

Liberalization of the Costa Rica Telecommunications Market

International Trade in Services Negotiation Simulation

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Tyler Hoffman/Jeanah Lacey/Olumide Adekoje/Maria Chan

**This simulation is based on a Master's in Commercial Diplomacy
Project completed at the Monterey Institute of International Studies by
Andrew Dyer**

Background, Facts and Issues Common to All Parties

Following is information and assumptions that are common to all parties in this negotiation simulation. They are intended to help set the parameters of the negotiations and give participants an initial point of reference before formulating positions within their respective stakeholder groups.

Efforts are currently underway to liberalize Costa Rica's telecommunications market. GlobalCom, a fictitious American company created for the purpose of this exercise, stands to gain approximately five million dollars annually in a liberalized telecommunications market in Costa Rica. Costa Rica stands out from its regional partners as an economic trendsetter, having already begun the internet boom that will soon hit its neighbors in Central and South America and the Caribbean. It is in the interest of GlobalCom to pursue the liberalization of the Costa Rican market, establish itself in that country, and use the country as a springboard to launch its growing information technology business throughout the region. GlobalCom already maintains a part-time representative in San José, which demonstrates the company's commitment and interest in this market.

The introduction of foreign competitors into the Costa Rican telecommunications market requires a constitutional amendment to dissolve the current state-owned utility company's monopoly position in the market. The current Costa Rican telecommunications service provider is the Instituto Costarricense de Electricidad (ICE), known as the "National Utilities Company" in English. Such an amendment requires an overwhelming (2/3) majority of votes in the Legislative Assembly, which is comprised of fifty-seven deputies.

Telecommunications reform has become a notoriously difficult political issue for the current administration. President Rodríguez came into office intending to reform the telecommunications sector, and he introduced privatization legislation several years ago. That legislation was defeated despite the fact that the President and prominent leaders from the business community all supported the effort.

In a new attempt to pass reform legislation, Rodríguez recently began a process of national consensus building designed to minimize political gridlock. The process has already resulted in the creation of a law that would gradually open the telecommunications market to outside competitors. While the process has not succeeded in dampening the spirit of opposition leaders, both major parties have agreed to introduce a compromise bill on the floor of the assembly. If passed, this bill will open the telecommunications market to foreign competitors yet maintain the national utilities company as a state-owned enterprise.

Now that both parties have committed to this debate, momentum seems to be building and the outlook for the passage of a compromise bill is positive. The likely result will be an opening of the Costa Rican market in which the state maintains some stake in the operation of the national utilities company. The exact nature of the relationship between the Costa Rican government and the new national utilities company is not yet clear, making it imperative that GlobalCom push for rules that will create a level playing field for foreign competitors and that other stakeholders analyze their interests and understand where they may gain or lose if further reform legislation is made law.

For the sake of this simulation, the following assumptions will be made:

- As mentioned, efforts are being made to present legislation that will result in the liberalization of the Costa Rican telecommunications market. Past attempts to present similar legislation have failed.
- In order to create new draft legislation, stakeholders have decided to meet to draft a comprehensive Memorandum of Understanding (MOU) that will be used as a basis for legal text regarding the liberalization of the Costa Rican telecommunications market.
- If negotiations are successful, the leadership of both major political parties in Costa Rica, the PUSC and the PLN, have agreed to draft legislation based on the principles and language of the MOU.

Commercial Background

As mentioned, GlobalCom stands to gain approximately five million dollars annually in a liberalized telecommunications market in Costa Rica. Costa Rica stands out from its regional partners as an economic trendsetter, having already begun the internet boom that will soon hit its neighbors in Central and South America and the Caribbean. Recent trends show that demand for telecommunications services in Costa Rica is growing rapidly. Furthermore, Costa Rica is on the forefront of Central America's information technology development, and can serve as a starting point for GlobalCom's own development as an information technology service provider in the region. Costa Rica is far ahead of its neighbors in transforming its economy from the production of just primary products toward a diverse set of manufacturing and services industries that depend on efficient information transfers.

GlobalCom's market potential in Costa Rica depends on the range of services it will offer to Costa Rican individuals and businesses. This analysis assumes that GlobalCom will offer international long distance as well as complete telecommunications services to Internet service providers. It is believed that GlobalCom will be able to secure one-quarter of the existing market in these products.

Approximately 77 million minutes of international long distance telephone calls originate from Costa Rica each year (see Figures 1 and 2). One-quarter of this figure is approximately 19.25 million minutes. Available figures show that an average three-minute local call at peak hours costs approximately 6.5 colones (in 1995). Extrapolating a ballpark figure for an international long distance phone call of the same duration for the current year brings us to 18.59 colones. (6.5 colones multiplied by 1.43 to account for currency depreciation, then doubled to account for the more expensive cost of international long distance). 18.59 multiplied by 19.25 million totals 357,857,500 colones, or US\$ 1,391,197.

Figure 1.

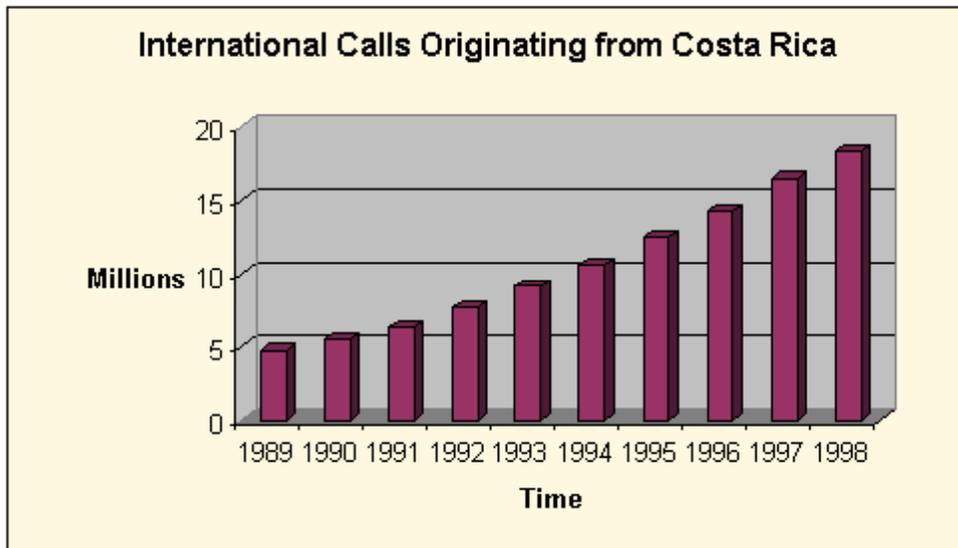
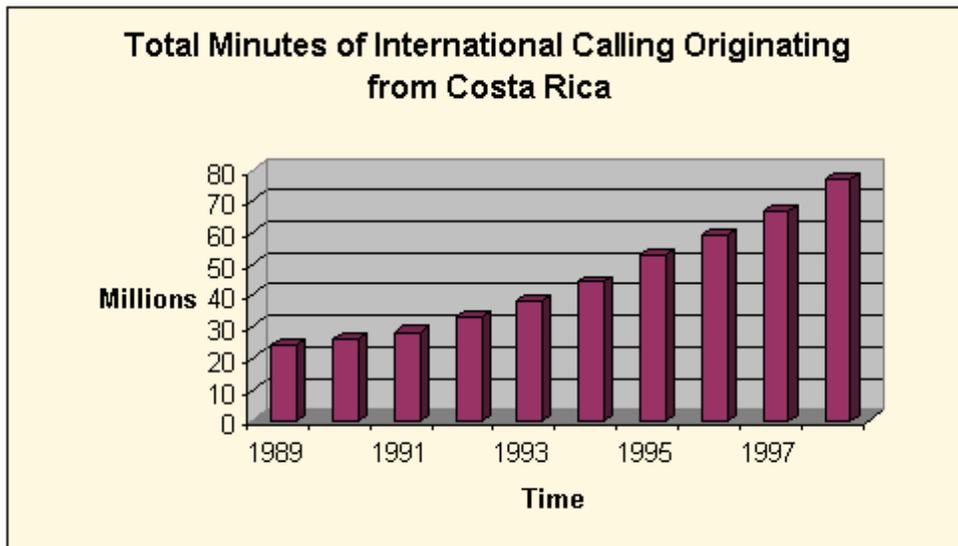


Figure 2.



The profit potential for providing telecommunications services to Internet service providers (ISPs) is extremely difficult to determine due to a fundamental lack of data on prices. In order to arrive at a figure, it will be assumed, once again, that GlobalCom will secure one-quarter of the market. It is highly likely that GlobalCom can secure a much larger portion than this due to its new emphasis on providing extremely high quality telecommunications services on a global scale.

Figure 3.

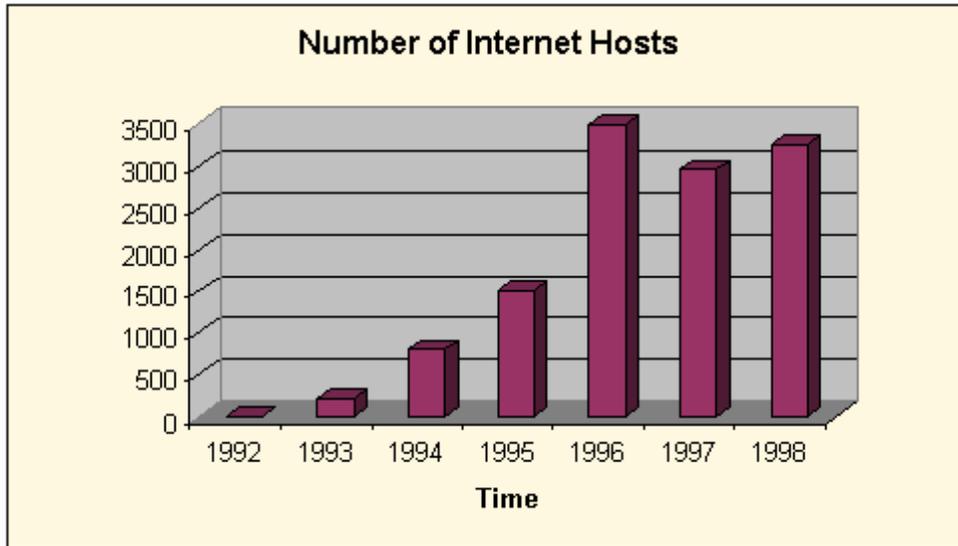
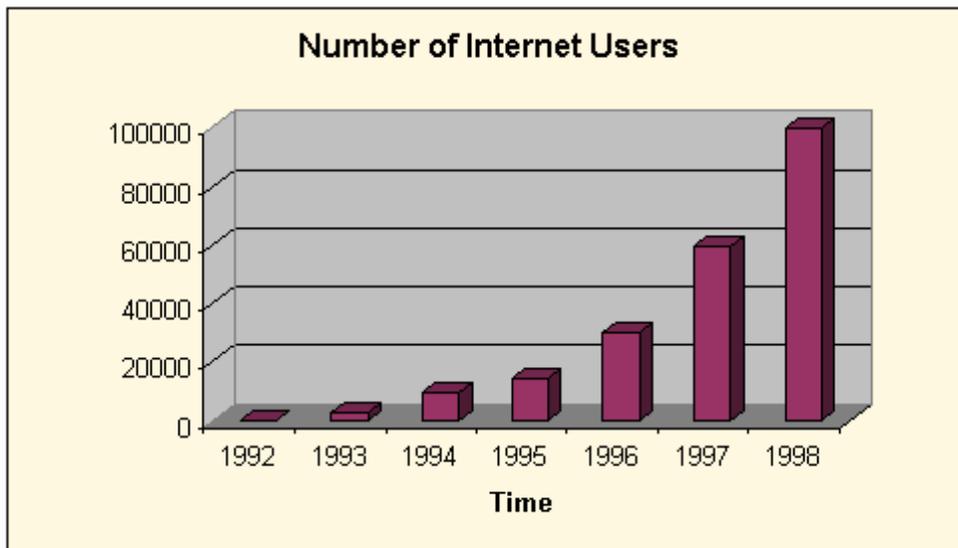


Figure 4.

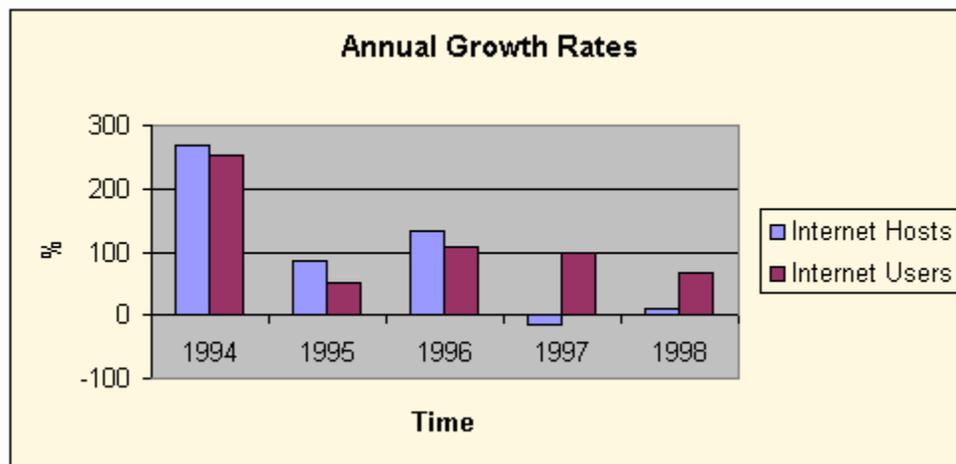


One-quarter of the current ISP market would equal approximately 815 ISPs. It is important to note, however, that while the number of ISPs has stabilized somewhat over the past two to three years, the number of Internet users has grown tremendously,

providing a particularly optimistic forecast for this market (see Figures 3 and 4). If GlobalCom charges US\$1,000 as a start-up fee for ISPs that switch to its service (this would include a complete overhaul of the ISP's current system and connection to GlobalCom's worldwide state-of-the-art network) and a \$100 average monthly fee (this fee would vary, of course, depending on the number of Internet users hosted by each ISP), the total intake from one ISP per year would be \$2,200. Multiplying this number by one-quarter of the market brings the total gross yearly income to \$1,793,000.

Of course, this only represents the first year's annual gross revenue. It is important to look at the rates at which each of these markets is growing in order to get a sense of just how much may be earned in the future.

Figure 5.



Although the initial boom in new Internet users and ISPs has tapered off, both have continued to post impressive positive growth rates over the last several years (see Figure 5). The international long distance market shows a relatively more stable pattern of growth (see Figures 1 and 2), which is to be expected from an older and more established industry. As the market for Internet technology develops, growth rates can be expected to even out.

The Economics of Telecommunications Reform: Why Costa Rica Will Benefit

Once competition is introduced into Costa Rica's telecommunications market, Costa Rican telecommunications customers will enjoy lower prices, higher quality services, a wider array of service choices, and state-of-the-art technology. A more efficient telecommunications sector will improve the efficiency of numerous business endeavors, thereby boosting the whole country's economy. An improved telecommunications infrastructure will also help attract increased levels of foreign direct investment.

As a state-run and state-supported entity, ICE lacks a commercial incentive to provide the best possible services at the lowest possible cost. It also lacks the financial ability to invest in the acquisition or development of new infrastructure. As a state-run institution, it is subject to fiscal restraints that slow the introduction of new technology, which is particularly problematic since the cost of maintaining a state-of-the-art telecommunications network is skyrocketing. Satellite, cellular, and information technologies are changing at breakneck speed. The longer that Costa Rica under-invests in its telecommunications sector, the farther behind it will slip.

Costa Rican Telecommunications: One Step Behind¹²

The Forum for Consensus Building is a diverse group of governmental and private sector representatives that were tasked with analyzing the telecommunications industry and developing a proposal for reform. The Forum found that, compared to countries at development levels similar to its own, Costa Rica's telecommunications infrastructure comes up painfully short. The group concluded that the results of this gap could be dramatic. The gap could reduce productive efficiency across a large number of industry sectors and reduce foreign direct investment.

"In order to compare the state of our telecommunications infrastructure with that of the rest of the world, we must first determine which are the most appropriate countries to select. We must not fall into the habit of comparing Costa Rica with other Latin American countries that perennially lend us a false sense of security in the state of our development. Instead we must compare Costa Rica to countries at similar development levels development—countries with whom we compete for export markets and foreign investment. Those countries are: Chile, Ireland, Mexico, New Zealand, Switzerland, Singapore, and Taiwan." According to studies conducted by the *International Telecommunications Union* in 1995, there are five major categories in which Costa Rica is compared to these other nations: teledensity, service quality, efficiency in the supply of services, investment, and rates.

Teledensity: Costa Rica is surpassed in cellular teledensity in every case and is surpassed by a majority of countries in fixed-line teledensity. Costa Rica is losing competitiveness compared to its global competitors.

Service Quality: Costa Rica has not only the greatest unsatisfied demand for services, but also the longest average wait for installation of telephone lines (up to three times as long as that of Chile or Mexico). It is important to note that although Costa Rica's level of service failures is about the same as Mexico's and lower Chile's or New Zealand's, the timetable for repairs is far longer.

Efficiency in the Supply of Services: Costa Rica is at a serious disadvantage

in terms of the number of lines per employee and the level of investment per employee.

Investment: Costa Rica invests approximately US\$20 in telecommunications for every inhabitant. In other countries, the investment ranges from two to ten times higher. Since 1992, the country has annually invested less in telecommunication than the amount needed to maintain the current level of personal welfare enjoyed by Costa Ricans.

Rates: ICE has attempted to reduce the effect of under-priced local calls on rates for international calls, but the problem still exists. International calls are still relatively expensive, and the price of a three-minute domestic call does not appear to be all that low. This reduces the competitiveness of our productive sectors."

Opening up the telecommunications sector to private telecom service providers would have several positive effects on the Costa Rican economy. First and foremost, the unsatisfied demand for telecommunications services would rapidly shrink as providers soak up those tens of thousands of customers who have been awaiting service for weeks or even years.

Public Survey on Telecommunications Reform

According to *La Nación*, Unimer Research International conducted a survey of 1,201 Costa Ricans to determine their knowledge of the issue of telecommunications and energy reform.

- 48.4 percent of Costa Ricans said that they were completely unfamiliar with the plans to reform ICE.
- 21.8 percent claimed to know very little about telecommunications and energy reform.
- 20.8 percent had a general idea of the issue.
- 3.1 percent assured researchers that they understood the propositions.

The Unimer study went further, asking questions about the Rodríguez Administration's handling of the issue and citizens' opinions on what should be done with ICE.

- 75.6 percent of the 512 people who claimed to have a general idea or know very little about the initiatives answered "no" when asked whether the Rodríguez administration had offered information regarding the reforms; only 21.8 percent answered "yes."
- 68.1 percent of the 512 declared that the government had managed the ICE reform process poorly.

- 21.5 percent believed that the government was functioning well.
- Of all of the people who claimed to have a certain degree of understanding of the reform process, 70.2 percent favored a reorganization of ICE to make it more efficient.
- 8 percent of those people favored the gradual introduction of competition to the market.
- 6.4 percent did not support either of these options.
- 5.6 percent supported selling off some services.

Then, once unsatisfied demand for telecom services is soaked up, free-market competition will begin to change the face of Costa Rica's telecom industry. Whether or not ICE participates as a private or quasi-private entity in the telecom market, service providers will begin attempts to expand their customer bases by lowering rates and improving their services. They will also want to try to expand their overall customer base, which will require investment in physical infrastructure.

Private companies also have an economic incentive to provide service to those who were previously not served by ICE due to geographic or other restrictions. Numerous communities in Costa Rica still do not have adequate (or in some cases any) telecommunication services, and these could be tapped for customers by any company with the resources to make the initial capital investments. Therefore, the process of liberalization will likely increase teledensity and provide a larger number of Costa Ricans with the opportunity to obtain telecommunications services.

Costa Rican businesses will also benefit from liberalization. As the telecommunications infrastructure becomes more efficient, teledensity increases, prices drop, and service quality improves, Costa Rican businesses will find themselves wasting less time and money in dealing with an inefficient telecommunications system. They will also find that it is easier and cheaper to communicate with customers and business partners—particularly those who are located in foreign countries.

What may be the most significant result of telecommunications liberalization is an increase in foreign direct investment. Indeed, attracting foreign investment has been a major goal of the Rodriguez administration, and a principle objective in Costa Rica's economic development strategy for some time. But while the country boasts a well-educated and low-cost work force, foreign companies may be turned off by the inefficient communications services that ICE currently provides. Foreign investors may instead choose to invest in any number of other countries within or beyond the Central American region that have more efficient communications and comparable work forces.

Once the telecommunications sector is liberalized, and service quality, prices, and reliability improve, Costa Rica will be far more attractive to foreign companies wishing to establish themselves in Central America. Concerns over the declining quality of telecommunications (due to insufficient investment by the Costa Rican government) will

transform into a recognition that open competition in the telecommunications sector will continue to provide high quality service at a reasonable price. Foreign investors will appreciate the stability that comes with a competitive market.

Of course, liberalizing the telecommunications sector will also attract telecommunications service providers who will need to hire a wide assortment of workers in order to operate in Costa Rica. Workers at ICE who are concerned about losing their jobs may be able to find work at a foreign telecom provider once liberalization occurs. In fact, scholars have found that telecommunications liberalization tends to have a positive effect on employment.

Legal and Political Analysis of Telecommunications Reform

The ICE enjoys a legally-mandated monopoly for the provision of telecommunications services. Only a constitutional amendment can dissolve this monopoly.

In Costa Rica, constitutional amendments require a two-thirds majority vote in the Legislative Assembly. They must also pass a second vote in the Legislative Assembly during a later session, which means that the process of amending the Constitution is lengthy, particularly because before a bill reaches the floor of the Assembly, it must go through a review process similar to the U.S. Congress's committee process.

Costa Rica's constitution and campaign finance laws have created a virtual two-party system with a strong Legislative Assembly and a relatively weak executive. The state contributes funds to the electoral campaigns of parties that win five percent or more of the vote, which makes it difficult for candidates from third parties to break into the system. This makes for a wide range of views within a single party and reduces the influence that parties have over the voting habits of their deputies. Furthermore, votes on the floor of the Assembly are rarely recorded or publicized, and there is little repercussion for crossing party lines. All of this gives deputies significant latitude in their voting habits and makes them prime targets for lobbying activities.

President Rodriguez's previous failure to pass privatization legislation is evidence of the relatively diminished role of the president in Costa Rican politics. He is able to introduce legislation, but cannot necessarily muster a two-thirds majority vote through his efforts or influence alone. Rodriguez has used the power of the executive to determine the agenda of the current extraordinary legislative sessions in order to focus attention on the issue of telecommunications reform, but even this will not bully opposition leaders into making large concessions.

The key to achieving the required two-thirds majority is to form a multi-party, multi-stakeholder consensus. In order to build such a consensus, voters and local Costa Rican interest groups need to be pulled into the campaign for telecommunications reform. Indeed, any steps toward de-politicizing the issue will undoubtedly speed up the process, which has been held back more by political interests than by problems related to

substantive issues. Both major political parties support telecommunications reform, but they differ on issues of how that reform should be carried out.

Current Status of Telecommunications Reform

To date, the debate over telecommunications reform has focused on the pace of liberalization and the nature of the state's involvement in a liberalized market. Very little has been made of the issue of a level playing field other than to say that the telecommunications market should be truly competitive.

President Rodriguez is a member of the Social Christian Unity Party (PUSC) and has supported telecommunications reform since the beginning of his presidency. The opposition party, the National Liberation Party (PLN), has blocked all of his attempts at reform, although the parties almost reached agreement on several occasions.

To try to break the deadlock between the parties, President Rodriguez initiated a process of national consensus building in which interest groups from various business sectors and society were invited to provide input into the telecommunications reform process. A formalized process for considering this input produced a piece of legislation, which was essentially a compromise between Rodriguez's attempts to fully privatize the telecommunications industry and conservatives' efforts to maintain the national utilities company as a state-owned monopoly. The law did not make it through the committee process intact, but it did bring the Rodriguez administration and the opposition much closer together, and it established a cooperative process for the first time. Subsequently, the Sub-Committee on Utilities Reform came out with its own compromise bill, which brought the issue closer to resolution than perhaps ever before. However, this legislation did not pass a vote.

Specifically, the compromise legislation takes into account concerns over profit utilization and the gradual opening of the market. The bill called for:

- A three-stage process of liberalization that is subject to review by an oversight entity;
- ICE to become a quasi-private entity;
- ICE to use 100 percent of its profits in order to develop its business for up to five years (after which deputies will revisit the issue of profit utilization);
- The executive to develop a National Plan for the Development of Telecommunications; and
- Creation of a quasi-governmental regulatory agency that will sell radio frequencies concessions and monitor for (and respond to) anti-competitive behavior.

The bill states that one of its objectives is to "increase the participation of businesses in the market of telecommunications through the promotion of effective competition in the provision of domestic and international telecommunications."³ In Article 126, it discusses the promotion of competition with regard to telecommunications:

The sustainable development of public telecommunications services and their efficient provision will proceed through the gradual liberalization and promotion of effective competition.

It is understood that effective competition does not exist when an operator or group of them displays a market power that gives them the ability to significantly influence the price or rate of the public telecommunications services, harming the rights of its users and obstructing the entry and encouraging the exit of new operators or users of the services, in conformity with that established in articles 195, 196, and 197 of this law.⁴

Opposition leaders are already planning to attack new legislation, and members of the sub-committee that approved the first proposed bill have even said they will not give it their full support on the Assembly floor. To effectively counter this opposition, GlobalCom will likely begin a comprehensive lobbying effort. Keeping in mind the two priorities for GlobalCom—market opening and fair competition—the company should push for the introduction of stronger language that would protect open and fair competition and limit the state’s involvement in supporting ICE. Indeed, the bill needs to go further than it currently does to ensure that there will be a level playing field among all competitors both foreign and domestic. It must specifically outlaw government bailouts or subsidization of ICE, and it must specifically allow for the failure of ICE. That is to say, each participant in the market, including the state-owned provider, must operate under the same levels of risk and uncertainty.

In terms of creating language for legislation, deputies must be convinced that such language is in Costa Rica’s best interests. Any proposed legislation regarding telecommunication reform will first be heard by the *Subcommittee on Utility Reform*, a subcommittee of the Committee on Government and Administration within the Costa Rican legislature. Both the PUSC and the PLN have party members active on this subcommittee. If any legislation is to be accepted by this committee it will be important to emphasize that the benefits of competition will be maximized only if a large number of companies choose to offer services in Costa Rica and that multinational companies will be discouraged from entering the market if they believe that ICE is maintaining an unfair advantage over its competitors. Only the strictest language that guarantees a level playing field will assuage these concerns.

Telecommunication Reform and the WTO

There are several relevant bodies of WTO law that are important for this simulation, they are the GATT, the General Agreement on Trade in Services GATS and the WTO Basic Telecommunications Agreement. By signing onto the Basic Telecommunications Agreement, Costa Rica will demonstrate to foreign investors that it is serious about reform and that their investments in telecommunications cannot be wiped out by a rapid change in government policy.

If Costa Rica were to sign the WTO Basic Telecommunications Agreement, it would first have to specify exactly what sort of commitments it is prepared to take on, which would require consideration of a whole host of technical details that the current legislative session is not ready to debate. Inserting language that even states the intention to sign the agreement might dissuade support from deputies who would otherwise vote for liberalization. At this point, it is advisable to simply mention the agreement as another avenue for showing foreign investors just how committed Costa Rica is to the reform process.

It should be stressed that the WTO Agreement does not lock Costa Rica into anything that it is not including in its own law. Costa Rica could simply come up with a schedule of commitments that repeats the language of its own law. Signing the WTO agreement will help attract foreign telecommunications investment by showing foreign service providers that they can expect the Costa Rican market to remain stable.

Background on the WTO General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS) is one of the key agreements administered by the World Trade Organization. It is designed to “secure progressively higher levels of liberalization of trade in services through successive rounds of negotiations, which should aim at promoting the interests of all Members of the WTO and at achieving an overall balance of rights and obligations” (Article XIX of the GATS).

The articles of the GATS, and a set of Annexes, establish some general rules for government measures that affect trade in services. In addition, national schedules of commitments set out specific commitments by each member country. The schedules are an integral part of the Agreement, as tariff schedules are an integral part of the GATT. While the text of the Agreement applies uniformly to all Members of the WTO the scheduling of commitments is negotiated by each Contracting Party (member countries or customs territories) with every other Contracting Party.

The text of the GATS consists of 6 parts:

1. Scope and Definition (Article I)
2. General Obligations (Articles II to XV)
3. Specific Commitments (Articles XVI to XVIII)
4. Progressive Liberalization (Articles XIX to XXI)
5. Institutional Provisions (Articles XXII to XXVI)
6. Final Provisions (Articles XXVII to XXIX)

The GATS does not define "services" but does define "trade in services". The definition covers not only the cross-border supply of services but also transactions involving the cross-border movement of capital and labor. Paragraph 2 of Article I defines trade in services as the supply of a service through any of four modes of supply:

4 modes of supply:

Cross-border supply

Cross-border supply is the supply of a service from the territory of one Member into the territory of any other Member. This is the type of transaction analogous to trade in goods. For example: international transport and the supply of a service through telecommunication or mail.

Consumption abroad

This happens when the consumer moves to the territory of another country and buys services there. For example, tourism or when a German resident crosses the border to deposit money in a Swiss bank. It may also happen when the property of the consumer is sent abroad for servicing, as in the case of ship repair.

Supply through commercial presence

This involves direct investment in the export market through the establishment of a business there for the purpose of supplying a service. For example, a country allows the establishment of foreign banks or hotels on its territory.

Supply through the presence of natural persons

Supply through the presence of natural persons. This means the temporary entry of an individual for the purpose of supplying a service. This person could be the service supplier himself or an employee of the service supplier. In both cases, the GATS definition covers only the temporary stay of such persons.

Obligations under the GATS

Obligations contained in the GATS may be categorized into two groups: General obligations which apply directly and automatically to all Members, regardless of the existence of sectoral commitments; and specific commitments whose scope is limited to the sectors and activities where a Member has decided to assume market access and national treatment obligations.

(a) General obligations

MFN Treatment: Under Article II, Members are expected to give services and service suppliers from each Member country "treatment no less favorable than that accorded to like services and services suppliers of any other Member country". However, Members were allowed to take a one-time exemption for specific services at the time they entered into the GATS. They could also obtain an exemption through the negotiation of a waiver under Article IX of the WTO Agreement. Any such exemption is subject to review and should in principle not last longer than 10 years.

Transparency: GATS Members are required, inter alia, to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests.

(b) Specific Commitments

Market Access: Countries are prohibited from placing any quantitative limitations on services and service suppliers in any sector listed in their national schedule of commitments unless the country lists any nonconforming measure in its schedule. The types of limitations covered by this requirement are enumerated in Article XVI (2). For example, a country is required to list limitations it imposes on the number of services suppliers, service operations or employees in a sector, the value of transactions, the legal form of the service supplier, or the participation of foreign capital.

National Treatment: In any sector included in its Schedule of Specific Commitments, a Member is obliged to grant foreign services and service suppliers national treatment unless it lists the nonconforming measure in its national schedule. National treatment is defined as treatment no less favorable than that extended to its own like services and service suppliers. In this context, countries commitment themselves not to adopt any law or other measure that would give its services or services suppliers a competitive advantage through more favorable treatment.

Schedules of Specific Commitments

Each WTO Member is required to have a Schedule of Specific Commitments in Services. It is a document, which identifies the services sectors and modes of supply subject to Market Access and National Treatment obligations. For each listed sector, and mode of supply within that sector, the schedule either indicates that the country has placed no limitation on its market access or national treatment commitments by entering the word “none”, or that the country is conditioning the commitment by listing conditions or by enumerating nonconforming measures. The schedule also includes horizontal commitments and reservations that apply across all sectors.

The GATS does not impose the obligation to assume market access or national treatment commitments in a particular sector. In scheduling commitments, Members are free to tailor the extent of the commitments they take so as to avoid or modify obligations that they consider too demanding at present.

Article XVI sets out six types of government measures that are covered by a market access commitment, unless the government lists an exception. They are:

- limitations on the number of service suppliers;
- limitations on the total value of services transactions or assets;
- limitations on the total number of service operations or the total quantity of service output;
- limitations on the number of persons that may be employed in a particular sector or by a particular supplier;
- measures that restrict or require supply of the service through specific types of legal entity or joint venture;
- and percentage limitations on the participation of foreign capital, or limitations on the total value of foreign investment.

Article XVII deals with national treatment. It states that in the sectors covered by its schedule, and subject to any conditions and qualifications set out in the schedule, each member shall give foreign services and service suppliers treatment, in measures affecting supply of services, no less favorable than it gives to its own services and suppliers.

Any market access or national treatment obligations inscribed in schedules must be granted unconditionally to all Members, without discrimination. Countries are allowed at the time of accession to list specific exceptions to this requirement. Parties to a Free Trade Agreement are not bound to give Parties that are not signatories of the Free Trade Agreement the same treatment. Also, countries are allowed to negotiate agreements for the mutual recognition of standards, though they have to give the same opportunity to other member countries.

Pursuant to Article XXI, specific commitments may be modified through negotiation after three years. However, countries that are affected by such modifications can ask the country making the adjustment to make an equivalent commitment in another area.

Services schedules consist of both sectoral and horizontal sections. The "Horizontal Section" contains limitations that apply across all sectors included in the schedule. They often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. The "Sector Specific Section" contains limitations that apply only to the particular sector, sub-sector or activity to which they refer.

What has not, or not yet, been covered in the GATS?

Although the scope of the GATS is very wide, dealing with "all measures affecting trade in services", policy measures in some areas are not covered by the GATS disciplines, provided the measures are not used to circumvent their GATS obligations:

- immigration rules; provided they do not contravene commitments on temporary entry under mode 4;
- services supplied under Government Authority;
- fiscal policy and taxation measures (provided the taxes do not discriminate against foreign services or service suppliers.)
- import restrictions on equipment necessary for the supply of a service;
- Restrictions on short term capital movements, or measures that affect property rights (provided they are nondiscriminatory)
- exchange rate management
- privatization of state owned property, though there are disciplines for state-owned trading entities and monopolies.

Other types of government measures have been put into the GATS work program, though detailed rules are yet to be negotiated:

- safeguard measures
- rules for government procurement
- disciplines on subsidies

- disciplines for domestic regulations

Negotiating Techniques with Respect to Services

Skill set required to become an effective negotiator:

1. Objective - negotiators must be able to transcend rhetoric and emotion of parties at the table in order to analyze proposals with detachment to assess their strengths and weaknesses.
2. Flexible - negotiators must adapt to new and surprising offers without remained rigid about agendas.
3. Articulate and effective as a listener - negotiators must be verbally astute to communicate thoughts, perspectives and proposals, as well as hearing and understanding concerns.
4. Forceful and persuasive - negotiators must be forceful enough to assert their needs and persuasive enough to have them considered.
5. Imaginative - negotiators must offer fresh ideas and new perspectives.

Persevering and Optimistic - negotiators must continue through difficulties, believing that the end result will be worthwhile.

THE NEGOTIATOR'S ROLE

Effective Negotiator has Power to Influence the Events

Power in Negotiations Comes in the Following Forms:

1. Constructive Power
 - Your ability to set the agenda, to listen, and to compromise
2. Obstructive Power
 - Your ability to keep the other party from satisfying her/his needs
3. Jumping Power
 - Your ability to leave a negotiation
4. Personal Power
 - Your ability to utilize your experience, confidence, knowledge and skills that will enable you to succeed
5. The Power of Empathy
 - Your ability to understand and satisfy the interests and needs of your opponents
6. The Power of Creativity
 - Your ability to devise new and surprising Solutions
7. The Power to Recognize
 - Your ability to give your opponent a special recognition
8. The Power of Courtesy

- Your ability to Apologize, When/If Necessary
- 9. The Power to Form Alliances
 - Your ability to unify and to unite
- 10. The Power of Completing the Task
 - Your ability to complete the assigned goal

International Trade Negotiations in Services

- The economic benefits that can flow from the liberalization of business services are likely to be particularly significant because business services constitute an increasing proportion of the cost of producing many manufactured goods and other services, and a reduction of these costs will therefore significantly enhance the productivity of national producers.
- Negotiators focusing on trade in services lack the kind of detailed quantitative data available to support negotiations on trade in goods. You cannot see a service crossing the border. Governments are therefore not able to measure the flow of services across the border in the same way that they can measure the flow of individual goods across the border.
- Since detailed data on services trade is generally lacking, and the protective effect of restrictive regulatory measures is difficult to assess, trade negotiators in services must dependent on qualitative assessments provided by potential exporters or importers of the services involved. This makes consultations with the affected industries particularly important with respect to negotiations on trade in services.
- The first step in preparing for international negotiations on trade in services is to identify and organize the domestic stakeholders. Starting the preparation of negotiations with the identification and organization of stakeholders makes sense because stake holders are likely to be in a position to contribute, and in some cases help collect, basic information about the competitive strengths and weaknesses of national service industries, the problems exporters face in penetrating foreign markets, and the regulatory issues that are likely to arise in the course of the negotiations.
- Asking domestic stakeholders to participate in the preparation of the negotiations also makes them feel as full participants in the process, making them loyal supporters of the negotiations as long as they can rationalize it as being consistent with their basic interests. At the very least, stakeholders included in the process will achieve a full understanding of the issues and the rationale for the negotiations, give the negotiators credit for including them in the preparatory process and for factoring their interests into the development of national positions.

BACKGROUND ON CONDUCT AND ORGANIZATION OF SIMULATION

THE NEGOTIATION PROCESS

The parties to these negotiations will be provided with individual team instructions and facts common to each country team's interests.

Individual interest groups (e.g., associations, government agencies, etc.) will meet first to review facts, develop team negotiating goals and strategies, assign research and negotiating roles, and to document all negotiating sessions.

All interest groups will then meet with their country team members. (Country team members may or may not share common interests, goals, etc.) Lead government agencies will seek to reconcile differences and to advance a unified voice in the bilateral or multilateral sessions.

All teams will seek to advance specific negotiating goals and interests. For example, it can be assumed that China seeks acceptance **in the** international trading community, that it would like to avoid a dispute in the WTO, and that it is committed to an increased level of enforcement in the area of intellectual property rights. Similarly, it can be assumed that the US, EU, and Swiss governments and constituent manufacturing groups seek enforcement of IPR laws in China and greater access to the Chinese market. Interest groups may differ, however, on appropriate timetables, implementation mechanisms, and enforcement.

All parties will want to consider some or all of the following:

- Documentation of the scope of the problem;
- Specific agreements to implement reforms including, but not limited to rules, regulations, monitoring devices, enforcement mechanisms, legal remedies, etc;
- Timetables for implementation of agreements reached;
- Criteria in the field of IPR for Chinese accession to the WTO.

It will also be important to determine the interests of your counterparts including adversaries and allies. You will want to try to build alliances within your country and with other country governments or individual interest groups.

CONFIDENTIAL PARTY INSTRUCTIONS

Each individual team (interest group) will be provided with further confidential instructions issued from the perspective of a superior corporate, governmental, or military officer. You are to design your negotiating strategy in accord with the instructions. Questions regarding instructions or the terms of agreements reached can be reviewed with one of the instructors.

NEGOTIATING SKILLS AND TECHNIQUES

- 1) Teams should engage in "brainstorming" sessions to identify and articulate your interests and those of your counterparts including the listing of potential **OPTIONS** for an agreement and the use of **OBJECTIVE CRITERIA** for the structuring and implementation of agreements;
- 2) Teams should elect a **LEAD NEGOTIATOR** for each negotiating session. It is important for team members to defer to a lead negotiator and to **SPEAK WITH ONE VOICE**. Lead negotiators may invite the participation of team members on specific issues, areas of expertise, etc.
- 3) Teams should use **CAUCUSES** (private team meetings) to review proposals, formulate counter-proposals, or to review the status of the negotiations; Remember to **LISTEN** to your counterparts and **ASK QUESTIONS** to learn what their needs are. What do they want? Can you fashion an agreement or the provision of an agreement that will meet some if not all of their needs? Are your sessions **CONFIDENTIAL** or open to the press and public? Craft and utilize **SINGLE TEXT DOCUMENTS** to introduce proposed language on agreements, to capture agreements on procedure and/or substance that can be added to the text of a final agreement; Obtain **SIGNATURES** of counterparts on documents reflecting interim or final agreements; Consider future meetings, working groups, investigative teams, etc as means to keep the process moving forward and to avoid stalemates. Remember you are dealing with people. What are their needs within their organization, bureaucracy, company, etc. Can you help them to meet their needs? Establish a personal rapport. Be hard on the problem, be soft on the people. Consider a **JOINT MEDIA RELEASE OR CONFERENCE** to announce progress or a final agreement. Use the media to help solidify the parties' public commitment to the agreement.

RULES TO ENHANCE THE LEARNING GOALS OF THE SIMULATION

Because time is extremely limited, the instructors request that students abide by the following rules which have proven effective in other negotiation simulations:

- 1) Limit caucus sessions and breaks during negotiations to no more than five (5) minutes;
- 2) Country teams will have to negotiate an internal consensus among all interest groups **BEFORE** the commencement of official bilateral negotiations with national counterparts.
- 3) The parties will not be authorized to "walk-out" or otherwise boycott a negotiation session;
- 4) If negotiating teams reach an "impasse" (stalemate, dead-end, end point) they should work on another issue and/or seek the instructors' intervention;
- 5) No name calling, personal attacks, or insults will be permitted. (This is not good style in real world negotiations and is usually the result of ego, loss of emotional control.)
- 6) Make use of charts, note-taking, printed exhibits, and printed documents to facilitate the recording of interim and/or final agreements.

LOCATION OF THE NEGOTIATIONS

As negotiating sessions are established, a home country will be identified. The home country should serve as the host of the negotiations. Hosts should welcome guests to their country and to the negotiation session. Introductions should be made before the parties proceed to substantive matters