictability of administrative decisions, which is important for Foreign Service suppliers.<sup>43</sup>

Coming to the obligations of members in relation to Monopolies and Exclusive Service Suppliers, Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.<sup>44</sup> Whenever monopoly suppliers of a service or exclusive services suppliers abuse their dominant position in their relevant market this poses a considerable threat to market access opportunities and non-discriminatory treatment of their competitors and hence this provision tries to control such privileged suppliers in the interest of trade liberalization even though it does not prohibit monopolies and exclusive service suppliers *per se*.<sup>45</sup> Accordingly, Members shall **ensure** that monopoly service suppliers do not act in a manner inconsistent with that Member's obligations under Art.2 and specific commitments.<sup>46</sup> This language implies that the government is responsible for actions of monopoly service suppliers because, as defined earlier, they are authorized or established by the government. The provision addresses the Members and not the monopoly service suppliers *per se*.<sup>47</sup>

The main tools of liberalization of the GATS, that is, Art.16 on market access and 17 on national treatment, are to be found in Part III of the Agreement, entitled "Specific Commitments".<sup>48</sup> The market access obligation, like the

<sup>40</sup> Ibid.

<sup>41</sup> Wolfrum, , Article II GATS,p.168.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Art. 8(1) of the GATS.

<sup>45</sup> Bigdeli & Rechsteiner, 'Article VIII GATS', in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands,2008,p.206[Here in after Bigdeli & Rechsteiner, Article VIII].

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Delimatsis & Molinuevo, 'Article XVI GATS', in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands,2008,p.369[Here in after Delimatsis & Molinuevo, Article XVI GATS].

<sup>37</sup> Id.p.52.

<sup>38</sup> Wolfrum, ' Article II GATS', in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands,2008,p.73[Here in after Wolfrum, , Article II GATS].

<sup>39</sup> WTO Trade in Services Division, *The General Agreement On Trade In Services: An Introduction*, 31 January 2013, p.6.

national treatment obligation, does not apply unconditionally. Rather, it applies only to services sectors that are inscribed in the Members' Schedules of specific commitments and subject to the terms, limitations and conditions set out therein. Furthermore, unlike national treatment, "market access" is not a general concept under GAT since The measures covered by Art. XVI are a well-defined set of quantitative restrictions as listed in Art 16(2) (a–f) that may hamper the ability to perform or expand business in the countries' market.<sup>49</sup> The number of service suppliers, the value of service transactions or assets, the number of operations or quantity of output, the number of natural persons supplying a service, and the type of legal entity or joint venture are the restrictions that must not be maintained in the absence of limitations. The National Treatment provision obliges WTO Members not to discriminate between domestic and foreign services and service suppliers by treating foreign services and suppliers less favourably than like domestic services and suppliers. It aims to eliminate discriminatory impediments to trade and ensures that both foreign and domestic services and service suppliers are subject to the same conditions of competition.<sup>50</sup> Finally, Since Art.17 is a provision of Part IV GATS national treatment applies only in sectors with specific commitments and subject to any limitations or modifications inscribed in the Schedules of specific commitments of the WTO Members.<sup>51</sup> Finally, Members may also undertake additional commitments with respect to measures not falling under the market access and national treatment provisions of the Agreement. Such commitments may relate to the use of standards, qualifications or licenses (Article 18).

### **3. Liberalization of the telecommunications services sector under the WTO/GATS system**

#### **3.1 The GATS and the telecommunications services sector**

The GATS contains so many obligations for members towards liberalizing their telecommunications services sector. However, WTO membership does not automatically extend trade liberalization to telecommunications services.<sup>52</sup> Instead, WTO members must explicitly make commitments to liberalize telecommunications services either as part of their accession package, or subsequent to accession.<sup>53</sup> Having made such commitments, however, the nature of a WTO member's obligations derive not only from the specific market-access commitments for telecommunications services themselves, but also from the broader agreements establishing the WTO (which subjects WTO members to the binding, supranational dispute settlement process) and the GATS.<sup>54</sup> Accordingly, a country making GATS commitments in telecommunications will be bound by the general and special obligations (MFN Treatment, Transparency, Domestic Regulation, monopolies, Payments and Transfers, Market Access, National Treatment) and other commitments it has

already made in its respective schedules with respect to their telecommunications service sector. Since the general and special obligations discussed above are also applicable for the telecommunications services, here the discussion will emphasize on the Annex to the GATS on Telecommunications.

An Annex on Telecommunications ("AT"), attached to the GATS, concerns "access to and use of public telecommunications transport networks and services."<sup>55</sup> As provided under article 5(a) of the annex 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 nondiscriminatory terms and conditions, for the supply of a service included in its Schedule. 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 (5(a) of AT). This provision specifically permits suppliers 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; 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 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. The Annex thereby guarantees that whenever a WTO member has made specific market access and national treatment commitments for a particular service sector or subsector (*e.g.*, financial, professional, advertising, publishing, audio-visual, health or education), the commitments will also apply to those services sectors and subsectors when delivered in electronic form.<sup>56</sup> This obligation applies regardless of whether or not the WTO member in question has bound commitments on telecommunications services under the GATS.<sup>57</sup> Thus, the AT is designed on the recognition that telecommunications are an essential tool for other economic activities and to make sure that concessions on other services would not be frustrated by a lack of progress on telecommunications negotiations.<sup>58</sup> In other words, the AT can be seen as a general insurance policy for suppliers of other services that they would have access to the requisite telecommunications networks and services in WTO countries.<sup>59</sup>

The AT does not contain or lead to any market access or national treatment obligation and hence it is not to be interpreted to require WTO Members to allow the provision of telecommunications services beyond the commitments they have already made in their respective schedules.<sup>60</sup> The

<sup>49</sup> Ibid.

<sup>50</sup> Krajewski & Engelke, 'Article XVII GATS', in Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinäugle (eds.), *WTO- Trade in services*, Netherlands, 2008, p.397.

<sup>51</sup> Ibid.

<sup>52</sup> Kent Bressie, Michael Kende, and Howard Williams, 'Telecommunications trade liberalization and the WTO', the 15th ITS Biennial Conference, Berlin, September, 5-7, 2004, p.3 [Here in after Kent, Telecommunications trade liberalization and the WTO].

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Marco Bronckers and Pierre Larouche, 'Telecommunications Services', in Patrick, Arthur, Michael (eds.), *The World Trade Organization: Legal, Economic and Political Analysis Volume I*, Springer Science + Business Media, Inc., New York, 2005, p.996[Here in after Marco, Telecommunications Services].

<sup>56</sup> Kent, Telecommunications trade liberalization and the WTO, p.6.

<sup>57</sup> Ibid.

<sup>58</sup> Marco, Telecommunications Services, p.996.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

AT is only applied once a WTO Member has offered specific commitments in a given service sector and It is therefore comparable to the general GATS obligations which apply in addition to the specific commitments made in schedules.<sup>61</sup>

The AT imposes some obligations regarding the transparency of tariffs and other terms and conditions relating to public telecommunications transport networks and services (Art. 4). It is also of interest to note that developing countries can claim an exception to the AT in order to strengthen their domestic telecommunications infrastructure or their participation in international negotiations on telecommunications (Art. 5(g)).

Beyond the above obligations, there is a reference paper, serve as a multilateral undertaking regarding competition regulation, adopted by majority of WTO members making telecom commitments (and all new WTO members who have acceded since 1997) in their schedules of commitments. The reference paper contains the following six obligations on the WTO members adopted it:<sup>62</sup> implement—either by means of telecommunications-specific laws and regulations, or general antitrust and competition laws—competitive safeguards, including the prevention of anticompetitive conduct, a ban on cross-subsidization, and a ban on the abuse of competitively sensitive information by carriers with market power; ensure timely, non-discriminatory, cost-oriented, unbundled, and transparent interconnection between carriers with market power and other carriers, and do so pursuant to publicly available procedures; administer universal service obligations in a transparent, non-discriminatory, competitively neutral, and no-more-burdensome-than-necessary manner. The Reference Paper specifies that universal service obligations will not be regarded as anticompetitive *per se*; ensure public availability of licensing criteria. The Reference Paper does not, however, specify whether those licenses must be issued on an individual, case-by-case basis, or with “class licenses” for entire classes of carriers; establish independent regulators, whether a government ministry or an independent commission; and allocate scarce resources—such as radio spectrum, numbers, and rights of way—in an objective, timely, transparent, and non-discriminatory manner.

### 3.2 Challenges and opportunities

Majority of the WTO members have made specific commitments in some or all aspects of the telecommunications sector. Even many countries are expanding their commitments towards liberalizing their telecommunications services sector, beyond their initial commitments undertaken while committing themselves to liberalize the telecommunications services sector. For instance, some WTO members have made new or improved offers as part of the Doha Round of WTO negotiations—With 39 initial submitted at the beginning, and additional governments have indicated a desire to commit for the first time on basic or value-added services and the Reference Paper and about a dozen are proposing to improve the level of their existing telecom commitments.<sup>63</sup> This implies that countries have found that liberalizing telecommunications services sector is purposeful. However, it doesn't mean that

liberalization of telecommunication services is always beneficial. It has both opportunities and challenges.

Telecommunications liberalization provides many opportunities though the benefits from services liberalization are by no means automatic.<sup>64</sup> Service sector liberalization in general and telecommunications in particular will have an advantage from both the supply and demand side.<sup>65</sup> The supply side has the following two benefits:<sup>66</sup> The first is that domestic services market liberalization and the opening of the services sector to external competition are expected to encourage quality improvement and product and process innovation, reduce the scope for waste and rent-seeking, as well as impose significant limitations on the economic power of any individual producer; and the second type is that service trade liberalization reduces the capacities and tendencies for actual and potential government regulation and control thus leading directly to a more dynamic development process steered by the private sector. Similarly, from the perspectives of consumers of services (demand side), increased quantity and enhanced quality of services from alternative sources of supply will give rise to substantial reduction in prices and economic distortions.<sup>67</sup> Services market liberalization has the potential to increase the number of services providers, thus engendering competition, quality improvement, product and process innovation, and investment, and reduce government anti-competition regulation, as well as to enhance efficiency of consumer choice and certainty in the market.<sup>68</sup>

Liberalization of trade in services, accompanied by the reform of complementary policies, can lead both to sectoral and economy-wide improvements in performance.<sup>69</sup> Full liberalization can lead to enhanced competition from both domestic and foreign suppliers, and in turn Greater foreign factor participation and increased competition together imply a larger scale of activity, and hence greater scope for generating the special growth-enhancing effects.<sup>70</sup> Even without scale effects, the import of foreign factors that characterizes services-sector liberalization could still have positive effects because the foreign factors are likely to bring technology with them.<sup>71</sup> Telecommunications Services liberalization also lead to an inflow of capital and skilled workers, and Such inflows would tend to be to the advantage of the unskilled poor—increasing employment opportunities and wages.<sup>72</sup> Interestingly, it has been shown that even when foreigners compete with local skilled workers in a services sector, the productivity boost to the sector from allowing foreigners' access could lead to an increase in the demand for

<sup>64</sup> Aaditya, overview on international trade in services, p. 1

<sup>65</sup> Teresa Belete, *The Impact of Ethiopian Trade in Service Liberalization on Welfare: CGE Analysis*, MA thesis, Addis Ababa University School Of Graduate Studies, June 2009,[available on internet], p.7[Here in after Teresa, *The Impact of Ethiopian Trade in Service Liberalization on Welfare: CGE Analysis*]

<sup>66</sup> Ibid

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Aaditya, overview on international trade in services,p.9.

<sup>70</sup> Id, P.12.

<sup>71</sup> Ibid.

<sup>72</sup> Id.p.16.

<sup>61</sup> Ibid.

<sup>62</sup> Kent, *Telecommunications trade liberalization and the WTO*,p.6&7.

<sup>63</sup> Kent, *Telecommunications trade liberalization and the WTO*, p. 3

domestic skilled workers—the scale effect could outweigh the substitution effect.<sup>73</sup>

Coming to the challenges of liberalizing telecommunications services, significant challenges exist in introducing genuine competition, building the regulatory institutions that are needed to remedy market failures, appropriately sequencing service-sector reforms, and establishing mechanisms that promote the availability of essential services especially among the poor.<sup>74</sup> The social Adjustment cost involved in establishing reforms to improve the conditions for investment and growth in the services sector is also potentially significant in terms of the employment implications of job losses, skills and professional obsolescence, and adverse effects on social services and culture.<sup>75</sup> Beyond this, Opening up services including telecommunications to foreign or domestic competition could have an adverse effect on the poor—which is often cited as a reason for the persistence of public monopolies.<sup>76</sup> Frequently, the prices pre-liberalization are not determined by the market but are set administratively and kept artificially low for certain categories of end-users and/or types of services products, and This structure of prices is often sustained through cross-subsidization within public monopolies or through government financial support.<sup>77</sup> Liberalization threatens these arrangements and Elimination of restrictions on entry implies an end to cross-subsidization because it is no longer possible for firms to make extra-normal profits in certain market segments.<sup>78</sup> New entrants may focus on the most profitable market segments (“cream-skimming”), such as urban areas, where network costs are lower and incomes higher.<sup>79</sup> The result is that even though the sector becomes more efficient and average prices decline, the prices for certain end-users may actually increase and/or availability decline.<sup>80</sup> So, liberalization of telecommunications services will pose a challenge in this regard. Finally, liberalization of telecommunications services sector creates a threat for infant domestic industries from foreign businesses though there are some WTO recognized mechanisms for countries to address the issue.

#### **4. Ethiopia’s accession to the WTO and Its Telecommunications services sector**

##### **4.1. Ethiopian accession endeavor in general**

The rules governing accession to the WTO, stipulated under article 12 of the WTO agreement states that “Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations or for the other matters provided for in this Agreement and the Multilateral Trade Agreement may accede to this Agreement, on terms to be agreed between it and the WTO”. The vague nature of this rule and the fact that decisions in the WTO are consensus based (among member countries) meant that in practice the terms and conditions of accession are determined by the will

of member countries.<sup>81</sup> The lack of specificity of the rules governing the accession process has led the WTO secretariat to produce practical guidelines that acceding countries and WTO members may follow in their negotiation<sup>82</sup>, comprise of four phases.

In the first phase, a state or customs territory wishing to accede submits a formal written request to the WTO Director-General, who then circulates the request to all WTO members.<sup>83</sup> The WTO General Council considers the request and establishes a Working Party to closely examine the application that is open to all interested WTO members.<sup>84</sup> The applicant then submits to the Working Party a detailed memorandum on its foreign trade regime, describing, among other things, its economy, economic policies, domestic and international trade regulations and intellectual property policies.<sup>85</sup>

In the second phase, the Working Party members submit written questions to the applicant to clarify features of its foreign trade regime. After all necessary background information has been obtained; the Working Party starts meetings to focus on issues of inconsistency between the applicant’s international and domestic trade policies and laws and the WTO rules and laws.<sup>86</sup>

In the third stage, thorough multilateral and bilateral negotiation on the terms of accession will be held. The multilateral negotiations focus on the compliance with the WTO rules and disciplines while in bilateral negotiations each member of working party negotiates with the acceding country on the specific market access commitments.<sup>87</sup> The result of the negotiations is “the accession package” consisting of the Report of Working Party, the goods and services schedules, and the accession protocol.<sup>88</sup> The Working Party has the responsibility of determining the terms of accession and incorporating them in a draft Protocol of Accession, which is submitted to the General Council/Ministerial Conference.<sup>89</sup>

In the final phase of accession process the decision on accession will be made. Once the final package, consisting of the report, protocol and lists of commitments is presented to the WTO General Council or the Ministerial Conference and a two-thirds majority of WTO members vote in favor, the applicant is free to sign the protocol and to accede to the

<sup>81</sup> Berihu Assefa and Andualem Telaye, *What shapes Ethiopia's foreign economic policy? The case of Ethiopia's accession to the WTO*, Ethiopian Development Research Institute (EDRI), International Law and Policy Institute (ILPI), December 2014, p.16[Here in after Berihu, *What shapes Ethiopia's foreign economic policy? The case of Ethiopia's accession to the WTO*].

<sup>82</sup> Ibid .

<sup>83</sup> WTO Accession Explanation: How to become a member of theWTO: [http:// www.wto.org/english/ the wto\\_e/acc\\_e/acces\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/acces_e.htm)

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> WTO Secretariat, *Accession to the World Trade Organization, Procedures for Negotiations under Article XII, WT/ACC/1*: <http://www.wto.org>.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Aaditya, overview on international trade in services, p.1.

<sup>75</sup> Teresa, *The Impact of Ethiopian Trade in Service Liberalization on Welfare: CGE Analysis*,p.9.

<sup>76</sup> Aaditya, overview on international trade in services, p.15.

<sup>77</sup> Id.p.16.

<sup>78</sup> Ibid .

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

organization.<sup>90</sup> In most cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.<sup>91</sup>

Coming to the Ethiopian case, Ethiopia has been a member of the WTO with an observer status since 1997 and according to the general guidelines of WTO an observer country must submit its accession application within five years of becoming an observer.<sup>92</sup> However, Ethiopia has not been able to submit such an application within the specified time mainly due to the war with Eritrea which diverted the attention of the authorities away from such endeavors.<sup>93</sup> Ethiopia was granted an extension and has formally applied for accession to the WTO on 13 January 2003.<sup>94</sup>

Following the application, a working party was established by the General Council to examine its application on 10 February 2003, with the chairmanship of Mr. N. McMillan.<sup>95</sup> The next phase in the negotiation process, to provide a memorandum detailing the country's trading regime (i.e. its tariff and other regulations), took about four years for Ethiopia (i.e., until January 25, 2007). The reasons mentioned for the delay are lack of human resources specialized in such areas and lack of information availability (i.e. the information needed was not well organized in one organization/portal.)<sup>96</sup> After examining the memorandum, questions and replies were conducted between the Working Party and the Ethiopian government between January 2007 and February 2008.<sup>97</sup> Following that, the first Working Party meeting was held on 16 May 2008 and The meeting examined the documents supplied until then and ended with second round questions and suggestion that Ethiopia submit its goods and services offer.<sup>98</sup> In the meantime, the Chairperson of the Working Party retired and appointment of the next chairperson took some time and Eventually, H.E. Dr. Steffen Smidt was appointed as chairman in October, 2010.<sup>99</sup> Following the chairman's appointment, the second round meeting of the Working Party took place on 6 May 2011, though Ethiopia was not able to submit its goods and services sector offer and the meeting was postponed.<sup>100</sup>

Ethiopia submitted its goods sector offer on 17 February 2012 and submitted answers to newer questions on 20

February 2012.<sup>101</sup> To examine the answers and the goods sector offer, a third round meeting of the Working Party was held on 27 March 2012; and two issues were raised by the Working Party: First, the binding tariff in Ethiopia's goods offer was too high and Second, Ethiopia has not submitted its service sector offer.<sup>102</sup> Ethiopia was not able to produce its service sector offer due to the complexity of issues involved and lack of man power experienced and skilled in these issues.<sup>103</sup> In recent years the process is denied attention from the side of the government. So, it is not certain when the process will be completed and the country will officially join the organization.

Structurally, the council of ministers has organized Ethiopia's WTO negotiating team by the council of ministers directive No 1/2011. Pursuant to the directive there is a national string committee comprising of representatives of seven stakeholder government institutions: Ministry of Trade, Ministry of industry, Ministry of foreign affairs, Ministry of Finance and Economic Development, Ethiopian Revenue and Customs Authority, National bank of Ethiopia, and Ethiopian Development research Institute.<sup>104</sup> The prime minister appoints a chair person and vice chairperson for the National string committee. The chair person and vice chairperson thus appointed will serve as lead and vice lead negotiators in the country's WTO accession process.<sup>105</sup> The national string committee is responsible to organize a technique committee that is comprised of people with knowledge and experience on the respective areas; and the technique committee has four sub groups: Goods sector committee, Service trade committee, Trade related intellectual properties committee, Legal affairs committee.<sup>106</sup>

#### **4.2.The Telecommunications Sector in Ethiopia: operation and regulation**

Ethiopia is one of the very few sub-Saharan countries in which a state-owned monopoly, the Ethio-telecom (formerly called Ethiopian Telecommunications Corporation (ETC)), operates all telecommunications networks and provides virtually all telecommunication services, including fixed and mobile telephones and Internet services.<sup>107</sup> The Ethiopian Telecommunications Corporation (ETC) has been established by the Council of Ministers Regulation No. 10/1996, later amended by the Council of Ministers Regulation No. 93/2003. However, council of ministers regulation No. 197/2011 repealed the establishment proclamation of ETC and established Ethio-Telecom as a public enterprise operating as an exclusive telecommunications provider in the country. Purposes of the Ethio-Telecom are listed under article 5 of the establishment proclamation. Some of the purposes of the enterprise are: to provide and make accessible

<sup>90</sup> WTO Accession Explanation: How to become a member of the WTO: [http://www.wto.org/english/thewto\\_e/acc\\_e/acces\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/acces_e.htm).

<sup>91</sup> Hussein Ahmed Tura, 'Ethiopia's Accession To The World Trade Organization: Lessons From Acceded Least Developing Countries', *Oromia Law Journal*, 2015, Vol.4, No.1, pp. 125-152, p.132[Here in after Hussein, Ethiopia's Accession To The World Trade Organization: Lessons From Acceded Least Developing Countries].

<sup>92</sup> Berihu, What shapes Ethiopia's foreign economic policy? The case of Ethiopia's accession to the WTO,p.17.

<sup>93</sup> Ibid .

<sup>94</sup> Information available at [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_ethiopia\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_ethiopia_e.htm)

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Berihu, What shapes Ethiopia's foreign economic policy? The case of Ethiopia's accession to the WTO,p.18.

<sup>100</sup> Ibid.

<sup>101</sup> Information available at [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_ethiopia\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_ethiopia_e.htm)

<sup>102</sup> Ibid.

<sup>103</sup> Berihu, What shapes Ethiopia's foreign economic policy? The case of Ethiopia's accession to the WTO,p.20.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Richard Self & Peter Stern, Impact of WTO Accession on Ethiopia's Telecommunication Services Sector, November 14, 2007,p.13[ Here in after Richard, , Impact of WTO Accession on Ethiopia's Telecommunication Services Sector].



next generation network based world class standard information technology services; to build a competent next generation network based workforce with appropriate knowledge, skill, attitude and work culture to provide world class telecom service; to engage in accordance with development policies and priorities of the government, in the construction, operation, maintenance and expansion of telecommunications networks and services; to provide domestic and international voice, data, video, and other related value-added services; and to provide communication services using integrated information technology platform, including re broadcast of television services. These purposes of the Ethio-Telecom show how this government enterprise is given a wider power to operate in the Ethiopian telecommunications service sector. On the other hand, Under the Ethiopian investment proclamation No. 769/2012, telecommunication services investment is open for investors (domestic or foreign) to invest jointly with the government (Article 6.2(b)).

In practice still Ethio-telecom has total control over all types of telecommunications services in Ethiopia, the only activities that is opened and currently being undertaken by the private firms are down-stream activities of telecommunication , which even for private use is still subject to Ethiopia Telecommunication Agency (ETA) authorization.<sup>108</sup> The use of any telecom technology that could bypass the local network is strictly prohibited and currently no licenses have been granted to private operators to sell or resell telecom services, either basic or enhanced.<sup>109</sup> Thus, Voice over Internet Protocol (VoIP) and call back are illegal in Ethiopia and Ethio-telecom claim that it is losing large amount of money through this channel and currently a proclamation that prohibit VoIP and categories the activities as one of terrorism activities with severe criminal charge was passed.<sup>110</sup>

Down-stream activities of telecommunication like resale and tele-centre services, installation and maintenance of cables, wireless local loop, and virtual Internet Service Providers (ISPs) are open for domestic investors, while Global Mobile Personal Communication by Satellite (GMPCS) is allowed for both domestic and foreign investors by proclamation NO.281/ 2002.<sup>111</sup> However, the act of opening the sector in terms of reselling services by Tele centers, SIM card shops, several internet cafes, shops on street that provide tele service, although allowed by the Authority to provide such services Ethio-telecom does not well-come and very suspicious about the possible use of VoIP and the consequent decrease of international traffic revenues.<sup>112</sup> On the other hand, 20 entities like Ethiopian Airlines for its aviation service, the Civil Service College for its remote learning courses, the UN Economic Commission for Africa (UNECA) for its Internet connection, and the World Bank within the framework of development activities in Ethiopia have been granted permission to operate their own

satellite connections.<sup>113</sup> The government has also awarded ETC a two year management contract to France Telecom (FT) in February 2010 after it won a tender against South Africa's MTN and BSNL from India.<sup>114</sup>

Coming to the regulatory frame work of the telecommunications services sector, it was in the year 1996 that The Ethiopian Telecommunications Agency (ETA) was established as an independent regulatory authority, by telecommunication Proclamation No. 49/1996. As clearly enshrined under article 3(2) of the proclamation, the Agency is accountable for the ministry of transport and communication. Among others The Agency shall have the following powers and duties:<sup>115</sup> to ensure that telecommunication services are operated in a manner that will best serve and contribute to the Country's economic and social development; to specify technical standards and procedures for the provision of telecommunication services; to ensure that telecommunication services conform to the specified standards of quality; to regulate tariffs relating to basic telecommunication services; to license and supervise operators of telecommunication services; to regulate types of telecommunication equipment which may be connected to a telecommunication system; to authorize and supervise the use of frequencies allotted to Ethiopia; where authorized by the Minister, subject to the appropriate laws and government directives, to represent the Government in international conferences and international organizations concerned with telecommunications and to follow up the implementation of treaties dealing with telecommunications to which Ethiopia is a party; and to collaborate with educational institutions in order to promote technical education in the fields of telecommunications; to collect license fees in accordance with the rate approved by the Ministry.

### **4.3. The impact of Ethiopia's accession to the WTO on the sector**

Previously we have briefly discussed the general frame work of GATS and obligations to be arise from it up on accession to the WTO. The commitments of acceding states can be resulted from the general obligations/principles applicable on all members, specific obligations applicable only when a member has undertaken specific commitments with respect to the service sector, additional commitments and schedule of specific commitments. This part of the paper is dedicated to assess the possible implications of the GATS on the various aspects of the telecommunications services sector of the country. To this end we will separately scrutinize the would-be impacts of the main obligations/principles on the sector.

To start with the implications of Transparency Principle of GATS, it is one of the general obligations of the GATS provided under Article 3 of the GATS. According to the principle of transparency, each member shall publish promptly all relevant measures affecting the GATS agreement and other international agreements affecting trade in services. The principle further requires establishing enquiry points (like websites) and providing adequate information for members seeking specific information. This principle is also linked to the law making procedure of the member in making laws that affect trade in services. In Ethiopian context, there

<sup>108</sup> Minyabel, Liberalization of telecommunication in Ethiopia challenges and prospects: citizens' view and opinion,p.12.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Teresa, The Impact of Ethiopian Trade in Service Liberalization on Welfare: CGE Analysis,p.20.

<sup>112</sup> Minyabel, Liberalization of telecommunication in Ethiopia challenges and prospects: citizens' view and opinion,p.12.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Article 6 of the telecommunication Proclamation No. 49/1996.

is a hierarchy of laws. The higher law next to the constitution is Proclamation, issued by the House of Peoples Representatives. The next in the hierarchy of laws is regulations issued by the Council of Ministers, while directives are issued by different ministerial offices. Proclamations and regulations are published in the Federal Gazette called *Negarit Gazzeta* and hence available to the public. There is however a problem with regard directives to be issued by the ministry of transport and communication or other ministries. All the directives issued by the respective ministries are not published by official Gazette. Absence of such publication creates problem of identifying which versions of the directives are authentic or binding and which of them are amended or null and void.<sup>116</sup> In addition to this, access of the directives to the public is very limited. It is also not clear what procedures the ministries employ in issuing directives. Since directives are binding laws significantly regulating the country's telecommunications sector, joining the WTO will bind the country to ensure a transparent law making procedure and official publication to make the transparency of the legal rules up to the standards of GATS. Beyond this, currently most of the laws (even published by the federal *Negarit Gazette*) regulating the telecommunications services sector are not easily accessible for the society. However, making accessible the laws governing sectors covered under the GATS is one aspect of transparency principle and hence doing this will be an obligation for Ethiopia upon joining the WTO.

There are a number of issues addressed in relation to domestic regulation designed to ease the burdensome of domestic regulations to market access under article 6 of the GATS. Article 6(1) imposes members an obligation to ensure that in sectors where specific commitments have been taken, measures of general application affecting trade in services are administered in reasonable, objective and impartial manner. This requirement is not dealing with the substance of the rules rather the manner how such rules should be used. This obligation is applicable to Ethiopia when it accedes to WTO and when there are specific commitments to be undertaken under the GATS.<sup>117</sup> But other provisions of Article 6 are relevant even before accession process is completed. Sub article 2 of Art.6 provides that each member is expected to maintain judicial, arbitral or administrative tribunals for review of administrative decisions affecting trade in services. In light of this, Article 78 of constitution of Federal Democratic Republic of Ethiopia (FDRE), guarantees independence of the judiciary. But when we come to the actual practice, there are a number of problems related to the judicial system and the most serious problem is delay of justice, independence and competence of the judiciary.<sup>118</sup> Due to limited number of judges and benches in Federal Courts, lack of qualified judges in sufficient number, political interventions and lack of accountability of government officials to rule of law, the judicial system remains weak.<sup>119</sup>

This has an effect in terms satisfying standards and principles set by multilateral organizations like WTO and hence the government needs to ensure the independence and effectiveness of the judiciary and other administrative tribunals.<sup>120</sup> In addition to this, Article 6(4) of GATS require member countries to have qualification requirements, technical standards and licensing requirements that do not impose unnecessary barriers to trade in services. If Ethiopia chooses to open up its markets in the telecommunications services sector to foreign telecommunications service providers, its licensing requirements need to be reasonable and objective.

Article 2 of the GATS provides a Rule on Most Favor Nation Treatment (MFN) and the treatment of MFN provides for an equal treatment of all foreign services and service suppliers. As far as products originating from different member countries are qualified as "like" products, discriminatory treatment between two foreign services or service providers is prohibited. Article 2(2) of GATS permits a member to maintain a measure in consistent with paragraph 1 if such a measure is listed in the Annex on Article II exemptions. For this purpose, a special Annex on Article II adopted to deal with the exemptions attached to the GATS. If any member uses the exemption clause, it is applicable if it prefers to treat some services or service suppliers better or preferentially to all other Foreign Service suppliers. But the application of the exemption clause itself is characterized by different prerequisites and one of such prerequisite is deviation from MFN clause is accepted only when the country is entering to the agreement or it is applicable at the time of acceding to the WTO.<sup>121</sup> But in some specific sectors like in financial services, maritime transport services and basic telecommunications, exemptions are still possible even after accession.<sup>122</sup> Furthermore, any exemption listed should not remain in force in excess of 10 years and subject to review by the Service Council after five years. This obligation will prohibit Ethiopia from providing any preferential treatment for any member country in relation to its telecommunications services sector. If it wants to provide any preferential treatment for a member in reciprocity for another treatment it has received, that treatment will also extend for all WTO members. So, it would be impossible for the country to have bilateral arrangements with a member state that could help to enhance its telecommunications services sector.

Art. 11 of GATS require members not to apply restrictions on international transfers and payments relating to 'current transactions'. According to Article 30 (d) of Articles of Agreement of International Monetary Fund, current transactions include 'payments in connection to foreign trade, payments for loans, remittances for family expenses and the like.'<sup>123</sup> Then, If Ethiopia undertakes commitments in cross border, consumption abroad or commercial presence modes of supply in telecommunications services sectors, it has to develop system that allows international payments for various transactions related to these modes of supply. In principle, no Ethiopian national resident in Ethiopia or resident company

<sup>116</sup> Semahagn Gashu, 'Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies', *Ethiopian Journal of Economics*, Volume XIX, No. 1, April 2010, pp.29-74, p.51 [ Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies].

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Annex on Article II Exemptions on GATS, No 2.

<sup>122</sup> Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.37.

<sup>123</sup> Id.p. 53.

allowed to open bank accounts abroad or obtain external credit from foreign bank or open bank accounts in foreign exchange.<sup>124</sup> For opening bank account in foreign banks, special authorization from NBE need to be secured and this is generally permitted to banks registered in Ethiopia.<sup>125</sup> Transfer of foreign currency from and into the country is also strictly regulated; Availability of Foreign currency for importing goods from abroad has its own procedures; to receive foreign currency in foreign trade, the person engaged in import-export trade has to apply for opening of Letter of Credit (LC) or Cash against Documents (CAD) arrangements; For each arrangement there are different procedures to be applied.<sup>126</sup> This shows how the Ethiopian payments and transfers system is full of restrictions/barriers. Upon joining/to join the WTO it will be an obligation for the country to adjust these systems in a way the GATS demands because these restrictions on international payments and transfers affects international trade in services, mainly cross-border mode of supply in any service sector highly affected by these kind of restrictions.<sup>127</sup> Commitments to cross-border trade liberalization (Mode 1) require the liberalization of inflows and outflows of capital, which are essential components of the concerned services.<sup>128</sup>

The national treatment rule of the GATS is provided under Article 17 of GATS and it provides that In the sectors inscribed in its schedule, and subject to any conditions and qualifications set out there in, each member shall accord to services and service suppliers of any other member in respect of all measures affecting the supply of services treatment no less favorable than that it accords to its own like services and service suppliers. It aims at addressing discriminatory treatment of the host member with respect to domestic and Foreign Service providers that are engaged in the same service trade; and When a member accord formally identical or formally different treatment that it accords to its own like service and service suppliers, it will be considered less favorable if it modifies the conditions of competition in favor of services or service suppliers of the member compared to like services or service suppliers of any other member.<sup>129</sup> However, as it has been discussed before the Ethiopian telecommunications agency permits private persons to engage in the downstream telecommunication market to operate independent from the government. However, many aspects of the downstream market are opened for Ethiopians and closed for foreign operators. But, after committing itself to open its telecommunications services sector, Ethiopia will be obliged

to extend for foreigner telecommunications services providers a treatment it will provide for its nationals operating in the sector.

Article 8 of the GATS imposes an obligation on a member to ensure that monopoly suppliers of services in their territory do not, in the supply of monopoly service in the relevant market, act in a manner inconsistent with their obligations under Article 2 (MFN obligation) and its specific commitments. Furthermore, where a member has monopoly supplier that competes, either directly or indirectly, in the supply of a service outside of the scope of its monopoly rights, that member is required to ensure that such a supplier does not abuse its monopoly position to act in a manner inconsistent with that member's commitments under the GATS.<sup>130</sup> These obligations are aimed at preserving the integrity of the specific commitments taken by the member, that is, at preventing that the market access granted by a member through its specific commitments be rendered ineffective by the action of monopoly service suppliers authorized by the member.<sup>131</sup> Currently Ethio-telecom has a monopoly to operate in the telecommunications services sector with huge supports from the government to strengthen its muscles. However, after Ethiopia joins the WTO the operations of the Ethio-telecom will be validated by the specific commitments to be undertaken by the Ethiopian government with regard to its telecommunications services sector. So, the government will bound to ensure that the Ethio-telecom is not going to abuse its monopoly that may result in impediment of specific commitments undertaken, and it is very unlikely that the specific commitments to be undertaken by the government after thorough negotiations will be in line with what the government and the Ethio-telecom is doing in the monopolized telecommunications market. So, the operation of the Ethio-telecom in monopoly is expected to be highly impacted by the commitments that Ethiopia will agree to.

Art. 16(1) of the GATS provides that each member shall accord services and service suppliers treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in the schedule. By inscribing market access commitment for a particular service sector in its schedule, a member binds itself to the minimum treatment that is required to accord to foreign services or suppliers in the sector and Market access generally is applicable in terms of addressing non-tariff barriers to trade in services.<sup>132</sup> Unless otherwise specifically indicated in schedule of commitments, the member country may not maintain the certain limitations with respect to sectors where market access commitments are undertaken.<sup>133</sup> The acceding country can undertake a number of limitations in its service sector schedule ranging from limiting the number of service suppliers, monopolies, and quotas, requirement of joint venture, limitation of participation of foreign capital and related limitations.<sup>134</sup> After undertaking specific commitments on telecommunications services sector Ethiopia will bind itself to the minimum treatment that is required to

<sup>124</sup>Foreign Exchange Directive No.FXD/67/1998, National bank of Ethiopia, as cited in Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.53.

<sup>125</sup> Ibid.

<sup>126</sup> Foreign Exchange Directive No.FXD/07/1998, National bank of Ethiopia as cited in Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.54.

<sup>127</sup> Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.54.

<sup>128</sup> Ibid.

<sup>129</sup>WTO, Understanding on Commitments in Financial Services (1994) Section C, as cited in Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.44.

<sup>130</sup> Art 8(2) of GATS.

<sup>131</sup> Semahagn Gashu, Ethiopia's Accession To World Trade Organization And The Implications To Its Financial Sector Policies, p.40.

<sup>132</sup> Id.p.42.

<sup>133</sup> Ibid.

<sup>134</sup> Art 6(2) of the GATS.

accord to foreign services or suppliers in the sector. But, currently the Ethiopian telecommunications services sector is almost closed for foreign services or suppliers. As discussed before foreigners are permitted to invest in the telecommunications services sector of Ethiopia only in joint with the government. Even in the downstream markets almost all activities are restricted for foreigners or foreign services. Down-stream activities of telecommunication like resale and tele-centre services, installation and maintenance of cables, wireless local loop, and virtual Internet Service Providers (ISPs) are open for domestic investors, while Global Mobile Personal Communication by Satellite (GMPCS) is allowed for both domestic and foreign investors by proclamation NO.281/ 2002. Thus, it is unthinkable for the Ethiopian telecommunications services sector to keep on in this situation after the country takes commitments on the sector and many adjustments are expected.

Finally, as provided in the Annex on Telecommunications (AT) 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 nondiscriminatory terms and conditions, for the supply of a service included in its Schedule. 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 (5(a) of AT). This provision specifically permits suppliers 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; 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 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. This obligation applies regardless of whether or not. The AT does not contain or lead to any market access or national treatment obligation and hence it is not to be interpreted to require WTO Members to allow the provision of telecommunications services beyond the commitments they have already made in their respective schedules. The AT is only applied once a WTO Member has offered specific commitments in a given service sector and it is therefore comparable to the general GATS obligations which apply in addition to the specific commitments made in schedules. So, if Ethiopia offers any specific commitment in any service sector, it 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 nondiscriminatory terms and conditions, for the supply of a service included in its Schedule. And it would be difficult to satisfy this obligation for Ethiopia with the existing situations of the sector and necessitates improvements in service coverage and quality. Hence, this obligation is one of the obligations that could impact the telecommunications services sector of Ethiopia.

## 5. Conclusions

Telecommunications services are one of the services covered under the WTO/GATS system. The GATS contains so many obligations for members towards liberalizing their telecommunications services sector. However, WTO membership does not automatically extend trade

liberalization to telecommunications services. Instead, WTO members must explicitly make commitments to liberalize telecommunications services either as part of their accession package, or subsequent to accession. Having made such commitments, however, the natures of a WTO member's obligations towards their telecommunications services sector derive not only from the specific market-access commitments themselves, but also from the broader agreements establishing the WTO and the GATS. Accordingly, a country making GATS commitments in telecommunications will be bound by the general and special obligations and other commitments it has already made in its respective schedules with respect to their telecommunications service sector. MFN Treatment, Transparency, Domestic Regulation, monopolies, and Payments and Transfers are some of the general obligations also applicable on the telecommunications services sector of members, while Market Access and National Treatment principles are specific obligations depend on commitments towards liberalizing the telecommunications services sector. Ethiopia has officially applied to join the WTO in 2003 despite the process is delayed. Like other services the Ethiopian telecommunications service is expected to be highly impacted by the accession of the country to the WTO. Currently, the sector is monopolized by a state owned operator, Ethio-Telecom. Even though the law permits private investors (domestic or foreign) to invest on the sector jointly with the government, practically almost all activities are operated by Ethio-Telecom. Even at the downstream market, nationals are permitted to operate in numerous activities that that of foreigners. Due to these and other situations incompatible with the rules of the GATS in relation to Telecommunications, the country will be forced to make many adjustments to comply with the commitment it will undertake towards liberalizing the sector.

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