

**A STUDY ON VIETNAM'S TELECOMMUNICATIONS INDUSTRY  
TOWARD JOINING THE WTO**

**By**

**NGUYEN THI HA THAO**

**THESIS**

**Submitted to**

**School of Public Policy and Management, KDI**

**In partial fulfillment of the requirements for the degree of**

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## **ABSTRACT**

Telecommunications plays an important role in every country nowadays. The strong development of telecommunication would help improve efficiency of the economy and the country's competitiveness which promote economic and social development. Over the last decade, Vietnam's telecommunications industry has been developing rapidly, especially since the introduction of telecommunications liberalization and competition. As the government's expectation, Vietnam will join the World Trade Organization (WTO) by the end of 2005. WTO accession not only provides opportunities but challenges to Vietnam's telecommunications industry.

The purpose of this thesis is aimed at (i) reviewing the current status of Vietnam's telecommunications industry including its legal framework; (ii) understanding the WTO principles and agreements relating to telecommunications sector and its implications for Vietnam's telecommunications; (iii) finding the problems/challenges that Vietnam's telecommunications industry must face in joining the WTO and (iv) proposing recommendations for Vietnam to utilize the opportunities and reduce the negative effects after its WTO accession.

## **ACKNOWLEDGEMENT**

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## **LIST OF ABBREVIATIONS**

<b>ADSL</b>	<b>Asymmetric Digital Subscriber Line</b>
<b>APEC</b>	<b>Asia- Pacific Economic Cooperation</b>
<b>ASEAN</b>	<b>Association of Southeast Asia Nations</b>
<b>BCC</b>	<b>Business Cooperation Contract</b>
<b>BOT</b>	<b>Build-operate-transfer</b>
<b>BTA</b>	<b>Bilateral Commercial Agreement between Vietnam and the US</b>
<b>BTO</b>	<b>Build-transfer-operate</b>
<b>CDMA</b>	<b>Code-Division Multiple Access</b>
<b>CMPT</b>	<b>China's Ministry of Post and Telecommunications</b>
<b>CSO</b>	<b>Community service obligations</b>
<b>DOTC</b>	<b>The Philippines' Department of Transportation and Communication</b>
<b>ETC</b>	<b>Electricity Telecommunications Company</b>
<b>FPT</b>	<b>Corporation for Financing and Promoting Technology</b>
<b>GATS</b>	<b>General Agreement on Trade in Services</b>
<b>GATT</b>	<b>General Agreement on Tariffs and Trade</b>
<b>GPRS</b>	<b>General Packet Radio Service</b>
<b>ITU</b>	<b>International Telecommunications Union</b>
<b>MFN</b>	<b>Most Favored Nation</b>
<b>MMS</b>	<b>Multimedia messaging services</b>
<b>MPT</b>	<b>Vietnam's Ministry of Posts and Telecommunications</b>
<b>NTC</b>	<b>The Philippines' National Telecommunications Commission</b>
<b>PLDT</b>	<b>Philippine Long Distance Telephone Company</b>
<b>PSDN</b>	<b>The packet switched data network</b>
<b>PTTN</b>	<b>Public Telecommunications Transport Networks and Services</b>

<b>SPT</b>	<b>Saigon Post and Telecom Share-holding Company or Saigon Postel</b>
<b>US</b>	<b>The United States</b>
<b>VDC</b>	<b>Vietnam Academic Research and Educational Network</b>
<b>Vietel</b>	<b>Military Electronics and Telecom Company</b>
<b>Vietshiptel</b>	<b>Vietnam Shipping Communications and Electronics Company</b>
<b>VNPT</b>	<b>Vietnam Posts and Telecommunications Corporation</b>
<b>VPN</b>	<b>Virtue private network</b>
<b>WiFi</b>	<b>Wireless Fidelity</b>
<b>WTO</b>	<b>World Trade Organization</b>

## **CHAPTER I: OVERVIEW ON VIETNAM'S TELECOMMUNICATION INDUSTRY**

### **1. History of Vietnam's telecommunication industry**

The development of Vietnam's telecommunication industry can be divided into five periods as follows:

- 1930-1945: The telecommunications system was constructed only in the big cities by the French colony just to support the colonists' policies and suppress the people's movements.
- 1945-1954: Vietnam regained independence and took control the communication system all over the country. During this period, telecommunications supported for the government only for the political objectives. No new investment was made to upgrade the old telecommunications system that the French colony constructed before.
- 1954- 1975: Telecommunications system was divided into 2 parts due to the separation of the country.

In the North, the system was firstly restored and improved from the old system which was destroyed by the war. Until 1971, the government decided to use telecommunications services for not only political objectives but the economic activities of the country as well. However, all the activities of the sector were fully controlled by the government.

In the South, due to security reasons for the 1975 National Liberation War, the telecommunications system was only accessible for the governmental

activities and designed to ensure the secret communication within the defense system and among the areas inside the region. Until 1975 when Vietnam was integrated, telecommunications system was merged into the united system under the government's control.

- 1975-1986: In this period, the telecommunications system was still fully under the government's control and plan. It was expanded to serve not only government activities and organizations but also high-ranking governmental officials. Most of the telecommunications equipment was imported from Soviet Union and other socialist countries. The technology commonly used was analog and was regulated through an operator that had the capacity to control 10,000 numbers. The telephone density at that time remained very low: 0.2 telephones per 100 inhabitants.
- 1986- present: Telecommunications has been considered to play the lead role in the reform program (known as "Doi moi"). Vietnamese government has made much new investment in the sector. However, until the mid 1990s, the telephone density in Vietnam was still much lower than that of other countries in the region while the telecommunication prices were 3 to 4 times higher than average telecommunication prices around the world<sup>1</sup>.

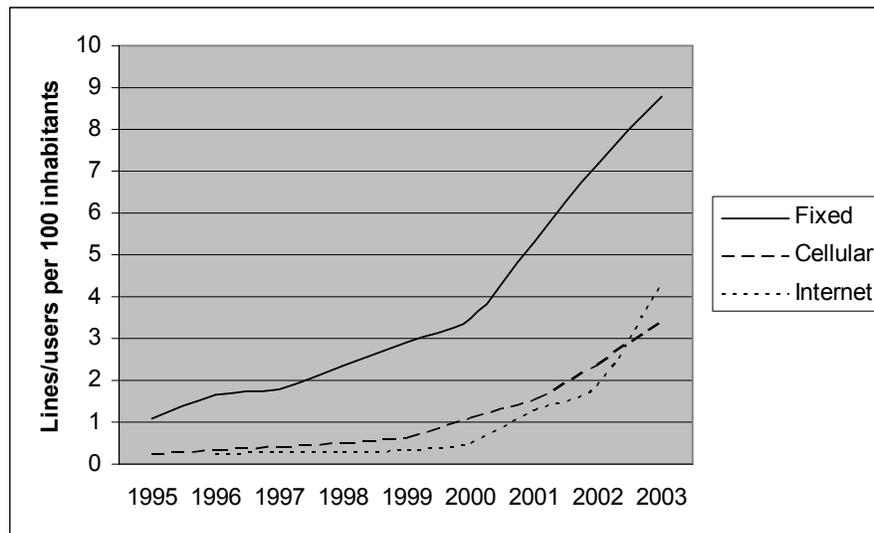
The fast development of Vietnam's telecommunication industry began in 1995 when VNPT, Viettel and Vietshiptel were established to encourage competition. The number of main telephone lines grew from 1.1 per 100 inhabitants in 1995 to 8.78 in 2003 at cumulative average growth rate of 45%. The cellular subscribers grew from

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<sup>1</sup> According to VnExpress.net at <http://www.vnexpress.net/Vietnam/Kinh-doanh/>

23,500 in 1995 to 2,742,000 in 2003 with cumulative average growth rate of 80%. Internet penetration increased rapidly since 2000 and the internet subscribers grew to 800,000 in 2003. The Figure below illustrates Vietnam's telecommunications growth during the period 1995-2003.

*Chart 1: Penetration levels for telecommunications services in Vietnam- Source: ITU*



The current status of the Vietnam's telecommunication industry will be further addressed in the following parts.

## **2. Current status of the Vietnam's telecommunication industry**

### ***2.1. Vietnam's telecommunications infrastructure and its services***

#### ***2.1.1. Current telecommunications infrastructure***

Vietnam has made great efforts in developing the telecommunication network and services in all the country so far. Under the strategy for telecommunications development, a modern telecommunications infrastructure has been built to facilitate the socio-

economic development. Since its reform, the Vietnamese government has paid special attention to the sector in order to meet the demands of industrializing and modernizing the country. Preferential policies have been provided to catch up with regional and world standards. Currently, telecommunications is one of the fastest growing industries in Vietnam.

Nowadays, the switching board system consists of 100% of digital switchboard. The transmission system includes satellites, optic fibers and wideband microwave system throughout the country. This transmission system has been connected to the international network. The key elements of network infrastructure are described as follows:

- *Data services*: There are many data transmission networks which are connected to the Internet such as Varnet, Netnam, Toolnet, HCMnet and Vianet.
- *The packet switched data network (PSDN)*: PSDN has been established in all cities and provinces throughout the country.
- *Rural telecommunications*: The telecommunications network has been expanded to all rural areas. It has been equipped with digital microwave and fiber-optic cable.
- *International telecommunications*: At present, there are three gateways and eight Intersputnik and Intelsat earth stations in the country, which can supply direct circuits to 30 countries.

With this infrastructure status, teledensity in Vietnam is expected to increase to 15-18% by 2010. By that time, the national information highway will be connected to all

communes and districts nationwide by cable and other high bandwidth method, telephone and internet use is targeted to reach the regional average, with 60% of households owning telephones<sup>2</sup>.

*Table 1- Facility of telecommunication as of annual 31 December*

<b>Facilities</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Pre1 2004</b>
Wireless transceivers- <i>Unit: Piece</i>	114	1114	1370	1400	1400	1400	3607	5111	6486	8992
Telephone transmitters- <i>Unit: Piece</i>	1146	1150	1582	1834		2253	2342	2464	2572	2703
Communicative satellite <i>Unit: Station</i>	8	8	8	8	8	8	6	7	7	7
Billing system <i>Unit: Piece</i>	531	531	954	1067	300	300	1730	1770	1731	1873

*Source: General Department of Statistics*

*Table 2. Total telecommunication Equipment- Unit: US\$ million*

	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Telecommunications Equipment</b>			
Total market size	648	840	1,050
Total local production	218	282	354
Total exports	13	16	18
Total imports	417	542	678

*Source: MPT*

<sup>2</sup> Based on the Decision No.158/QĐ-TTg on Telecommunications development strategy until 2010 and Orientation until 2020, available at <http://www.mpt.gov.vn>

### 2.1.2. Vietnam's telecommunications services

Telecommunications services in Vietnam include most of items classified in the list of UN/WTO. Of the basic services, only satellite mobile services have not supplied in Vietnam.

Since 2003, many new services have been introduced such as CDMA mobile phone, GPRS technology for mobile phone, a range of multimedia messaging services (MMS), high-speed Internet using ADSL technology and mobile internet access points (hotspot), internet telephone service, virtual private network (VPN) services, broadband fixed wireless (WiFi) services. The expansion of new services has led to rapid growth in home and office subscriptions.

*Table 3. Total telecommunication Services- Unit: US\$ million*

	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Telecommunications Services</b>			
Total market size	1,553	1,758	1,995
Total local production	1,335	1,500	1,690
Total exports	135	160	190
Total imports	83	98	115

*Source: MPT*

Although telecommunications is one of the top priorities for development by the government and the industry has achieved rapid growth so far, the telecommunications system is currently costly and the telecommunications services charges are high. For example, the ADSL internet fee in Vietnam is up to US\$59 per month while those in China are between US\$6 and US\$18<sup>3</sup>. Data transmission speeds remain lower because of

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<sup>3</sup> The prices are based on 2004 charges. References: <http://www.vnpt.com.vn>, <http://www.hcmc.netnam.vn>, <http://www.chinanetcom.com.cn/en/index.asp>, <http://www.chinatietong.com/english/index.htm>,

chronic congestion which is made worse by a firewall system for Vietnam's 25 mail and 21 file-transfer ports that also blocks standard business software, such as Lotus Notes and Real Player.

With current status of infrastructure and services, although Vietnam's telecommunications has been developing rapidly since 2000, its indicators are still lower than many other countries in the region. Vietnam's telecommunications industry should further develop to utilize its development potential.

*Table 4. Penetration levels for telecommunications services of ASEAN countries*

	Population (million)	Per capita GDP (USD)	Fixed-line subscribers per 100 inhabitants	Cellular subscribers per 100 inhabitants	Internet subscribers per 100 inhabitants
<b>Vietnam</b>	<b>81.38</b>	<b>429</b>	<b>8.78</b>	<b>3.37</b>	<b>4.30</b>
Myanmar	49.62	148	0.85	0.13	0.05
Lao P.D.R	5.68	328	2.12	1.00	0.27
Cambodia	14.14	254	3.01	2.76	0.25
Indonesia	215.09	860	9.17	5.52	3.76
Philippines	81.1	969	23.29	19.13	4.40
Thailand	62.53	2044	36.55	26.04	11.05
Malaysia	25.17	3870	62.36	44.20	34.41
Brunei	0.36	12447	65.92	40.60	10.23
Singapore	4.2	20894	125.84	79.56	50.87

*Source: ITU, 2003*

## ***2.2. Vietnam's current telecommunication market***

### ***2.2.1. The main participants in the telecommunications market***

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<http://it.sohu.com/s2005/wtcb.shtml>

With the population of over 80 million people, Vietnam is a potential market for telecommunications. The monopoly of state corporations in the telecommunications sector has given way to competition. Domestic competition in Vietnam's telecommunications market was introduced in 1995. According to the government's strategy which tends to enable rapid transition into a competitive market, private and certain foreign invested enterprises are now able to take part in telecommunications services supply. The non-state sector is expected to increase its service market share in telecom markets by 25-30% by 2005 and 40-50% by 2010<sup>4</sup>.

Currently, there are 6 main enterprises which are approved to build telecommunication network and provide services:

- (1) The Vietnam Post and Telecommunications Corporation (VNPT) was established in 1992 and now is the dominant provider of telecommunications services. It participates in almost activities and services such as providing the full range of domestic and international telecommunication services; building, operating and controlling the telecommunication infrastructure and networks.
- (2) VIETEL was established in 1995 under the control of MPT and the Ministry of Defense. Under its license, Vietel has constructed a Nation-wide PSTN, Terrestrial Cellular, Paging, Radio-trucking, Internet and Trial Commercialized VoIP networks to provide all available services over these infrastructures.
- (3) Saigon Postel (SPT) was established in 1995 as a joint-stock company among the state-owned companies including major shareholder VNPT. It provides

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<sup>4</sup> Based on the Decision No.158/QD-TTg on Telecommunications development strategy until 2010 and Orientation until 2020, available at <http://www.mpt.gov.vn>

telecommunication services including fixed local telecommunications service in Hochiminh City only, internet exchange service, internet access service, domestic long distance and international VoIP services, mobile cellular telephone service using CDMA technology.

(4) Vietnam Maritime Telecommunication Company (VIETSHIPTEL) was established in 1999 by General Corporation for Marine Transport which is fully owned by the government. It has been licensed to provide telecommunications services to ships and other maritime transportations. It is granted to build domestic and international VoIP service.

(5) ETC is fully owned by Vietnam Electricity Corporation which is a state-owned monopoly in power sector. It has been granted licenses to provide domestic long distance, international VoIP service, domestic leased line service, fixed local telephone service, domestic long distance service, and international telephone service.

(6) Hanoi Telecom is a private company. It has been granted licenses to provide fixed local telephone service only in Hanoi, internet exchange service, internet access service, domestic long distance and international VoIP services and mobile cellular telephone service.

Beside these main providers, there are several other companies which have been granted licenses to provide value-added services. However, most of them, except FPT and Netnam, are not active.

### *2.2.2. The competition in the telecommunications market*

In theory, competition in Vietnam's telecommunications sector started in 1995 when the three major providers (VNPT, Viettel and SPT) began operation under licenses to diminish monopoly. However, there was just considerable change in practice in 2003 when three other companies (ETC, Hanoi Telecom & Vietshiptel) were licensed to provide some kinds of telecommunications services.

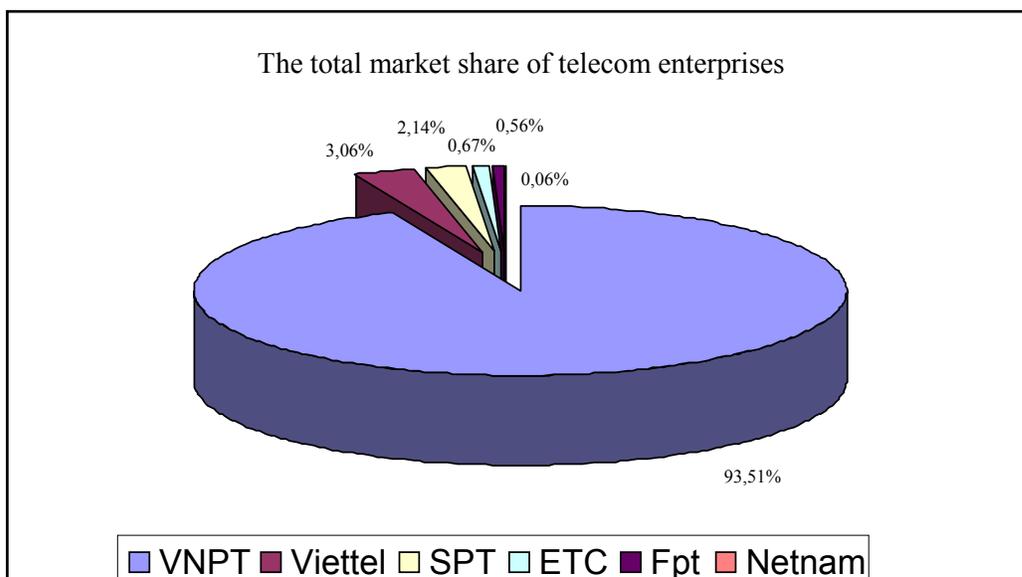
Currently, competition has been established in almost market segments. However, Vietnam's telecommunication market has been considered to be unfair so far. VNPT, with its large downstream companies such as Mobifone, Vinaphone, VDC, has been considered to be a monopoly-like enterprise as it occupies approximate 90% total national market share. Furthermore, it provides almost telecommunications networks that all other companies actually have to rely on. That fact has given to VNPT an "invisible" control over the activities of other competitors. The competitors of VNPT usually complaint network congestion while VNPT refuses its responsibilities, giving the reasons of limited infrastructure capacity. This has created an unfair competitive market for other telecommunications companies.

Being a dominant enterprise, VNPT has many advantages; however, it is also the largest state-owned telecommunications enterprise with disadvantages. While other telecommunications companies just provide services in the main cities and provinces, only VNPT has to provide public services in the remote areas under the subsidy policy of the government that has given VNPT some burdens. To compete with other companies, VNPT seems to reluctant to broaden the coverage areas for other companies' services. In addition, other telecommunications companies using VNPT's infrastructure can only

effectively compete with VNPT by lowering their service charges. Being a dominant operator in the market, VNPT's pricing policy must be approved by the MPT; however, VNPT's price strategies are not always approved by the MPT because MPT worries that VNPT's price changes can make the number of subscribers increase too fast for its infrastructure to adapt, furthermore, the MPT wants to give ways for the new companies in the sector.

In general, in the fix-line and mobile market, VNPT still overwhelmingly dominates the market with approximately 94% market share although other licenses have been awarded. Real competition occurs only in internet service market. Currently, there are total 13 licensed companies in this sub-sector, however, in practice, only 6 companies actively provide services. The diagrams below show the market share of the internet service providers by March 2005.

*Chart 2- The total market share of telecommunications enterprises*



*Source: MPT, 2004*

Market share of the enterprises in internet market:

Chart 3- DSL (64Kbps) Market Share:

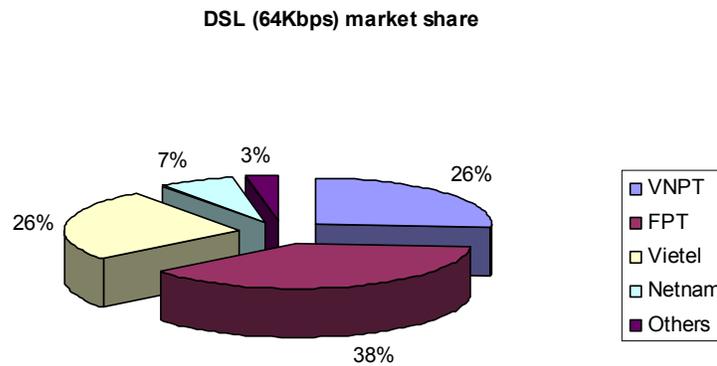


Chart 4- ADSL market share

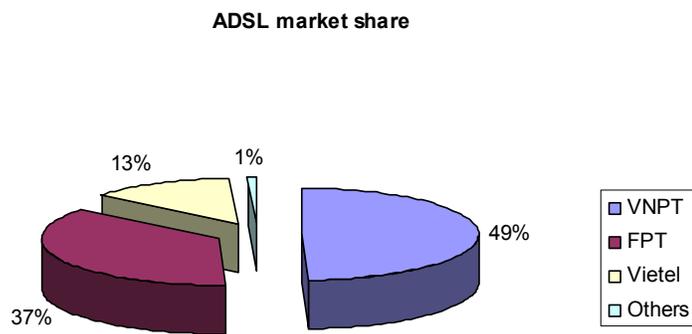
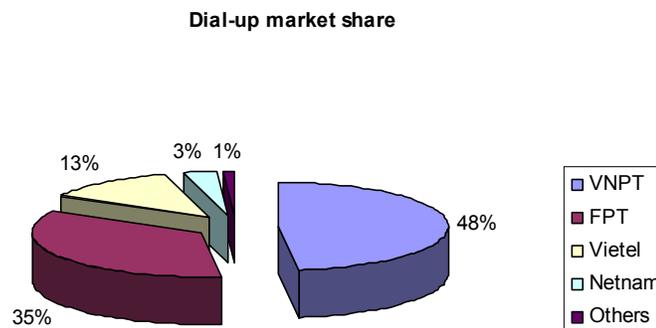


Chart 5- Dial-up market share



Source: Ministry of Post and Telecommunications, 2005.

*Table 5. Turnover of top 3 telecom enterprises- Unit: US\$ million*

<b>Turnover/ Year</b>	<b>2003</b>	<b>2004</b>
<b>Total turnover of telecom industry</b>	1,700	1,955
<b>VNPT</b>	1,600	1,850
<b>Vietel</b>	64.2	NA
<b>SPT</b>	44.8	59.1

**Source: MPT**

## **CHAPTER II: THE CURRENT REGULATORY AND LEGAL FRAMEWORK FOR VIETNAM'S TELECOMMUNICATIONS INDUSTRY<sup>5</sup>**

### **1. The State general policy for telecommunications industry**

The government's telecommunications policy is formally set out in the Decision No.158/QD-TTg dated October 18, 2001 which provides Vietnam Post and Telecommunications development strategy as well as the sector's development and targets until 2010 and Orientation until 2020.

The three basic objectives of the telecommunications policy are:

- To build up and further develop the national information infrastructure with modern technologies;
- To provide society and consumers with modern, diversified, and abundant telecommunications service in all parts of the country;
- To increase the share of this sector in Vietnam's GDP and employment growth.

The telecommunications policy also sets out the key goals and targets among which are:

- By 2010 the number of telephone sets and Internet users per 100 people shall reach the regional average;

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<sup>5</sup> This part is mainly based on Vietnam's legal documents on telecommunications including the Ordinance on Post and Telecommunications, Decision 158, Decree 90, Decision 217, Decree 160, available at <http://www.mpt.gov.vn>.

- By 2005 all provinces and cities throughout the country shall be linked together by broadband fiber optic cables;
- By 2010, the average telephone density shall reach 15-18 telephones per 100 people and 60% of households will have telephones.

Under the Decision, the following strategies are considered to be important:

- Speeding up the development of the Ordinance on Posts and Telecommunications;
- Developing specific policies and measures to boost competition;
- Implementing the Vietnam – US Bilateral Trade Agreement (BTA);
- Renewing the charge rate policy in line with competitive market conditions;
- Effectively managing the radio frequency spectrum, numbering systems, zone and domain names, and addresses;
- Promoting productivity, quality, and efficiency within business enterprises;
- Creating policies for network development in rural and remote areas;
- Encouraging foreign direct investment;
- Promoting international co-operation in service development.

It seems that the strategies rely too much on the role of government other than market mechanisms. However, along with the Ordinance on Post and Telecommunications (which is called “the Ordinance” thereafter) addressed below, it is hoped that the way will be paved for further detailed regulations to facilitate the development of telecommunications industry.

## **2. Regulatory framework for telecommunications industry**

The Ministry of Posts and Telecommunications (MPT) is the government organization that acts as a policy maker as well as a regulatory authority in posts, telecommunications, information technology, electronics and some other relevant sectors. The functions and responsibilities of MPT are stipulated in the Decree No. 90/2002/ND-CP dated November 11, 2002. This Decree covers not only telecommunications, however, only telecommunication content is hereby addressed.

The main functions of the MPT are defined as follows:

- Submit to Government drafts of laws, ordinances, regulations, strategies and development plans on telecommunications;
- Give guidance in implementation of laws, ordinances, regulations as well as development strategies and plans related to telecommunications;
- Regulate the access to and the inter-connection between public switched telephone networks, specialized and private networks;
- Regulate charges and tariffs in telecommunications sector;
- Plan, assign and allocate radio frequency spectrum; control and monitor radio frequency spectrum and radio equipment; organize radio-frequency, satellite orbit registration and coordination;
- Grant licenses telecommunications and Internet;

- Regulate the quality of telecommunications networks, plants, products and services;
- Regulate numbering resources, codes, domain names and addresses used in the fields of telecommunications;
- Conduct international cooperation activities in telecommunications;
- Inspect all activities and settle all regulatory breaches in telecommunications.

Within this regulatory framework, MPT takes control over almost activities of the telecommunications sector including issuing legal documentation, making economic plans, supervising over technical and professional issues and coordinating international relations. In particular, MPT holds the mechanisms of issuing of operator licenses and monitoring of license conditions. MPT also has right to set the prices of telecommunication services of the dominant provider.

### **3. The legal framework and relevant law documents for telecommunications**

#### ***3.1. Comprehensive legal framework- The Ordinance on Post and Telecommunications***

The legal framework governing the telecommunications sector in Vietnam is defined in the Ordinance on Post and Telecommunications (the “Ordinance”) dated May 25, 2002. The Ordinance took effect on October 1, 2002 and replaced the Decree No. 109/1997/ND-CP dated November 12, 1997. This Ordinance is expected not only to be the consolidation of the legal structure into a single law, but also improve legal structure as well as address the important issues arising in the new age.

The Ordinance covers not only telecommunications sector but also post sector. However, only the main regulations on telecommunications are addressed. The main parts of the Ordinance include (i) general provisions; (ii) provisions for telecommunications network and services; (iii) state management in telecommunications.

### *3.1.1. General provisions*

It is clearly stipulated in the Article 1 that the State has identified telecommunication as an important economic, technological and service sector in the infrastructure of the national economy. The development of the sector aims at meeting the needs for socio-economic development, improving the quality of life of the people and ensuring national defense and security.

Besides, the most important point of the general provisions is that the Ordinance encourages enterprises of all economic sectors to participate in the telecommunication activities in a transparent and fair-competition environment under State's administration. The State also provides good conditions for utilization and development of telecommunication technologies as well as protects legitimate rights and interests of all the participants (Article 5).

“Priority” is emphasized in the Ordinance. Under the Article 5, priority is given to develop telecommunication services in rural and remote areas; providing incentives and supports for enterprises that provide public telecommunications services and executing other public tasks assigned by the State. Furthermore, under the Article 7, priority of information provision must be given to emergency situations including emergency information on national defense and security, information used for fighting flood, typhoon, fires and other disasters, information to prevent epidemic diseases; and other

cases under emergency law. In case of these emergency situations, parts or whole telecommunications network shall be mobilized in accordance with decisions issued by State competent authorities.

In addition, the Ordinance also mentions the banned telecommunications activities which include the activities providing, utilizing telecommunication services to protest against the State of Socialist Republic of Viet Nam, disrupt security and public safety, violate national custom, smuggle or breaking other provisions of law and regulation on telecommunication (Article 10).

The Ordinance also stipulates that the State aims to expand international telecommunications cooperation on the basis of respecting independence, sovereignty, equity and fair, and ensuring compliance with Vietnamese laws and international commitments Viet Nam has made. In case international treaties which Vietnam has signed provide otherwise, the international treaties shall prevail.

### *3.1.2. Provisions for telecommunication network and services*

Through the Ordinance, the provisions for telecommunications network and services include the regulations on the different types of telecommunications network and services, the rights and responsibilities of telecommunications services providers and users. The Ordinance also covers the regulations on telecommunications licenses and other detailed issues including radio frequency. The main points of these provisions are as follows:

\* Removing state monopoly over the network infrastructure:

Under the Ordinance, the state monopoly over the network infrastructure no longer exists. However, Article 38 limits network infrastructure providers (Lower Layer network providers) to state-owned enterprises or enterprises in which the state holds controlling shares or special shares.

\* Telecommunications licensing:

Under the Ordinance, enterprises of all economic sectors can provide telecommunications service to the public under several types of licenses. The Ordinance classifies two kinds of licenses: (i) licenses for network or facility based operation are only granted to state-owned enterprises or the enterprises with state-owned shares; and (ii) licenses for service-based operations which are granted to all types of enterprises.

\* Interconnection:

The Ordinance stipulates that all telecommunications enterprises have the right to “link their own network to those of other telecommunications communications enterprises and shall be obliged to allow those other telecommunications enterprises to link and access their own networks or services subject to fair and reasonable conditions”. Interconnection agreements are to be negotiated between operators while interconnection charges and co-location are controlled by the MPT. The Ordinance ensures interconnection at technically feasible points, with the requirement for a reference interconnection agreement or offer, and with dispute settlement provided by the MPT.

\* Preventing the market domination of the major enterprises:

In order to prevent the market domination of the enterprises with large market share, Article 39 stipulates that enterprises having over 30 per cent market share in respect of

one type of service in a licensed geographical area are not allowed to restrict or cause difficulties to the activities of other telecommunications enterprises. Furthermore, the enterprises with large market share shall be controlled by government authority (MPT).

\* Cross-subsidization:

Cross-subsidization is not specifically prohibited under the Ordinance. However, the Ordinance requires telecommunications operators with dominant share in a market segment to maintain separate cost accounting of such segment. Furthermore, under Article 50 of the Ordinance, the government ensures the conditions for the enterprises which provide public beneficial telecommunications services by stipulating connection charges on basis of cost and the contribution of public beneficial services they provide. Furthermore, the Government also establishes a fund for public beneficial telecommunications services from the contribution of telecommunications enterprises and other financial sources.

***3.2. Pricing policy for telecommunication services- Decision 217***

The particular regulations on service charges are stipulated in the Decision 217/2003/QDTTg dated October 27, 2003.

Under the Decision, the Government respects the telecommunications charges set by enterprises according to the relevant laws. The Government only applies the necessary measures to stabilize the charges in necessary cases in order to protect the legitimate rights and benefits of the service users, telecommunication enterprises and the Government as well.

The principles for setting charges are mentioned clearly in the Decision as follows:

- The prices and charges for telecommunication services of the telecommunications sector shall be set in conformity with the socio-economic policies of the Government, in conformity with international agreements signed or accorded to by Vietnam.
- The telecommunications prices and charges shall be based on the product or service costs, the relation between supply and demand, and it should reasonably inter-relate the telecommunication price level of the regions and the world.
- The international telecommunications prices and charges shall be determined in US dollars (USD), applicable to all Vietnamese organizations and individuals, foreign organizations, and individuals working in Vietnam. Charges shall be collected in USD converted into Vietnam dong at the official exchange rate announced by the State Bank of Vietnam at the time. There is no competition in the market, thus market forces do not really determine telecommunications prices.

The Decision also addresses the competence in the management of telecommunications prices and charges. At the highest level, the Prime Minister decides the strategies, policies, mechanisms, and principles for setting domestic and international telecommunication charges. The Prime Minister authorizes MPT to exercise a wide range of rights and responsibilities relating to charges including:

- Coordinating with the Ministry of Finance to formulate policies, mechanisms, and principles for setting telecommunications prices.
- Being authorized by the Prime Minister to decide the domestic standard charges for the public telecommunications services and the telecommunication services for the management activities of the telecommunication network.
- Being authorized by the Prime Minister to decide the telecommunication charges for the service users which are set by the enterprises with large market share.
- Deciding the connecting charges between the telecommunication enterprises.
- Laying down the principles and adopting the policies on international payment charges between Vietnamese telecommunications enterprises and international telecommunications organizations, ensuring national interests and the enterprises' interests in conformity with international practices and agreements which have been signed or accorded to by Vietnam;

Under the invalid regulations, telecommunications enterprises had to accept the prices and charge rates approved by competent agencies. However, there has been a major change in pricing policy for telecommunications since the Decision 217/2003/QĐ-TTg was issued. Under the Decision and the MPT guidance for the Decision deployment 16 /BBCVT-KHTC to be signed on January 6, 2004, only these must be subject to tariff regulation:

- VNPT (in long haul, domestic, and international telephone, VoIP, leased line, mobile telephone, Internet, and Immarsat),
- Viettel (in international telephone, VoIP),
- Vishipel (in Immarsat)

All other companies are free to decide their own service charges in respect to the Ordinance on price and relevant regulations.

### ***3.3. Competition policy: Decree 160 and Competition Law***

#### *3.3.1. Decree 160 Provisions regarding competition*

The Decree 160 was issued on September 3<sup>rd</sup>, 2004 to specify additional details of implementation important provisions of the Ordinance in which provisions affecting competition in the telecommunications industry are included.

The Decree elaborates the Ordinance's competition aspects primarily in these areas: (i) the definition of essential facilities and dominant shares; (ii) the interconnection regime; and (iii) the setting of tariffs.

According to the Decree, the enterprises with essential facilities are required to (i) make master plans and invest in the establishment of telecommunications networks which are sufficient for network interconnection and traffic transmission; (ii) to create favorable conditions for the negotiation and execution of interconnection in a fair and reasonable manner on the basis of efficient use of telecommunications resources and of shared use interconnection points and physical infrastructure; and (iii) to prepare a Master Interconnection Agreement for the MPT's approval to make it publicly available.

### *3.3.2. Competition Law<sup>6</sup>*

Vietnam's Competition Law will be put into effect by July, 2005. It covers some competition issues relating to telecommunications such as abuse of dominance, anti-competitive mergers and acquisitions, particular unfair competition acts. Instead of Vietnam's telecommunications legal framework, Competition Law can be the legal basis by which Vietnam can implement anti-competitive safeguards in telecommunications.

### *3.4. Market access for foreign companies in telecommunication sector<sup>7</sup>*

#### *3.4.1. For the telecommunication service providers*

Under the Vietnamese Investment Law of 1992, foreign companies are allowed to provide services to Vietnam's telecommunication market only if they enter into Business Cooperation Contract (BCC).

BCC is a cost and revenue sharing agreement under which the foreign partner generally provides the needed equipment and training for local operators. BCC is also a management and operation contracts for a fixed period of time (usually from 10 to 15 years with a single corporate entity- VNPT). Under a BCC, a foreign company cannot have any equity stake in the operation of the network or the company even though they

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<sup>6</sup> The final text of Vietnam's Competition Law has not been officially released until July, 2005. The reference hereby is based on the Draft of Competition Law presented at Vietnam Business Forum, August 30, 2002.

<sup>7</sup> This part is based on the Vietnam Investment Law, available at <http://www.mpi.gov.vn> and the information from the website of Vietnam Ministry of Trade at <http://www.mot.gov.vn>.

provide financing. To close a deal, that foreign company must negotiate simultaneously with VNPT and regional/local authorities.

#### *3.4.2. For the telecommunication equipment providers*

Currently, domestic production cannot meet the increasing demand in the country. The quality of domestic products is also lower than that of international standards. Due to the priority to develop and modernize its telecommunication system, Vietnam allows the foreign companies which work in the telecommunication equipment production field to establish joint ventures or 100 % foreign-owned companies. These joint ventures and wholly foreign-owned companies work under the MPT's management.

#### *3.4.3. For other foreign participants in telecommunication providers*

The import of telecommunication equipment is not under the control of either MPT or VNPT, but rather the supervision of the Ministry of Trade. Taxes imposed on these activities are very low compared to other products to encourage the development of telecommunication infrastructure. The import of used equipment is prohibited.

### **4. Vietnam's current international telecommunication commitments**

#### ***4.1. Telecommunication commitments in the Vietnam-US Bilateral Trade Agreement<sup>8</sup>***

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<sup>8</sup> Vietnam-US Bilateral Trade Agreement, available at <http://www.vietnamese-law-consultancy.com>

The Bilateral Commercial Agreement between Vietnam and the United States (BTA) was signed on July 13, 2000. Under the horizontal commitments which are applied to all service sectors including telecommunications, the market access are permitted as follows:

- US companies are allowed to do business in Vietnam under Business Cooperation Contract (BCC), joint ventures, build-operate-transfer (BOT) and build-transfer-operate (BTO) agreements.
- All service providers are established in accordance with commitments on market access and national treatment specified in each sector and sub-sector.
- US companies can establish resident representative offices which do not involve in profit making in Vietnam. US companies can establish branches according to the current relevant laws.
- Companies with US equity can lease land in a period of each company's operation which is stated clearly on investment license.

Under the Agreement, Vietnam's commitments related to telecommunication services are divided into three sub-sectors: Value-added services, basic telecommunication services and voice telephone services.

#### *4.1.1. Telecommunication commitments for value-added services:*

Value- added services include electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange, enhanced/value-added facsimile services

(including store and forward, store and retrieve, code and protocol conversion, and online information and data processing).

Within this sub-sector, US companies are allowed to provide cross-border services only through business cooperation contracts (BCC) with Vietnamese gateway operators. From 10 December 2003, joint ventures are allowed to provide value-added services with the US equity of no more than 50%; for internet it is from 10 December 2004.

Within this sub-sector, there is no limitation on market access regarding consumption abroad and national treatment for value-added telecommunication services.

There is no commitment on presence of natural persons in these sub-sectors.

#### *4.1.2. Telecommunication commitments for basic telecommunications services:*

Basic telecommunication services include packet-switch data transmission services, circuit-switch data transmission services, telex services, telegraph services. Facsimile, private lease circuit services and radio based services (including cellular, mobile, satellite).

Similar to the commitments on the sub-sector of value-added services, within this sub-sector, the US companies are allowed to provide cross-border services only through business cooperation contracts with Vietnamese gateway operators. Without a business cooperation contract with Vietnamese partners that are authorized to provide telecommunications services, the US companies are not permitted to establish a

commercial presence in Vietnam. There is neither limitation on market access regarding consumption abroad nor national treatment for value-added telecommunication services.

From 10 December 2005, joint ventures are allowed to provide basic services (except local call, long distance call, and international call) with the American equity of no more than 49%. With the exceptional services, American companies must lease from Vietnamese operators.

*4.1.3. Telecommunication commitments for voice telephone services:*

Voice telephone services include fixed local, long distance and international services. Within this sub-sector, the American companies are allowed to provide cross-border services from Vietnam via business contracts with Vietnamese gateway operators. They should also form business cooperation contracts with Vietnamese partners authorized to provide telecommunication services to establish a commercial presence.

From 10 December 2007, joint ventures are allowed to provide voice telephony (including local call, long distance call, and international call) with the American equity of no more than 49%. Furthermore, the Agreement also covers the following commitments:

- Tariff commitments: Import tariff reduction by 5-10% for wireless receiving and broadcasting equipment within 3 years upon the BTA effectiveness.
- Non-tariff commitments (rights to import and distribute telecommunications equipment): The regulations on rights to imports will be removed after 3-8 years, and right to distribute after 8-14 years upon the BTA effectiveness.

- Commitments on policy transparency: Vietnam will notify in advance the application of laws, to publish laws related to the regulations in the industry.

## ***4.2. Telecommunication commitments of Vietnam within ASEAN and APEC<sup>9</sup>***

### *4.2.1. Telecommunications commitments of Vietnam with ASEAN*

Being a member of ASEAN, Vietnam has signed the two Memoranda and the two important frameworks titled “Framework Agreement on Negotiations in Services from 1999 to 2020” and “Framework Guiding the ASEAN Liberation of Trade in Services”. Under these signed law documents, the service negotiation within ASEAN also followed the GATS/WTO rules. Telecommunication is one of seven service sectors that received the priority in ASEAN negotiation since 1996. Currently, Vietnam made commitments on telex, telegraph, email, voice telephony, and electronic data transmission services.

### *4.2.2. Telecommunication commitments of Vietnam within APEC*

The common objective of APEC is to complete the trade liberalization process by 2020. Being a member of APEC, Vietnam made commitments on trade in telecommunication services through the International Action Plan. Currently, regarding to telecommunications sectors, Vietnam made the major commitments on the improvement in the legal framework for trade in telecommunication services and market access, based on the current regime.

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<sup>9</sup> This is based on the information on Vietnam’s international telecommunications cooperation, available at <http://www.mpt.gov.vn>.

Unlike the commitments in the BTA and the ASEAN or future WTO commitments, the commitments on trade in telecommunications services within APEC are voluntary and unilateral. However, the principle on annual review and binding for not imposing new restrictions indirectly create pressure on market access and reform in the telecommunications sector.

## CHAPTER III: WTO REGULATIONS FOR TELECOMMUNICATIONS<sup>10</sup>

### 1. Understanding the GATS in the context of telecommunications

#### *1.1. Overview of GATS*

The General Agreement on Trade in Services (GATS) is an annex to the Agreement Establishing the WTO concluded on April 15, 1994. It is a comprehensive legal framework which covers many service activities including telecommunications, finance, maritime, energy, business, education and environment and excluding “services supplied in the exercise of government authority”. Unlike GATT which requires Members to accept the entire package of agreements, GATS requirements are based on a “positive list” approach in which Members only undertake specific commitments in the sectors that they listed in their schedules. According to the Article 10 of GATS, progressive liberalization is to be achieved through successive rounds of multilateral negotiations. However, Article XIX:2 provides that individual developing countries shall have appropriate flexibility for opening fewer sectors, liberalizing fewer types of transactions, progressively extend their market access in accordance with their development level.

GATS framework includes the following parts: Part I and II provide general rules and principles with respect to liberalization of trade in services. These parts cover all sectors and include (i) the most-favored nation treatment obligation (Article II); (ii) transparency (Article III); (iii) reduction and elimination of non-tariff barriers in domestic

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<sup>10</sup> This part is mainly based on official documents of WTO including General Agreement on Trade in Services (GATS), GATS Annex on Telecommunications, Reference Paper, available at <http://www.wto.org>.

regulations (Article IV); (iv) prevention of anti-competitive practices (Article VIII); and (v) obligations to developing countries (Article IV). Part III and IV of GATS provide a framework for the negotiations of specific market access commitments of individual members. These parts include (i) market access and (ii) national treatment obligations. Both general obligations and specific commitments are subject to certain exceptions under GATS. Part V concerns about dispute settlement and enforcement of obligations. Part VI covers definitional issues in the application of the GATS. In addition, there are Annexes on exemption from MFN treatment, movement of persons, financial services, telecommunications and air transport services as well as 8 Decisions concerning various aspects of implementation and interpretation of the GATS.

### ***1.2. Modes of supply:***

Defining four modes of supply is considered to be one of the most distinguishing features of GATS. The four modes are as follows:

- Mode 1- *Cross-border supply* is defined as the supply of service from the territory of one member to that of another member. This is considered to be an important mode in telecommunications sector today because international calls from country to country fall into this mode.
- Mode 2- *Consumption abroad* deals with the cases in which the customer of a member country goes to another member country to consume services. In the case of telecommunications, treated calling card services in some countries fall into this mode.

- Mode 3- *Commercial presence* is defined as the supply of a service from one member's service supplier through commercial presence in territory of another member. This is considered to be the most important mode in telecommunications sector when many developed countries would like to establish branches in other countries to provide services or construct telecommunications infrastructure. Further liberalization in this mode is very significant for almost countries in telecommunications negotiations.
- Mode 4- *Movement of natural persons* is defined as the supply of services by a supplier of one country in another country through the presence of natural persons. In telecommunications sector, a relevant case occurs when an employee of a telecommunications provider travels to another country to provide services.

### ***1.3. General provisions***

As mentioned above, the general obligations of GATS which are incorporated in the telecommunications sector include the following rules:

- *Article II- Most Favored Nation (MFN) Treatment*: The Article II obligates WTO members to accord other members treatment no less favorable than that accorded to any other country. Therefore, if a Member engages in liberalization in a sector and extends a benefit to some of its trading partners, it must give the same treatment to all of its trading partners. However, Article II allows some exemptions to MFN treatment under the conditions which

include (i) exemptions granted for more than 5 years shall be reviewed by the Council for Trade in Services; (ii) exemptions should not last for more than 10 years; and (iii) exemptions must be subject to future negotiations. Any exemptions must be approved under the waiver procedures according to the Article IX:3 of the WTO Agreement.

- *Article III- Transparency:* This article requires that all members provide publicly information on relevant rules and measures related to trade and investment in services. Firstly, WTO Members must publish all measures of general application relating to GATS. Secondly, WTO Members are required to inform the Council on Trade in Services periodically about their measures which affect trades in services. Thirdly, WTO Members must provide specific information on measures of general application under any request of other WTO Members.
- *Article VI- Domestic Regulation:* This article requires that all members administrate the measures affecting trade in services in a reasonable, objective and impartial manner. In addition, necessary disciplines are to be developed to remove unnecessary barriers relating to qualification requirements and procedures, technical standards and licensing requirements. International standards and criteria for recognition should be established by the WTO Members.
- *Article VIII- Monopolies and Exclusive Service Providers:* This article addresses the prevention of anti-competitive practices. It requires signatories

to ensure that monopolies and other firms with market power do not act in a manner inconsistent with scheduled commitments.

- *Article IV- Obligations to developing countries:* Developing countries are facilitated to strengthen their domestic service capacity, its efficiency and competitiveness; to improve their access to distribution channels and information networks; and to liberalize the market access in sectors and modes of supply of export interest to them. “Contact points” within two years from the date of entry into force of the WTO Agreement shall be established to facilitate the access of developing countries' service suppliers to information relating to their respective markets. In addition, Article IV mandates that special priority shall be given to the least-developed country members.

#### ***1.4. Specific commitments***

Market access and national treatment obligation are the two important specific commitments of GATS. Unlike the general obligations, Members only have to undertake these specific commitments in case they make a positive commitment in their schedules of Specific Commitments in a particular sector.

- *Market access:* Article XVI of the GATS requires Members to permit other Members to provide services under all modes of supply according to the commitments they make in their schedules. Article XVII:2 addresses six types of limitations that Members shall not maintain unless specified in their

schedules. These include the limitations on: Number of services suppliers; total value of service transactions or assets; total number of service operations or quantity of service output; total number of natural persons that maybe employed in a service sector or on number of employees of a service suppliers; types of legal entities or joint ventures through which a service may be supplied and participation of foreign capital either in the form of caps on foreign shareholding or total value of individual or aggregate FDI in a particular service.

In telecommunications sector, the market access principle implies that Members must limit and qualify commitments on Mode 1 (cross-border supply) and Mode 3 (commercial presence). If a Member applies the types of limitations under Article XVI:2, it must specify and qualify them in its schedules.

- *National treatment:* Article XVII of the GATS requires Member to treat the foreign suppliers at least as favorable as that applied to domestic suppliers in respect of measures affecting the supply of services. Under this Article, Members shall indicate the service sectors and modes of supply for which they apply national treatment in their schedules.

### ***1.5.Exceptions***

Under the Article XIV and Article XIV bis, GATS provides “general exceptions” and “security exceptions” which allows Members to deviate from their obligations under their commitments if the arising issues relate to national sovereignty or national security,

public morals or public health, protection of human, animal or plant life or health, prevention of deceptive or fraudulent practices or dealing with effects of default on services contracts, protection of the privacy of individuals or safety. Besides, Article X and Article XII of GATS allow Members to apply safeguard measures in cases of emergency. Under Article XXVII, a Members have right to deny benefits of the GATS to the supply of services or service suppliers from non-Members.

In general, GATS commitment structure is voluntary and more flexible. Under GATS, members are free to decide which service sectors they wish to subject to market access and national treatment disciplines. Members can also specify in their schedules the limitations and exceptions they wish to maintain on market access and national treatment. Furthermore, market access and national treatment commitments can be made for each of the four modes of supply. These flexible features of GATS present both opportunities and challenges to developing countries in negotiations for services in general and telecommunications in particular.

## **2. Uruguay Round Decision on Negotiations on Basic Telecommunications**

During the Uruguay Round, a Group for Negotiations on Services was established to conduct the negotiations; however, it was not possible to reach agreement in four service sectors including telecommunications by the end of Uruguay Round. In telecommunications sector, the biggest problem was that many countries remained state-owned monopoly in telecommunications sector and only a few Members which are

developed countries were willing to make commitments in basic telecommunications services. As result of these difficulties, Ministers took the “Decision on Negotiations on Basic Telecommunications” by the end of the Uruguay Round.

Under this Decision, the Ministers decided:

- To establish a Negotiation Group on Basic Telecommunications this would begin negotiations no later than April 30, 1994 then complete and submit the report on basic telecommunications to the GATS Council by April 30, 1996.
- To keep negotiations open to all Members on voluntary basis and any commitments from negotiations would be attached in the Schedules of Members annexed to GATS.

### **3. GATS Annex on Telecommunications**

Telecommunications is a specific sector which affects all economic and social activities. Recognizing the specificities of the sector, by the end of the Uruguay Round, member signed the GATS Annex on Telecommunications which applies to all measures of a member that affect access and use of public telecommunications transport networks and services. This does not apply to measures affecting the cable or broadcast distribution of radio or television programming.

The Annex includes the following parts: Scope of the Annex, definitions of the relevant terms, regulations on Transparency, Access to and use of Public Telecommunications Transport Networks and Services (PTTN), Technical Cooperation and Relation to international organizations and agreements.

The most important parts of the Annex cover the regulations on Transparency and Access to and use of Public Telecommunications Transport Networks and Services.

- *Transparency:* Members are required to maintain transparency by ensuring that all relevant information on conditions affecting access to and use of PTTN is made publicly available.
- *Access to and use of Public Telecommunications Transport Networks and Services:* According to this Annex, all firms which need to use telecommunications networks will be provided adequate access to national telecommunications infrastructure and accorded access to and the use of public telecommunications network on a reasonable and non-discrimination basis. Under the Annex, members have rights to apply particular to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services or to protect the technical integrity of public telecommunications transport networks and services or to ensure that service suppliers of any other member do not supply services which are not permitted according to the Member's Schedule. However, the members must ensure that the imposed conditions on access to and use of public telecommunications transport networks and services are not more than necessary.

In particular, the Annex allows developing countries to place reasonable conditions on access to and use of public telecommunications transport networks and services based on their level of development to improve their domestic telecommunications infrastructure and service capacity.

Besides the regulations, the Annex pays attention to technical cooperation including the cooperation among the members and relevant international organizations, special considerations and technical supports to the least-developed countries as well as relation to international organizations and agreements.

#### **4. WTO Basic Telecommunications Agreements**

The WTO Basic Telecommunications Agreement (BTA), which was put into force on February 5th, 1998, was signed in 1997 by 69 countries which occupy over 90% of global telecommunications service revenue. According to the Agreement, all signatory members are required to implement pro-competitive telecommunications regulations and schedule binding, most-favored-nation commitments with respect to market access, investment as well as regulatory principles. Telecommunications carriers of signatory countries also ensure access to local, long-distance, international service markets through all means of network technology.

The Basic Telecommunications Agreement includes the following documents:

- The Fourth Protocol to the General Agreement on Trade in Services;
- The Reference Paper on Pro-competitive Regulatory Principles;
- Fifty-five supplementary schedules of commitments;
- Nine lists of most-favored nation (MFN) exemptions;
- Two notes on the scheduling methodology of the Chairman of the WTO's Working Group on Basic Telecommunication.

#### ***4.1. Fourth Protocol to the GATS***

The “Fourth Protocol to the General Agreement on Trade in Service” was issued on April 30, 1996 as the second Ministerial Decision on Commitments on Basic Telecommunications. Under the Fourth Protocol, WTO members with schedules attached to the Fourth Protocol could add or modify national schedules and lists of MFN exemptions. Members which had not submitted national schedules and lists of MFN exemptions to the Fourth Protocol could do it until 30 November 1997. If by 1 December 1997 the Protocol had not been accepted by all Members concerned, those Members which have accepted it by that date might decide whether the Protocol would enter into force on 1 January 1998.

#### ***4.2. Reference Paper on Pro-Competitive Regulatory Principles***

After 3 years of negotiations, the Group on Basic Telecommunications devised the Reference Paper in 1997 to determine what type of commitments should be made. Among 69 members who submitted schedules, 57 countries agreed to adopt the Reference Paper in whole or in part, 6 other countries agreed to bind themselves to observe regulatory principles of their own creation. The Reference Paper was annexed to the Fourth Protocol of the GATS.

The Reference Paper provided commitments on pro-competitive regulatory principles. While the GATS Annex on Telecommunications applies to the measures affecting the access to and use of public telecommunications transport networks and

services and excludes cable or broadcast radio and television programming, the Reference Paper applies to “basic telecommunications services” which commonly understood to include the public or private relay of voice or data from sender to receiver by various means including by phone, fax, cell phone and satellite systems. The key elements of the Reference Paper are as follows:

- *Regulations on the activities of major service suppliers*

The Reference Paper goes further than the Annex on Telecommunications, which does not contain restrictions on major or dominant telecommunications service suppliers, by providing the rules which prohibit the major suppliers from:

- Anti-competitive cross-subsidization
- Using information obtained from competitors with anti-competitive results
- Withholding technical information “about essential facilities and commercially relevant information” for other service suppliers.

- *Access to and use of interconnected networks*

Similar to the Annex on Telecommunications, the Reference Paper contains provisions to ensure greater access to public telecommunications networks. Interconnection rules are provided to ensure new entrants to have access to “bottleneck” facilities and access to service networks at rates equivalent to that of dominant operators as well as technical conditions of interconnections to easily co-locate equipment or offer other services. Furthermore, the Reference Paper required that interconnection with a major supplier be provided upon request on a non-discriminatory basis in timely fashion

and at rate that are cost-oriented, transparent, reasonable and economically feasible. Besides, the interconnection procedures must be made publicly available.

- *Transparency*

Under the Reference Paper, besides the requirement on publicly available interconnection procedures, it also requires that Member must make public the normal timing of decision-making, terms and conditions of individual licenses and the reasons of licensing denial.

- *Separation between regulators and service providers*

In order to avoid the potential for conflicts of interest, complete independence between regulators and service providers is required under the Reference Paper. This should be understood that regulators and service providers do not operate under control of a same government authority.

- *Necessity test and other limits on Universal Service Obligations*

The Reference Paper stipulates that each Member has rights to define the kind of universal service obligation as it wishes, however, its Universal Service Obligations must be administered in a transparent, non-discriminatory and competitively neutral manner as well as not more burdensome than necessary.

- *Non-discriminatory allocation of scarce public resources*

The Reference Paper places another “pro-competitive” regulation that any procedures for the allocation and use of scarce public resources will be carried out in an objective, timely, transparent and non-discriminatory manner. These resources include but not only telecom “frequencies, numbers and rights of way”.

#### ***4.3. Fifty-five Schedules of Commitments and Nine Lists of MFN Exemptions***

The schedules which were submitted by 69 countries in 1997 provided information about their market access and national treatment commitments in telecommunications sector. The nine lists of MFN exemptions list the exceptions to MFN treatment made by nine WTO countries.

#### ***4.4. Report of the Group on Basic Telecommunications and the Chairman's Notes***

All the issues address since April 30, 1996 were summarized in this report that by February 15, 1997, 55 schedules and 9 lists of MFN exemptions had been submitted. According to the report, WTO members have agreed that differential accounting rates applied to international traffic should not consider being MFN violations. It also stipulated that further national schedules and lists of MFN exemptions might be submitted prior to January 1, 1998.

##### ***Chairman's Notes***

On January 16, 1997, the Chairman of the Group on Basic Telecommunications issued a Note in order to simplify commitments relating to telecommunications. The Note stipulated that unless otherwise specified in a country's schedule, commitments pertaining to basic telecommunications would apply to three areas: (i) fixed local, long-distance, and international services for public and non-public use; (ii) networks based on all transmission technologies; and (iii) facilities based and resale services.

On February 3, 1997, the Chairman issued another Note stating that signatories do not need to list as market access restrictions frequency/spectrum management policies.

In conclusion, the GATS and other relevant legal documents on telecommunications provide a considerably flexible framework for the Members, especially developing countries. It neither forces developing countries to open up their entire telecommunications sector to foreign competition nor compels them to privatize and deregulate their telecommunications services. Members can select the activities and sub-sectors to commit. They can also choose the modes that they wish to commit on, the forms in which they make these commitments and the kinds of limitations or conditions as well as MFN exemptions. However, the Members should specify their schedules which show their decisions on which areas, to what extent, and under what conditions they decide to open their market to foreign direct investment. In telecommunications sector, there are some requirements that Members should commit. Among them, the important requirements include the separation between regulators and service providers, transparency, prohibition on anti-competitive subsidization and using information obtained from competitors with anti-competitive results.

As a developing country, Vietnam can choose the telecommunications sub-sectors, specific modes that it wishes to commit. The important point is that it should create greater transparency and improve its commitments in the sector through negotiations.

## **CHAPTER IV: CHALLENGES FOR VIETNAM'S TELECOMMUNICATIONS INDUSTRY TOWARD JOINING THE WTO**

Nowadays, telecommunications industry is more and more important for the development of the country. Vietnam's accession to the WTO is a good opportunity to expand Vietnam's telecommunications activities internationally and push up its development.

Firstly, telecommunications liberalization will provide opportunities to attract foreign capital to improve telecommunications infrastructure that would help to improve efficiency of the economy as well as the country's competitiveness.

Secondly, foreign investment also gives opportunities for Vietnam's telecommunications industry to receive modern technology transfer, to learn advanced experience in management. Those would lead to the development of telecommunications industry itself.

Thirdly, the fast change in technology and the move toward globalization of the telecommunications industry will put a positive impact on the effectiveness of state management.

Lastly, Vietnamese consumers will benefit more from the telecommunications liberalization such as cheaper charges and better products and services.

Being a WTO member, Vietnam is not only given opportunities but have to face a lot of challenges. The following analysis will show the challenges that Vietnam should consider carefully to avoid the negative impacts and catch the positive opportunities in

the period of deeper integration.

## **1. Comparison between Vietnam's telecommunications laws and the WTO telecommunications laws: The non-compliant points**

Although Vietnam has revised the legal framework for telecommunications and updated many legal documents, however, it is still a challenge to meet the WTO requirements. The Ordinance has revised to be compliant with all of the regulations under the WTO Annex on Telecommunications and the Decree 160, Decree 217 have been issued to give more specified regulations, however, there still exists some non-compliant points in comparing with the Reference Paper. These non-compliant points are as follows:

### *Interconnection*

The Ordinance has not been compliant with the *Article 2.2* of the Reference Paper although it intends to comply by requiring that interconnection should be provided on non-discriminatory and reasonable terms and conditions and in timely fashion. There is conflict when comparing the Article 44.2 and the Article 50. The Article 44.2 stipulates that interconnect charges should be based on the cost of provision of a product, while the Article 50 states an obligation which requires an added increment to the cost-based interconnection charges. Furthermore, the requirement that interconnection be sufficiently unbundled is appeared to be intentionally compliant but it is not clearly stipulated in detail.

### *Independent regulators*

In theory, the MPT has stated to separate VNPT from its organization, however; in reality, many leaders of the MPT are also the members of VNPT's Administration Board. Besides, the Article 43.2 of the Ordinance on the right of the interconnect access seeker to seek dispute resolution adequately cover the requirement of the *Article 2.5* of the RP, however, it does not appear that dispute resolution will necessarily be conducted by an independent body. Under Article 42.3, dispute resolution is carried out by the regulator and it's not clear that regulator is independent.

### *Universal service*

The *Article 3* of the Reference Paper requires that universal service obligations be not more burdensome than necessary for the kind of universal service defined by the Member. Under the Article 50 of the Ordinance, the community service obligations (CSOs) are determined as subordinate regulations. The CSOs is not defined clearly through the Ordinance, therefore, the regulations seem to be “more burdensome than necessary” and not transparent.

### *Transparency*

Article 5.3 of the Ordinance stipulate that all-type economic entities are given a “fair and transparent competitive environment” as required in the *Article 4* of the Reference Paper, however, it is not specially stated through the Ordinance that terms and

conditions of individual licenses will be made publicly available. Furthermore, the Reference Paper requires that if a license application is denied, the reasons will be clearly informed to the failed applicant, however, the Ordinance does not stipulate such requirement. Transparency of license conditions is very important in telecommunications sector. Without such transparency, favorable terms and conditions can be given to some licensee, which may lead to the violation of national treatment or cause a lot of argument.

The Ordinance does not mention the independence of the regulator which is a fundamental principle as required by the *Article 5* of the Reference Paper.

## **2. Challenges for Vietnam's telecommunications toward joining the WTO**

WTO accession will give not only opportunities but challenges and it will put a profound impact on Vietnam's telecommunications development. It is necessary to define the challenges to reduce the negative impact of joining the WTO.

### ***2.1.Challenges at the macro level:***

#### ***2.1.1.Challenges for reforming the legal framework and management at macro level***

Although Vietnamese government has tried to make its legal documents on telecommunications more compliant with the WTO agreements by revising updating its laws, however, it still takes time to make its legal framework for telecommunication to meet both its development goals and the requirements of the WTO regulations.

Having remained monopoly in telecommunications sector for a very long time, nowadays Vietnam just took the first steps in opening its telecommunications market. As

mentioned in the above chapters, although monopoly has been removed, competition in Vietnam's telecommunications market is not fair. Although the MPT stated that it had created independence of the VNPT, however, it is difficult to make a real separation of these two organizations. The reasons are that they still co-locate, even share some office facilities. More importantly, many leaders of the MPT are also the member of VNPT's Administration Board. In fact, the MPT and VNPT share the same interests; moreover, the MPT unofficially relies on the VNPT's finance. This leads to no independent status between regulator and operator in Vietnam's telecommunications market although it is a fundamental principle of the WTO agreements.

Until now, post and telecommunications are still operating under control of the same organization (the Ministry of Post and Telecommunications) while postal sector need a lot of subsidization from telecommunications sector. The employees in the state-owned organizations in post and telecommunications are very large and they are considered to be well-paid employees in Vietnam. It is also obvious that post and telecommunications sector is one of the sectors that have unfair recruitment policies which sometimes are not stipulated in documents but obvious in real life, for example, each employee in post sector is given one vacancy for his or her relative. With this structure of organization, it is very difficult to remould its bulky, bureaucratic structure and become more sleek and efficient. Recently, the MPT has issued a Decision in which the current Vietnam Post and Telecom Corporation (VNPT) will be split into two separate corporations: The Vietnam Post Corporation and the Vietnam Telecommunications Corporation to separate post and telecommunications. This restructure has been processed during 2005. However, because of Vietnam's cultural and

administrative characters<sup>11</sup>, the implementation of this Decision is a big challenge and it must take much longer time to stabilize the operation of postal sector which used to rely heavily on the finance of telecommunications sector.

Bribery and red tape are also very big problems in Vietnam and telecommunications sector is not an exception. The regulations on transparency in the Ordinance, as analyzed above, are not very clear and not yet compliant with the Reference Paper. This may lead to bribery and red tape problems in some stages, which is very difficult to manage.

In addition, the regulations on competition, licensing, basic services, independence of the state regulatory body are all very complicated and still new in Vietnam. In order to utilize the opportunities and overcome the challenges in opening the telecommunications market, it requires not only wise policy makers, talent managers but competent employees in the sector. To improve the capacity of employees and local governments is also a challenge for manager in telecommunications sector.

### *2.1.2.Challenges for harmonization between economic and social objectives*

Vietnam's telecommunications industry used to be controlled by the governmental authorities. Being a developing country, telecommunications services are even unfamiliar in many rural and remote areas, while Vietnam is always trying to make basic telecommunications services accessible and affordable to those people. Besides,

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<sup>11</sup> The operation of state-owned organizations in Vietnam is usually impacted by personal relations. Although post and telecom sectors will be divided in theory, it is very difficult to operate independently in practice as they have been together for a very long time. Furthermore, currently, post and telecom sectors share the same locations and it is difficult to separate them at local level.

there are some sub-sectors that are profitable while some other sub-sectors are at loss. Cross-subsidization policy was provided to ensure this social benefit; however, it is now avoided to follow the WTO requirements. The community service obligations<sup>12</sup> (CSOs) under the Article 50 of the Ordinance seem to be a substitutive means for the cross-subsidization policy in the transition period. Without CSOs policy, it is concerned that the future telecommunication market in Vietnam would be highly fragmented when large foreign corporations come to penetrate. Recently, VNPT is responsible for developing infrastructure nationwide, including extending costly services to low-profit rural, mountainous and isolated areas but it will become an unfair and burdensome obligation for VNPT when Vietnam improve greater liberalization and foreign investors can rely on the existing infrastructure to reduce their capital costs and they just invest in the profitable areas. The CSOs appears to be a solution to ensure social objectives, however, it is considered to be not compliant with the WTO regulations.

In addition, if Vietnam opens telecommunications market freely, its domestic enterprises may lose their market share. This will lead to a loss in the national budget which is a very important source to fulfill social objectives because telecommunications industry currently ranks the second among the largest contributors to the national budget.

### *2.1.3. Challenges for harmonization between development and security*

It is a big challenge for Vietnam's telecommunications industry to undertake full commitments in telecommunications liberalization with the WTO, at least in the near

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<sup>12</sup> The Article 50 of the Ordinance stipulates that the State ensures the necessary conditions for enterprises providing public beneficial telecommunications services by regulating connection charges on the basis of cost and their contributions under community service obligations.

future. Being a country which is sensitive in politic aspect, furthermore, the national economy and security depend more and more on reliable and secure operation of information networks, Vietnam is more careful in opening its telecommunications sector. With greater liberalization and globalization of telecommunications networks, presence of foreign investors will increase the availability of telecommunications resources for all citizens, businesses and governmental organizations. However, it may be risky for domestic stability and national security because communications are vital to national security and the operation of the key industries. Foreign companies may install equipment and lines that Vietnamese authorities can not control. Telecommunications industry is also an important means to maintain political and social stability within the country and preserve the sovereignty of Vietnam. Furthermore, the reach of global telecommunications networks may harm many industries' security. Cyber-crimes such as hacker, online bank robber and terrorism become serious problems that Vietnam has to face.

## ***2.2.Challenges at micro level***

Vietnam will join the WTO in very near future and it has been gradually taken steps to liberalize its telecommunications market. Domestic companies started to get acquainted with competition, devised strategies to be ready to competition. However, weaker competitiveness of the domestic telecommunications companies pushes them to face the biggest challenges in integration period.

### *2.2.1. Shortage of capital and technology*

Shortage of capital is one of the biggest problems of domestic companies. Most of the domestic companies in telecommunications are state-owned companies whose capitals are obviously much shorter than that of the powerful international telecommunications corporations from developed countries. In telecommunications sector, a huge source of capital is necessary to build telecommunications infrastructure that will help them to provide better services. In addition, the foreign companies with large capital resource and experience usually pay much higher salaries to attract competent employees. This is also a big problem that domestic companies must find a solution.

Besides the shortage of capital, domestic companies also have to face the shortage of technology. Because of this weakness, the cost of services in domestic companies is very high in comparing with that of foreign companies. For example, the current charge for universal license imposed by VNPT is fourfold as that imposed by many foreign enterprises in other countries. Vietnamese customers also have to pay much higher fee for telecommunications services than customers in many other countries in the region. Despite of higher charges, the quality of services is not very good. This is also a fact that makes the competitiveness of domestic companies weaker.

### *2.2.2. Shortage of qualified labor force*

The biggest domestic telecommunications enterprises in Vietnam are state-owned and almost of them maintain the unfair recruitment and compensation policies. Except

some cases, it is popular that recruitment is based on relations other than qualifications. Compensation for the staff of state-owned enterprises is much lower than that of foreign ones. This leads to the fact that state-owned enterprises can hardly have enough qualified staffs to compete with foreign counterparts.

In addition, the awareness of integration and WTO by the public at large, the firms and other players is limited. Many regulations in trade in services are new in Vietnam. Many domestic telecommunications companies' leaders are lack of management and business experience in the conditions of international integration. Besides, a large number of employees neglect the WTO regulations, they unclearly understand the challenges that their enterprises must face in the integration period. This makes it harder for the domestic enterprises to cope with challenges.

## CHAPTER V: CONCLUSIONS AND RECOMMENDATIONS

### 1. Improve the regulatory and legal framework

Although Vietnam has revised its regulator and legal framework to conform with many international commitments it has made in telecommunications sector, however, it still exists inconsistent points with the WTO Agreements. Toward joining the WTO, Vietnam should either bring the non-compliant points to conform to the WTO regulations or reduce the gaps between Vietnam's and the WTO telecommunications laws. The suggestions are as follows:

#### *1.1. Bring the regulations to conform to the WTO regulations*

- Firstly, the government should revise the legal documents relating to telecommunications and make further clarification: The important terms such as “community service obligations” (CSOs) should be clearly defined. Besides, the regulations which are implicitly compliant with those of the WTO but not clear enough should be more specified, e.g. the regulations on interconnection, allocation and use of scarce resources, universal service.
  
- Secondly, the MPT should improve the transparency of the licensing procedures under its relevant laws: As required by the Reference Paper, the terms and conditions relating to licensing procedures should be made “publicly available”. This requirement should be clearly stipulated in the legal documents.

### ***1.2. Reduce the gaps between Vietnam's telecom laws and WTO requirements***

- Currently, Vietnam's telecommunications laws are not compliant with the requirement of independent regulators under the WTO regulations. As mentioned in the previous Chapter, although the MPT and VNPT have very close relationship and the MPT always give favor to the VNPT. Because of existing political and public administrative culture of Vietnam, it is impossible to create a fully independent regulator in the near future. The only solution is that it should reduce the gaps between Vietnam's telecom laws and WTO requirements by allowing public participation and consultation on the MPT's policies. Besides, the government should speed up the restructuring process of post and telecommunications system in general and the MPT and VNPT in particular, then, separate these two organizations in appropriate time.
- A Department which is responsible for supervising telecommunications infrastructure network operations should be established to supervise the activities of VNPT relating to network leasing to improve real transparency and ensure a fair competition environment.
- Domestic telecommunications enterprises in Vietnam need more time to prepare for competition with foreigners. Regarding to the market access principle under the WTO Agreements, Vietnam should negotiate that foreign equity will be no more than 50% and this market access can be applied gradually by several periods after its WTO accession.

- Vietnam should assess the strength and weakness of its domestic enterprises' services to decide which sub-sectors it should make commitments under the WTO Agreements.

## **2. Improve management and administration**

### ***2.1. Reorganize the administrative structure***

- Administrative structure of the MPT should be reorganized to increase its efficiency. Firstly, the bulky administrative system should be reduced and its recruitment policy should be changed. Vacancies should be given publicly to attract the talent applicants to management positions.
- Secondly, real separation between post sector and telecommunications sector should be established. In post sector, the administrative system is even more bulky than telecommunications sector, especially at provincial level. The fact that many staffs of post sector just attend short-term training and undertake easy jobs but receive too much high salaries has created unfair mechanism. Therefore, cross-subsidization from telecommunications sector to post sector should be reduced to save financial resources for the telecommunications industry to develop.

### ***2.2. Reform administrative procedures***

- Complicated administrative procedures are general problems in many sectors in Vietnam. In telecommunications sector, for example, the current administrative procedures for licensing are cumbersome with too long consideration process. In

fact, the time to get a license is longer than the time stipulated in the regulations. In many cases, many companies applying for a license have to keep waiting for extended periods<sup>13</sup>. Therefore, all administrative procedures should be reformed.

### ***2.3. Remain government's control over the backbone of the telecom network***

- Because telecommunications is a very sensitive sectors which affects all economy, political regime and social life, Vietnamese government should still remain its management over the telecom backbone of the telecommunications network in the near future to ensure security.

## **3. Improve domestic competitiveness**

Toward joining the WTO, improving domestic competitiveness is crucial for telecommunications industry. It not only helps the domestic enterprises to compete with foreign investors in the future, but also increases the national budget by their tax contribution.

### ***3.1. Improve competition in telecommunications market***

- Firstly, the government should encourage more new companies to participate in telecommunications market. The participation of new companies will promote competition in the industry. New companies will bring more financial sources into the industry and they can use it for infrastructure construction. The primary participants in the market always the companies which utilize their comparative advantages to

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<sup>13</sup> According to “*Competition review of the Vietnamese Telecom Sector*” by Nguyen Thanh Ha, Pham Quang Thanh, John David and David Ray.

penetrate into the market. With new participation, the existing enterprises must try their best to compete with more competitors and keep their market share. They also usually apply the new kinds of services or the services under more modern technology. These factors will help them to operate more effectively. As mentioned in the Chapter above, higher competition in internet services has led to higher penetration of the internet users and stronger development of internet providers. Currently, competition in fixed line and mobile services is still weak and it should be promoted by encouraging new participation of service providers.

In addition, the government should study the reasons why many among the new companies which have been granted licenses so far are still reluctant to start operation. From the findings, the government should have more appropriate policies.

- Secondly, during the time to adjust telecommunications industry, government can provide all the enterprises more favorable conditions to develop. This will help them to improve their competitiveness to cope with foreign enterprises in the future.

### ***3.2. Invest on constructing telecommunications infrastructure***

- As mentioned in the previous Chapter, the MPT, in many cases, do not approve the VNPT's lower pricing policy because it concerns that the current infrastructure cannot adapt the increase of subscribers. Therefore, government should invest more in telecommunications industry to construct and modernize telecommunications infrastructure. Infrastructure construction by the government also helps to maintain

the state control over the backbone of telecommunications network later, even when the foreign investors penetrate the market.

- Vietnam can apply the policy which requires that in order to get a license to provide services; each operator has to build a number of landlines. However, the authorized organization should carefully study to decide how many and where the landlines should be constructed to avoid wasteful and ineffective operation.
  
- Long-term incentives should be given to the BCCs to attract foreign investment.

### ***3.2. Strengthen human resource***

- Human resource is very important in knowledge-based economy and an industry cannot develop without strong human resource. In telecommunications industry, besides reforming recruitment policies to attract competent applicants, the government should invest more on scholarship funds for potential employees as well as organize training programs for the staffs of both governmental organizations and telecommunications enterprises.

In conclusion, WTO accession will create many new opportunities while impose new challenges to the telecommunications in Vietnam. Competition will accelerate the development of telecommunication industry which will in turn positively influence on other aspects of both society and economy. Foreign participation in the telecommunications sector can help it to attract foreign investment and get international

experience, however, it also give risks to Vietnam's economy and political regime. Vietnam should implement the appropriate policies to avoid the risks and grasp the opportunities to develop its telecommunications industry in joining the WTO.

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