International Chamber of Commerce
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Discussion Paper

Prepared by the ICC Commission on E-Business, IT and Telecoms (EBITT) and its Task Force on Internet & Telecoms Infrastructure and Services (ITIS)

ICC discussion paper on the adverse effects of discriminatory taxes on telecommunications services

Document No. 373/495 – (26 October 2010)

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A number of countries apply taxes to telecommunications goods and services at higher levels than for other goods and services. These burdensome and discriminatory taxes deter the adoption and use of broadband, mobile and other advanced ICT sector tools that are major drivers of development and growth in the information-based economy of the 21st century. The World Bank has found, based on an econometrics analysis of 120 countries, that each 10% increase in broadband penetration increases economic growth by 1.3%.[1] Unfortunately, the tax treatment of telecom goods and services sometimes reflects the outdated view that communications services should be taxed as luxuries affordable only by the rich[2] – rather than as essential services for all, which they are today. Because telecommunications taxes often have the most stifling impact on the low income consumers who represent the greatest opportunity for achieving universal adoption of fixed or mobile broadband, these taxes are directly inconsistent with both Millennium Development Goals and the public policy of most countries that have implemented the taxes.

High taxes on communications services frustrate efforts to increase telecom service deployment by raising consumer prices and reducing demand for these services. A study by U.S. economists Greg Sidak and Allan Ingraham in 2004 found that each 1% increase in the price of wireless service reduces consumer demand by between 1.12% and 1.29%.[3] Reductions in consumer demand reduce the cash flows available for investment in the build-out of telecom networks and the development of new services. With information and communications technologies (ICTs) now playing a key role in stimulating increased productivity growth in all economic sectors, tax policies that reduce or slow investment in telecommunications infrastructure therefore reduce or slow the achievement of the broader economic benefits that follow from that investment.

Remedying the discriminatory tax treatment of telecom goods and services may reduce tax receipts in the short-term, but the longer-term increase in use of advanced capability devices, service demand and network deployment resulting from these tax reductions is likely to counteract this loss of tax revenues over time. Indeed, a study conducted for the GSMA in 2008 estimates that many countries in sub-Saharan Africa would *increase* their longer-term tax revenues by removing or reducing their existing high taxes on mobile services, as the result of the beneficial impact on tax receipts from the resulting increase in mobile penetration.[4] After the GSMA released this study, the Kenyan government in 2009 removed import duties and sector-specific sales taxes on mobile hand-sets.

Recently, the European Commission instructed two European Union member states to abolish taxes on telecommunications services used to subsidize free public broadcasting, asserting the laudable conclusion that any specific taxes on telecom operators should be collected only to cover the costs of regulating the telecom sector. As well, other types of discriminatory taxation also harm the growth of telecommunications services and the resulting economic benefits, by decreasing demand and network utilization. El Salvador, for example, is unfairly shifting its domestic tax burdens for funding social programmes that are unrelated to telecommunications, to be paid by telecom consumers in other

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1 *World Bank, Information for Communications and Development 2009, Extending Reach and Increasing Impact, at 5.*

2 *See, e.g. GSM Association, Global Mobile Tax Review 2006-2007, at 48 (quoting statement by Maria del Rosario Guerra de la Espriella, Minister of Communications Columbia, that "mobile communications is considered a luxury good and has a special VAT rate of 20%, compared to common goods and services which are charged at 16% … Today in Columbia, because of its high use and penetration, mobile telephony is now a basic consumer good, but it is taxed as a luxury good.")*

3 *Allan T. Ingraham & J. Gregory Sidak, Do States Tax Wireless Services Inefficiently? Evidence on the Price Elasticity of Demand, Virginia Tax Review, Fall 2004, at 249-261 (finding that reducing the taxation of wireless services by one dollar would improve the economic welfare by between $1.23 and $1.95).*

4 *GSMA, Taxation and the Growth of Mobile Services in Sub-Saharan Africa, May 2008 (finding that the removal of all non-VAT phone ownership taxes in twenty countries in sub-Saharan Africa would increase tax receipts from mobile services, as well as increasing mobile subscribership by 43.4 million, in addition to the significant benefits to economic development from this increased mobile penetration).*

countries by adopting a tax solely on inbound international calls to that country of US$ 0.04 per minute, while imposing no such tax on El Salvador's outbound international or domestic calls. In contrast, both the United States and the European Union have declined to impose universal service fees on inbound international calls, both for telecommunications-related Universal Service Fund programmes, and also for any other government programmes.

A similarly misplaced approach for raising domestic revenue is reflected in the ITU-T Recommendation D.156 adopted in 2008 which recommends that developing countries consider requiring the addition of a "network externality" premium to termination rates for inbound international calls from developed countries to be used for network build-out in developing countries. Twenty-eight ITU Member States, including most members of the OECD, have entered reservations against the ITU Recommendation and have stated that they will not apply it. According to an analysis by the OECD, "such proposals fail to appreciate that imposing a mechanism, which for all practical purposes is incompatible with a market based system, will act as a constraint on network expansion. . . . [which] has occurred through competition and in the face of declining international call termination charges, which have been moving toward cost, and not through subsidies from high, non-cost based, international call termination charges."[5] Additionally, the United States Trade Representative (USTR) has noted that the Recommendation appears to encourage potentially WTO-inconsistent action in several important respects.[6]

For the reasons stated above, the ICC recommends that countries minimize the taxes imposed on telecommunications goods and services. Far from being luxuries, the tools from this sector bring the building blocks of opportunity to the global information-based economy. Increasingly, public policy is oriented towards connecting the unconnected in order to achieve 100% adoption of advance telecommunications services. Any taxes that have the effect of impeding that goal merit reconsideration.

The following are further examples of the discriminatory taxes imposed on telecommunications goods and services in some countries. These all represent opportunities for the ICC to work with national governments to avoid, minimize or repeal the identified tax:

Argentina: Pending legislation in Argentina seeks to increase internal taxes on mobile handsets to a nominal rate of 17% for devices not produced in the Tierra de Fuego special economic area. Since 98% of mobile devices are produced outside this area, the legislation is likely to have a major effect in reducing mobile handset ownership and in turn on mobile service subscribership.

Bangladesh: Imposes a SIM card tax of Tk. 800 (US$ 11.6) for each new mobile subscriber that functions as a significant obstacle to the connection of new users in the world's seventh most populous country.

Brazil: Telecommunications services in Brazil are subject to retail taxes of 25% (or higher in some states). It is encouraging, however, that some efforts are being made to reduce these taxes. The State of Sao Paulo last year removed its 25% retail tax for Internet services of 256 kilobits per second or more that charge under $17 per month.

Croatia: On 1 August 2009, a 6% fee on invoiced services for mobile SMS, MMS, and voice services including roaming services entered into force in Croatia. The fee is imposed only on infrastructure based mobile operators and is part of anti-recession legislation that seeks to support economic recovery by transferring funds to more adversely-affected economic sectors. A sunset clause has not been built in.

El Salvador: As described above, in August 2008, El Salvador approved Decreto No. 651, which

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[5] *OECD Working Party on Communication Infrastructures and Services Policy, Network Externality Premiums and International Telecommunication Traffic Exchange, Apr. 15, 2009, at 9.*

[6] *Office of the U.S. Trade Representative, Results of the 2010 Section 1377 Review of Telecommunications Trade Agreements, at 4,*

http://www.ustr.gov/sites/default/files/2010%2003%2025%201377%20REPORT%20FINAL.pdf expressly seeks to shifts the funding costs for domestic social programmes away from domestic end users in El Salvador and to impose these costs on consumers in other countries by taxing inbound international calls. The introductory paragraph to the legislation states: “Charges for interconnection services for inbound calls from outside the country are paid for outside the country and therefore have no impact on the cost of calls made by domestic end-users because these charges are not made part of the domestic charges.” Calls from other Central American countries are exempt from the tax. The United States Trade Representative (USTR) has questioned whether this exemption complies with the Most-Favored-Nation requirement of the WTO General Agreement on Trade in Services (GATS). USTR has noted that the tax also “raises questions regarding El Salvador’s adherence to its commitment in the GATS Annex on Telecommunications (GATS Annex) and the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR) to ensure reasonable access to and use of its public telecommunications network.”[7]

France: On 5 March 2009, France introduced a tax of 0.9% on electronic communication service provider revenues, including telecom, mobile and Internet service revenues (and 3% on the advertising revenues generated by privately run broadcasters), to fund public television following the cessation of advertising on those channels. The new tax is estimated to produce annual revenue of 400 million Euros. On 30 September 2010, the European Commission announced that it considers the tax to be incompatible with European Union telecom rules requiring specific charges on telecom operators to be specifically and directly related to the costs of regulating the telecoms sector and asked France to abolish the tax.[8]

Greece: Since 1998, a tax has been applied to the monthly bills of post-paid mobile subscribers. Until 2009, there were three different rates (EUR 2, EUR 5, and EUR 10) depending on the amount of the total monthly bill. Pre-paid subscribers did not pay this tax. In July 2009, a new law introduced a 12% tax on prepaid mobile subscriptions and also increased the tax rates on post-paid subscriptions to12%, 15%, 18%, and 20%, depending on the amount of the total monthly bill. Additionally, the Greek government is reported to be planning to impose a special levy on the most profitable companies (which could include telecommunications companies) for the next three years, worth EUR 1.8 bn, as one of the conditions for the euro region’s EUR 110 bn bailout.

Hungary: In October 2010, the Hungarian Government announced the introduction of a new ‘crisis tax’ to be imposed on the telecom, energy and retail sectors, with EUR 230 million to be collected from the telecom sector, to bring the country’s budget deficit in line with European Union rules. ETNO, the European Telecom Network Operators’ association, has called on the Hungarian Government to reconsider this proposal, noting its concern that this special tax is not consistent with EU telecoms rules, as recently stated by the European Commission in its decision on the French and Spanish telecoms taxes. The European Commission has announced that it will seek information from the Hungarian authorities on the new tax.

India: India’s levies on telecommunications services include a license fee of 6-10% of annual gross revenue (depending on the license provided), and a spectrum charge of 2-6% of annual revenue. India’s regulator, the TRAI, has recently recommended a uniform license fee of 6% across all license categories, but this suggested reform has yet to be ratified by the Indian government.

Italy: Post-paid mobile services are taxed at the rate of 5.16 euros per month. Tax-deductible business post-paid mobile subscriptions are taxed at the rate of 12.91 euros per month.

Jordan: In 2009, Jordan enacted legislation imposing a tax of $0.01 per minute on mobile and wireline calling to support livestock farmers.[9]

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[7] *Office of the U.S. Trade Representative, Results of the 2010 Section 1377 Review of Telecommunications Trade Agreements, at 3.*
http://www.ustr.gov/sites/default/files/2010%2003%2025%201377%20REPORT%20FINAL.pdf

[8] *See Europa Press Release, Digital Agenda: Commission Requests France and Spain to End ‘Telecoms Taxes,’ 30 September, 2010.*

[9] *Jordan Times, MPs Enact Electricity, Mobile Taxes to Support Livestock Fund, Jan. 8, 2009.*

Serbia: Following a decision of the Government of Serbia, mobile telephony services users pay an additional 10% tax since June 1, 2009. The Government's "Mobile Phone Tax", applied according to the instructions of the Ministry of Finance, is a temporary measure and refers to all calls, sending of text (SMS) and multimedia (MMS) messages, as well as data transfers (Internet traffic), and special services, both in the country and abroad. The tax, payable on service rates, VAT excluded, is collected on behalf of the state by all three operators in the territory of Serbia. For postpaid subscribers, the tax is added to monthly traffic total and presented in the bill as a separate item. Prices of top-ups for prepaid subscribers will not change nominally, since the new tax will be included in the price. The tax will be also be payable on special services for all subscribers, including SIM card or number replacements, special numbers, and mailing of call specification to home address.

Spain: On 31 August 2009, Spain introduced a tax of 0.9% of gross retail revenues of telecom operators providing media services (and 3% in the case of free to air television stations) to finance RTVE, the public service broadcaster, following the removal of advertising from public service television. On 30 September 2010, the European Commission announced that it considers the tax to be incompatible with European Union telecom rules requiring specific charges on telecom operators to be specifically and directly related to the costs of regulating the telecoms sector and asked Spain to abolish the tax.[10] Spain also levies a tax of 1.5% of gross telecom operator retail revenues to finance local municipalities.

Turkey: Some of the highest taxes on telecom services in the world are in Turkey, where mobile services are subject to total taxes of more than 40%, according to several studies.[11] These taxes include a special communications tax, in addition to value added tax and a Treasury share premium. The Special Communications Tax rates are 25% for mobile services, 15% for fixed telecommunications services, and 5% for Internet services. Turkey also charges additional taxes and fees related to mobile subscriptions and usage.

Uganda: This country imposes a 12% tax on mobile services and a 5% tax on fixed line usage.[12]

United States: US states and localities tax communications services at more than twice the rate of other industries.[13] Often these higher transaction tax rates only apply to traditional providers of communications services creating competitive disadvantage and distorting consumer behavior. In addition, the multitude of various state, county and city taxes, utility fees, license fees, and user fees are confusing, expensive, and difficult for telephone companies to comply with and administer. This complexity and the lack of a central repository of taxes, fees and their rates is a significant barrier for competitors to enter the market. Monopoly-era property taxes on incumbent telephone companies remain in place in many states and have been extended in some cases to providers of wireless telecommunications, imposing exceptionally high and discriminatory assessment ratios, tax rates, or valuation on telephone-company-owned property. In addition, these property taxes do not encumber communications companies that do not qualify as telephone companies, and thus they provide a competitive disadvantage to traditional telecom providers. Furthermore, US interstate telecom services are currently subject to federal universal service fund charges of 13.6%.

[10] *See Europa Press Release, Digital Agenda: Commission Requests France and Spain to End 'Telecoms Taxes,' 30 September, 2010.*

[11] *Today's Zaman, Taxes Account for Nearly Half of Cell Phone Bills, Aug. 4, 2008; Turkish Daily News, Turkey Champion of High Mobile Phone Tax Rates, Jul. 26, 2008; GSMA, Global Mobile Tax Review 2006-2007 (finding Turkey to have the highest cost of tax as a percentage of the total cost of mobile ownership at 45%, and one and a half times greater than the next highest country).*

[12] *Wireless Federation, Uganda's Telecom Penetration to Reach 17 Mn by 2012, Apr. 23, 2009.*

[13] *See 2004 State Study and Report On Telecommunications Taxation, Council on State Taxation, March 2005, at 3-4 (showing an average effective rate of state and local transaction taxes for telecommunications services of 14.17%, compared to 6.12% for general businesses).*

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization, the G20 and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

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