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Selected International Rules of Foreign Direct Investment in the Telecommunications Sector and Its Influences on Taiwan's Telecommunications Legislation

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SELECTED INTERNATIONAL RULES OF FOREIGN DIRECT INVESTMENT IN THE TELECOMMUNICATIONS SECTOR AND ITS INFLUENCES ON TAIWAN'S TELECOMMUNICATIONS LEGISLATION

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I. INTRODUCTION

In past decades, the most significant contributor to the booming global economy was the development of cross-border transactions. Specifically, foreign investment has expanded rapidly, becoming an increasingly important factor in host economies and in the international community. Also, foreign direct investment (FDI) has increased rapidly for a substantial period and covering a wide spectrum of industries. Moreover, foreign investment capital generally will spur economic growth and create better living standards in particular countries. Despite the benefits of FDI, many developing countries fear that by opening up their markets to competition and foreign investment without any restrictions, they will lose control of strategic industries such as the telecommunications sector. Nonetheless, FDI brings technological skills, funds and market competition to the telecommunications industry. In response, many countries create measures and policy requirements to control and guide foreign investment to correspond to their economic and developmental

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strategies. From an economic standpoint, international investment usually benefits each side but its related legislations internationally and locally are still inchoate. Meanwhile, some multilateral agreements on investment have been negotiated through the Organization for Economic Cooperation and Development (OECD) and World Trade Organization (WTO) with built-in restrictions on the time frames for implementation and execution. This article will focus on the tension between the goals of the proposed OECD and WTO multilateral investment agreements and the host countries' economic strategies.

Some proposed international investment agreements under OECD and WTO are mainly based on the foundational principle of "Non-Discrimination" and are designed to make it easier for individual and corporate investors to move capital across international borders. However, those same agreements could hasten job flight from industrialized countries and thus increase pressure on all countries to compete for FDI capital by decreasing wages, lowering living standards, and weakening environmental standards. Due to economic disparities between countries, developing countries seek to maintain a level of sovereignty that would allow them to attain their economic developmental pilot and industrial strategies while more developed countries look for overseas markets, a cheap labor force, and natural resources. At the same time, telecommunications have a substantial and essential influence on national security, social stability, economic development and many industrial sectors. Therefore, foreign investment opportunities in the telecommunication services sector historically have been limited and most developing countries have monopolistic telecommunication carriers. The proposed multilateral investment agreements have also been designed to forbid governments to require foreign corporations to transfer technology, which deprives developing countries of an important avenue for accessing technology in telecommunications and reaping the commensurate economic benefits from the foreign country's economic investment.

As an example of FDI's influence on economic development, this article will examine the role of FDI in the development of Taiwan's telecommunications industry as well as Taiwan's economic growth. Focusing on Taiwan's foreign investment regulations in telecommunication sectors as a standard, this article will debate the reasons and necessity of host countries efforts to protect their telecommunications industries. Lacking natural resources, Taiwan heavily depends on foreign investment to stimulate economic growth and achieve sustainable development. FDI has substantially contributed to Taiwan's economic growth since World War II. To promote foreign investment, the Taiwanese government has enacted many favorable foreign investment incentives and regulations. Since 1996, Taiwan has liberalized its telecommunications market by privatizing its state-owned telecommunication carriers and adopting a more competitive, efficient and fair foreign investment regulation scheme to improve its international investment climate. Taiwan wants to provide the telecommunications infrastructure with low-cost, high-quality services for foreign investments in order to encourage them to set up telecommunication operations centers in Taiwan and effectively enhance international competitiveness. Due to telecommunication's particular character, its related industries are often state-operated and monopolized in many countries. Thus, finding the balance between economic gains from foreign investment and national telecommunications sovereignty presents a substantial challenge. Focusing on foreign investment and telecommunications, this article will debate the international investment paradigm including the meanings of FDI, negotiations of international investment agreement, their relation to telecommunication as well as their influences on the global economic market.

II. FDI AND THE TELECOMMUNICATIONS SECTOR

A. DEFINITION AND ECONOMIC EFFECTS OF FDI

FDI can provide abundant capital, progressive technology, managerial knowledge, and beneficial skills. Since FDI has been looked upon as a tool to transform underdeveloped countries into advanced nations, every government has encouraged the expansion of FDI. Over the past few decades, FDI has been one of the most important driving forces for the world's economic growth. According to the United States Department of Commerce, FDI is a direct investment, which "implies that a person in one country has a lasting interest in and a degree of influence over the management of, a business enterprise in another country."[2] The US Commerce Department also defines FDI as "ownership or control by a foreign person of 10 percent or more of an enterprise's voting securities or the equivalent," which is deemed enough to influence management decisions.[3] At a Global Investment Forum hosted by UNCTAD, it was reported that "there was a strong feeling among ministers from some developing countries that more research and analysis was needed about

2. William J. Zeile, Foreign *Direct Investment in the United States: 1992 Benchmark Survey Results*, 84 Surv. Of Current Bus., 154-186, Bureau of Econ. Analysis (Dep't of Commerce July 1, 1994).

3. Daniel R Yorgason, *Research and Development Activities of U.S. Multinational Companies: Preliminary Results from the 2004 Benchmark Survey*, 87 Surv. Current Bus., 22-39, Bureau of Econ. Analysis (Dep't of Commerce March 1, 2007).

the critical issues at stake in a multilateral framework on investment and many speakers stressed the complexity of the issues related to the effects of economic policy liberalization on the quantity, quality and distribution of FDI, and its impact on development."[4] Requiring sufficient information and abundant funds, foreign investment usually entails higher risks. Such risks also come with the possibility of much greater returns. Thus, most current foreign investment has either been the result of taking a huge risk or the result of an international organization such as the World Bank underwriting that risk. Traditionally, foreign investment has been very closely related either with trade or with an international development agency. International development agencies often pursue the more enlightened goal of helping countries develop properly rather than seeking the greatest return.[5]

The benefits of FDI for host countries include economic growth, technology transfer and job-creation in the local economies. Moreover, exports would increase since many exports are comprised of shipments from domestic companies to their foreign affiliates. Technology transferred from foreign investment projects will improve the efficiency of local firms. These effects become the major attractions for underdeveloped countries seeking foreign investment.[6] FDI can serve to integrate domestic markets into the global economic system far more effectively than could have been achieved by traditional trade flows. FDI benefits will be enhanced in an open investment environment with active competition policies, macroeconomic stability, privatization and deregulation.[7] Under such conditions, FDI can play a key role in improving the capacity of a country to correspond to global economic integration and future national developmental strategies. Thus, greater openness and liberalization will result in more economic reforms and potential benefits for the participating countries.[8]

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4. Organ. Econ. Co-Operation Dev., "Foreign Direct Investment and Economic Development - Lessons from Six Emerging Economies," paper presented at an OECD-DNME Workshop on Foreign Direct Investment held in Mexico City on Dec. 10-11, 1997.

5. Stan Ng, "Background information on the multilateral agreement on trade," paper prepared for University of California assignment, Irvine, USA, available at: http://darwin.bio.uci.edu/~sustain/issueguides/MAI/ (last visited at May 15, 2010).

6. Michelle Sforza, Scott Nova & Mark Weisbrot, "Writing the Constitution of a Single Global Economy: A Concise Guide to the Multilateral Agreement on Investment – Supporters' and Opponents' Views," paper presented for Preamble Center, available at http://www.preamble.org/MAI/maioverv.html (last visited at May 15, 2010)

7. Jan McDonald, *The Multilateral Agreement on Investment: Heyday or Mai-Day for Ecologically Sustainable Development?*, 22 Melbourne Univ. L. Rev. 617 (1998).

8. Chun Hung Lin, *Reviewing the Relationship Between Foreign Direct Investment and Economic Sovereignty on Developing Countries with Reference to Multilateral Agreement on Investment*, 2:1 J. Econ. & Mgmt. 93-110 (2006).

B. POLICY REQUIREMENTS OF FDI AND ITS ROLE IN THE GLOBAL ECONOMY

Although FDI provides huge economic benefits, many countries are only partially open to foreign investment. Instead, those countries use performance requirements such as exporting requirements or technology transfer agreements to control the categories and sizes of FDI. Foreign investment performance requirements were considered necessary and desirable to ensure that the activities of foreign capitals are consistent with local countries' developmental strategies.[9] The same decline in effectiveness can be seen in terms of policies designed to maximize the potential benefits from inward investment. However, since it has been acknowledged that FDI can stimulate economic growth and development, there remains a tremendous diversity in countries' approaches to their FDI policies. Countries can also screen incoming investment and retain control of foreign participation in particular sectors such as telecommunications.[10]

On the other hand, more and more industrial firms from different countries are expanding their businesses abroad through direct investment. Now, all economies compete to attract huge investments from multinational enterprises (MNE) or medium and small scaled foreign companies. Meanwhile, direct investment by MNE has the potential to restructure local industries rapidly and to transform local economies into prodigious exporters of manufactured goods or services to the global market.[11] Integration with the global economy does not merely come through direct exports from foreign-owned companies but also derives from the presence of foreign investors in sectors providing goods and services to exporters. As foreign affiliates of MNE become more oriented toward the global market and less dependent on the domestic market, and as the number of countries eager to attract FDI grows, the tolerance of foreign investors for barriers and restrictions on their operations is likely to be much less than in the past.[12] Besides, there are numerous insurable risks for foreign investors, such as political, currency, regulatory, and security risks on host economics as well as non-insurable risks including the competence and honesty of local

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9. H. Brian Thompson, "Investing in the Global Information Infrastructure," paper presented at Telecom'99 Keynote Panel: Investing in Communications Companies; Geneva, Switzerland; October 11, 1999.

10. *Ibid*.

11. Chun Hung Lin, "Legislation and Development of Multilateral Agreement on Investment: Criticizing from Viewpoint of Developing Countries," paper presented at 2006 International Conference on Law, Economics and Trade: New Legal Knowledge, held by Ming Chuan University School of Law, at Taipei, Taiwan, March 18, 2006.

12. See *supra* note 9.

partners, local managers, and quality of staff. Thus, foreign investors have to consider local policies that distort investment where corporations are chartered and where real estate and other assets are regulated. Under this trend, FDI policy requirements gradually decrease in many countries and virtual gains from FDI tend to be disappointing, particularly in technology transfer.[13]

Indeed, the economic problems of developing countries are fundamentally different from those of the developed countries and require different measures and policies. Since the 1950s, "late industrialization countries" required even greater protection and state intervention than the most developed countries had relied upon during their early development.[14] For less developed countries, foreign investment would preclude many of their development strategies and developmental processes. For example, in Mexico, most individuals prospered economically under a more authoritarian regime.[15] Economists have pointed out that the instability of international financial markets was a major cause of the previous financial crises in 1994 Mexico.[16] Therefore, the spread of such disinvestments to Mexico, should be questioned whether or not the deregulation of international capital flows is in the best interest of "emerging market" economies.[17] In addition, the South Korean government used to exert numerous measures like subsidized credit, tax and tariff exemptions and export subsidies to intervene with foreign investment after World War II. Thus, foreign investment was restricted and played a minimal role in South Korea's industrialization and economic development for a long period.[18] After the 1997 financial crisis, the International Monetary Fund required the South Korean government to take steps for internationalization and deregulation including the removal of a number of restrictions on foreign ownership of domestic stocks and bonds, residents' ownership of foreign

13. *Ibid*.

14. Alexander Gerschenkron, Economic Backwardness in Historical Perspective: A Book of Essays (Harv. U. Press 1996).

15. Prior to international trade and investment liberalization, Mexican economic growth was fairly rapid, at a real per capita rate of 3.9% in the 1960s and 3.2% in the 1970s. Since the 1980s, after liberalization began, per capita income has stagnated and real wages have actually fallen. See, Angus Maddison, Monitoring the World Economy 1820-1992, 78-79 (OECD Development Centre, Paris, 1995).

16. Guillermo Calvo & Enrique Mendoza, *Reflections on Mexico's Balance of Payments Crisis: A Chronicle of a Death Foretold*, 41 J. Int'l Econ. 235-264 (1995).

17. Mark Weisbrot, *Globalization for Whom?,* 31:3 Cornell Int'l L. J. 631 (1998).

18. Larry Westphal, *Industrial Policy in an Export-Propelled Economy: Lessons from South Korea's Experience*, 4:3 J. Econ. Persp. 41-59 (1990).

assets, and overseas borrowing by domestic institutions.[19] The sharp reduction in government planning and industrial policy has caused problems such as overcapacity in the petrochemical industry, overinvestment, and corporate failures in industries.[20] Afterward, the liberalization of international investment was struck by the Asian financial crisis in the same year, and economists pointed out that the liberalization of international borrowing and investing in Asian countries over the last decades created the instability from which the crisis was born. One economist even noted, "the Asian crisis cannot be separated from the excessive borrowings of foreign short-term capital as Asian economies loosened up their capital account controls and enabled their banks and firms to borrow abroad. It has become apparent that crises attendant on capital mobility cannot be ignored."[21] Those economic crises all were impacted by influences of foreign investment to the global economy. Even so, the 1997 economic crisis did not seem to significantly affect telecommunications investment in Asia and even some regional companies have extended their offshore investments, for example Singapore Telecom and Telstra.[22] Some reports indicated that the background to these cycles had been the liberalization of the telecommunications sector over the period, but a closer examination of different economies in Asia will show marked differences in timing and the way liberalization has occurred.[23] Investment patterns in each country differed, especially in reaction to the 1997 downturn and the economies were relatively unaffected in Asian nations. [24]

Recently, the U.S. subprime mortgage crisis halted worldwide housing markets,[25] handicapped energy and commodity prices, and caused another global financial crisis. The global financial turmoil set off by subprime mortgages problems prompted a backlash in some nations, particularly those nations with unlimited foreign capital and foreign exchange control. Economists who supported increasing deregulation of international investment have conceded that a large number of workers have indeed been hurt by the process of internationalization and

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19. Ha-Joon Chang, Hong-Jae Park & Chul Gyue Yoo, *Interpreting the Korean Crisis - Financial Liberalization, Industrial Policy, and Corporate Governance*, 22:6 Cambridge J. Econ. 9-14 (1998).

20. *Ibid*.

21. Jagdish Bhagwati, *The Capital Myth: the Difference between Trade in Widgets and Dollars*, 77:3 Foreign Aff. 8, May/June 1998.

22. John Ure "FDI in Telecommunications Services in Asia," paper presented at High-Level Policy Seminar on Services FDI and Competitiveness in Asia, UNCTD and ASEAN, held by Ritsumeikan University, Kyoto, Japan, March 2-4, 2004.

23. *Ibid*.

24. *Ibid*.

25. Claire A. Hill, *How Investors React To Political Risk*, 8 Duke J. Comp. & Int'l L. 283 (1998).

liberalization.[26] On the other hand, foreign investors take into account all relevant information affecting asset returns when deciding their market positions and would be hard pressed to explain the disinvestments from these countries.[27] A report also had intended to make the case for international investment liberalization wherein they contend that such negative impacts are "at most, modest."[28] Indeed, the reversal of capital flows reflected the result that foreign and domestic investors stampeded for the exits for fear of being caught with greatly depreciated local currency and assets. The policy requirement and financial measures for foreign capital flows empirically shows us its strong impacts on the global economy. However, the 1997 economic crisis did not have a strong impact on telecommunications investment in Asian countries by economic indicators.[29] Telecommunication industries with special characteristics relating to national security and social order that are regulated by local guidelines and considerable protective measures thus seem not affected deeply by such a global financial crisis.

C. FDI and the Development of the Telecommunications Industry

In the early 1970s, the service sector accounted for only one quarter of the world's FDI stock.[30] In 1990, the percentage rose to almost 50% and by 2003, to approximately 67 percent.[31] Now service sectors like telecommunications, information technology enabled services, electricity, insurance, and air transport are becoming prominent. Under the mutual beneficial influences and the liberalization measures in the post-1990 era, the world of foreign investment has changed radically. Now portfolio investment as well as FDI are not only allowed but also actively encouraged. Initially, FDI was introduced in only in a few sectors in many countriesm, but since then it has been introduced in a variety of sectors including the telecommunications industry. FDI in telecommunication includes the ability to establish a commercial presence in a foreign territory or the purchase of telephone companies by foreign investors or joint ventures between local and foreign partners to establish new telecommunication service companies. Historically, foreign investment opportunities in the telecommunication services sector had been limited by the fact that most countries had state-owned

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26. See *supra* note 17.
27. *Ibid*.
28. Organization for Economic Co-Operation and Development, *Open Markets Matter: the Benefits of Trade and Investment Liberalization*, 11 (OECD Publications, 1998).
29. See *supra* note 22.
30. M. Selvakumar, T. Ambika, & S. Muthulakshmi, *Foreign Investment in Service Sector*, Science Tech Entrepreneur, Nov. 7, 2007.
31. *Ibid*.

monopoly carriers. While FDI was coming into the telecommunications sector during the 1990s, the liberalization and legal transformation of the sector in many countries had witnessed FDI's powerful influences. An early step towards sector liberalization is the full or partial privatization of the state-owned telecommunications enterprise, and many national governments have seemed reluctant to remove themselves entirely from ownership for a variety of reasons. Since 1984, 44 Public Telecommunication Operators (PTOs) have been privatized, raising 159 billion U.S. dollars[32], with one-third of this investment coming from foreign investment. Foreign capital can be raised either through a share offering or the sale of a minority share of a PTO to foreign partners. For the privatization of the telecommunications industry, there are numerous opportunities for foreign investors to establish foreign subsidiaries or to combine with others in joint ventures.[33] Because telecommunications covers and relates to other industrial sectors, it has a dual role as a traded product and service, as well as a facilitator of trade in other products and services. Freer foreign investment in telecommunications will promote more economic gains including new and improved telecommunication products and services, lower prices and additional investment, as well as resulting in more competition between different service providers for consumer benefits.[34]

Telecommunications development means more than expanding the number of telephone lines per hundred inhabitants.[35] Access to information and telecommunications is essential for development, but is still inadequate.[36] By introducing foreign investment into these areas, waiting lists for telecommunication services can be sharply reduced. A large portion of the world continues attracting and foreign investment must pursue a schedule of projects to improve the basic telecommunications infrastructure. To attract more foreign investment

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32. Johan Deprez, *The Telecommunications Industry in the Information Age: A Case Study in Globalization, Deregulation, and Tax Competition*, 23 Loy. L. A. Int'l & Comp. L. Rev. 537 (2001). See also, *Public Telecommunication Operators for sale Value of privatizations of PTO's by region*," ITU Telecomm. Privatizations Database, Geneva, Switzerland (1998).

33. Int'l Telecomm. Union, "1996/97 World Telecommunication Development Report, Trade in Telecommunications, Executive Summary," (ITU Publications 1998).

34. *Ibid.*

35. Numbers of countries still had fewer than 10 telephones per 100 inhabitants while about half of the population were waiting for a telephone, and the other half waiting for dial tone. Those people live in rural and often isolated areas where most of the natural resources are located. See, Chun Hung Lin, *Review of Right to Communicate: International Telecommunications Development under Trend of Universal Recognition*, 50:3 Acta Jurid. Hung. 269-291 (2009).

36. Int'l Telecomm. Union, "Integrated Rural Development and Universal Access," Brief Description of ITU's Buenos Aires Action Plan Programme Nos. 9 & 12 (ITU Publications, 1998). Situation on 16 October 1998. There are 43 million people on registered waiting lists for telephone connections in emerging markets with the average waiting time longer than a year.

and to operate in an integrated global economy, many countries already have made high-speed data networks, cellular radio, mobile satellite services, Internet access and facsimile more diversified and available. To attract more foreign investment and market competition, developing countries privatized their public telecommunication operators at the start of the 1990s.[37] Additionally, they concentrated on telecommunications trends and tried to satisfy the complex requirements of multinational enterprises. Developing countries face the same pressures to upgrade and diversify the telecommunications sector but typically the developing countries have less financial, technical and operational resources to do so, particularly in light of an incomplete basic infrastructure.[38] These governments have to consider the need to attract foreign investments and to serve business and basic telecommunications infrastructure for the public. At this point, privatization of telecommunications markets and attraction of foreign investment will be the best way to resolve this dilemma.

For example, in Latin America, several countries that first privatized their operators at the beginning of the decade are now preparing for a second round of market-openings. Even Africa, which has long been the last bastion of telecommunication monopolies, is leading the way by attracting foreign partners investing in their telecommunications sectors.[39] It could be seen that privatization in Latin America and Africa had been conducted through the sale of an equity interest in the company to foreign strategic investors such as France Telecom, Telekom Malaysia and SBC of USA.[40] Additionally, in the Asia-Pacific region, telecommunications market reform had continued apace with developing countries such as India, the Philippines and Thailand, opening up their markets to foreign investment.[41] In Asia, some mobile cellular companies were established to take advantage of the bull markets of the mid-1990s, often using their close personal and political connections to gain operating licenses. In the early to mid-1990s, many Western telecommunication companies in particular were looking towards

37. See *supra* note 33.

38. Donald Maitland,"The Missing Link: Still Missing 8 Years Later?" Proceedings of Seminar on Telecommunications and Its Role in Socio-Economic Development 5, Eigtveds Pakhus, Copenhagen Denmark, 2-3 Nov. 1992.

39. Pekka Tarjanne, "Telecommunications and World Development: Forecasts, Technologies and Services," paper presented at Telecommunications and Trade by Secretary-General, ITU Forum, Moscow, Russia, Feb. 5, 1997.

40. Dr. Henry Chasia, "Opening Remarks to the Annual Council of the Commonwealth Telecommunication Organization", Speech for ITU (Sept. 29, 1998).

41. Pierre Guislain & Christine Zhen-Wei Qiang, *Foreign Direct Investment in the Telecommunications in Developing Countries*, in INFORMATION AND COMMUNICATIONS FOR DEVELOPMENT 2006: GLOBAL TRENDS AND POLICIES, 15-40, (N.R. Narayana Murthy 2006).

strategic investments in the Asia Pacific region, or simply looking eastward at growing markets. Others were following their major MNC accounts, building international networks and looking for local backhaul opportunities to provide their customers with global end-to-end services. In Asia, some of the mobile cellular companies were no doubt established to take advantage of the bull markets of the mid-1990s, often using their close personal and political connections to gain operating licenses. Others were following their major MNC accounts, building international networks and looking for local backhaul opportunities to provide their customers with global end-to-end services. Unlike Latin America and Eastern Europe, where private investment was largely attracted by divestment of fixed-line state-owned telecommunications enterprises (SOTE), private investment in the Asian Pacific has been mostly driven by the market entry and rapid expansion of competitive mobile cellular telephone companies.[42] Since the 1980s, many newly industrializing Asian economies were planning for the expansion of their information technology sectors and coming to recognize the importance of the telecommunications infrastructure to promote efficient networking. Those economies where governments showed commitment to development experienced steady and sometimes rapid growth in the telecommunications sector.[43]

FDI has entered developing markets in a myriad of ways: joint ventures with local telecommunication operators, awarding of licenses to foreign companies, or the sale of equity stakes in state-owned telecommunication entities to private investors. Private investment was initially permitted mostly in value-added services, but increasingly, it is entering the basic services as well.[44] Indeed, privatization and increased foreign investment in telecommunications markets has resulted in substantial progress in meeting developing countries' basic telephony requirements. It is also expected that competition in the provision of international and domestic telecommunication services will bring a significant reduction in prices and the difference between domestic and international telephone services.[45] Where markets have been liberalized, the level of investment, particularly foreign investment, has generally increased and telephony and network development has proceeded more rapidly. The combination of competitive markets, private ownership and foreign investment has created an appropriate environment for telecommunication development.

42. See *supra* note 22.
43. *Ibid*.
44. See *supra* note 40.
45. Int'l Telcomm. Union, "World Telecommunication Development Report 2003: Measures Access to the Information Society Monitors Impact of ICTs on Global Development Goals," (ITU Publications 2003).

III. INTERNATIONAL ORGANIZATIONS AND FDI IN TELECOMMUNICATIONS

A. ROLES OF THE WTO AND ITU IN THE TELECOMMUNICATIONS SECTOR

The telecommunications sector is currently undergoing a transition from a global market system for telecommunication services based on multilateral arrangements. It should foster a suitable international environment where investment and entrepreneurship can prosper, including the development of new forms of electronic commerce. The WTO and International Telecommunication Union (ITU) are two of the most important international organizations dealing with global affairs for the telecommunications sector. The WTO agreement hopes to promote foreign and domestic investment in the telecommunications sector and, as a consequence, in the development of each country's telecommunications infrastructure and services.[46] Those countries made commitments to open their markets to competition and foreign investment in basic telecommunication services, such as voice telephone, telex, telegraph, data transmission and privately leased circuits.[47] Under the WTO commitments, developing countries were required to open the sector to foreign investment gradually, although in many cases there are FDI ceilings which fall short of major equity ownership.[48] Furthermore, the Doha Round Declaration included further liberalization on FDI in telecommunications. This included an extension of market openings to sectors that were previously excluded, such as media and audio-visual services which are closely associated with trends towards convergence with telecoms, especially with broadband networks that can multiplex high speed high definition services such as TV and video signals.[49] Although these are contentious issues and an agreement is likely to prove

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46. Int'l Telecomm. Union, "Second Draft of the Secretary-General's Report to the Second World Telecommunication Policy Forum on Trade in Telecommunications," (ITU Publications, Geneva Mar. 16-18, 1998). See also Int'l Telecomm. Union, "Third Draft of the Secretary-General's Report To the Second World Telecommunication Policy Forum on Trade in Telecommunications," (ITU Pub., Mar. 16-18 1998). The WTO agreement which was concluded on February 1997 and which entered into force on February 1998, commits 72 countries to a program of progressive opening of their basic telecommunication service markets to competition and increased foreign investment.

47. Int'l Telecomm. Union, "First Draft of the Secretary-General's Report to the Second World Telecommunication Policy Forum on Trade in Telecommunications," (ITU Publications Mar. 16-18 1998).

48. Chun Hung Lin, *WTO and Telecommunication Service*, 4:11 Ukrainian J. Bus. L. 24-28 (2006).

49. J. Robert Vastine, "Services Negotiations in the Doha Round: Promise and Reality;" paper presented to Conference on Perspectives on the Doha Development Agenda, Gerald R. Ford School of Public Policy, University of Michigan, Oct. 21, 2005.

difficult, the negotiation direction for the telecommunications sector under the WTO seems obvious.

On the other hand, the ITU provides great benefits in terms of telecommunication infrastructure construction and the development of information processing industries. The ITU allocates global spectrum to telecommunication services and manages scarce radio resources among countries that benefit trade liberalization and the prevention of discrimination between domestic and foreign suppliers.[50] The ITU also promotes the global telecommunication development and plays the role of providing the information to assist developing countries to understand the benefits that liberalization and trade in telecommunications can bring, as well as the measures necessary to protect their national interest.[51] Both WTO and ITU encourage the development of global telecommunication infrastructure. Global telecommunication development provides the impetus to strengthen the leadership role of the private sector in the development of a diverse, affordable, and accessible information infrastructure. It provides a further impetus to the involvement of developing countries in the building and utilization of a truly global and open information infrastructure and facilitates activities and identifies policy options that foster effective global application of telecommunications, broadcasting, and information technologies and services.[52]

Moreover, FDI in telecommunications is a prerequisite for broad based economic development. The dual role of telecommunications as both a traded service and a trade vehicle in other service sectors means that price reductions, investment and infrastructure improvements and services should also have an impact on other sectors of the economy.[53] There are multi-faceted advantages of encouraging FDI in the telecommunications sector. Efficient, low-cost telecommunications networks will provide the necessary platform for the growth of electronic commerce. The implementation of liberalized telecommunication investment should produce significant benefits not only within the country's telecommunications sector but also for the national economy as a whole. The opening of telecommunications markets has facilitated the entry of domestic and foreign private capital and technological skills that have in turn accelerated network build-out, the provision of new services

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50. Audrey L. Allison, *Meeting the Challenges of Change: the Reform of the International Telecommunication Union*, 45 Fed. Comm. L.J. 491 (1993).

51. Chun Hung Lin, *International Telecommunication Union (ITU) and the Republic of China (Taiwan): Prospect of Taiwan's Participation*, 10:1 Ann. Surv. Int'l & Comp. L. 133-156 (2004).

52. See *supra* note 9.

53. See *supra* note 46.

and improvements in quality of service. Market liberalization also has a profound effect in promoting development in other sectors such as information technology and computing, which depend heavily on good, reliable and low-cost telecommunications.

Economic development in these sectors indeed has been constrained in many countries because of an inadequate telecommunications infrastructure.[54] Inadequate telecommunications reduces efficiency throughout the economy, diminishes the effectiveness of investments and development programs, causes a comparative disadvantage in attracting investment, and lowers the quality of living standards as well as personal access to communication. The evidence leaves no doubt that there was indeed a correlation between economic development and investment telecommunications.[55] Throughout economic development history, telecommunications infrastructure has played a vital role in supporting the economic development of countries. There are numerous documented examples about the direct relationship between telecommunications infrastructure investment and economic growth.

B. REVIEW OF FDI MULTILATERAL AGREEMENTS AND RELATED NEGOTIATIONS

Through the sustained and forceful influences of FDI on global economic development, there were several multinational agreements discussed and negotiated in the worldwide forum. Two of the most remarkable multinational investment agreements relating to telecommunications sector were the "Multilateral Agreement on Investment" (MAI) and the "Agreement on Trade-Related Investment Measures" (TRIMS). Although MAI had failed at the end of long negotiations, it stood as the basic model of FDI in telecommunications and other economic sectors. Earlier the MAI was negotiated under the OECD. Previously, the OECD created two codes for investment liberalization including the "Code of Liberalization of Capital Movements" and the "Code of Liberalization of Current Invisible Operations." In addition to those two codes, the MAI was negotiated between members as an international investment agreement planned to establish rights for foreign investors.[56] It was

54. *Ibid*.

55. Robert M. Frieden, *Universal Service: When Technologies Converge and Regulatory Models Diverge*, 13 Harvard J.L. & Tech. 395 (2000).

56. Founded in Paris, France, the OECD was originally established as the Organization for European Economic Cooperation (OEEC) to help rebuild the European economies after World War II. In 1961, after economic reconstruction in Europe was mostly accomplished, USA, Canada and the European countries decided to form the OECD in place of the OEEC to serve as a forum to conduct researches and negotiations on global trade and investment. Unlike the U.N., the OECD is not a quasi parliamentary body, and has no supranational legal authority over individual members.

designed to make it easier for individual and corporate investors to move capital across international borders. The MAI is mainly based on the investment provisions of the "North American Free Trade Agreement" (NAFTA) and expands these provisions into all economic sectors.[57] The major aim of the MAI is to ensure that foreign investment from individuals and multinational corporations can move capital in and out of countries without governmental involvement.[58] However, the MAI negotiations were postponed and delayed for further discussion. Since the demise of the MAI negotiations in the OECD, some supporters of the MAI model stepped up efforts to move the negotiations to the WTO.[59] However, because a WTO agreement would likely be much weaker than the draft that was emerging at the OECD, the USA opposed the MAI negotiations in the WTO.[60] Also, many developing countries and non-governmental organizations had stated that the WTO was neither democratic nor transparent and that a MAI in the WTO would be more unacceptable than in the OECD.[61] There had been other attempts to suggest that future MAI negotiations might take place at the UN Conference on Trade and Development (UNCTAD) instead of the OECD or the WTO.[62] The UNCTAD thus is considered to be a fairer forum for developing countries, but critics still have charged that

The seeds of the MAI can be tracked back to the 1960s, when member countries adopted two binding OECD Codes on investment liberalization.

57. Chun Hung Lin, *Developing Countries and the Practicality of Multilateral Investment Agreements on Telecommunications*, 45:1-2 Acta Jurid. Hung, 1-23 (2004).

58. Sergio Marchi, *The MAI Debate: YES: Canada Needs Clear Investment Rules,* Montreal Gazette, Nov. 10 1997, at B3.

59. In January 1999, the EU and Japan formally proposed that they would push the MAI negotiations into the WTO to be completed by 2003. Beginning with the WTO's Singapore Ministerial in 1996, developed-country WTO members pressed for investment rules similar to the MAI. Investment rules, along with competition policy, government procurement policy and trade facilitation, came to be known collectively as the "Singapore issues." At the WTO Ministerial in Cancún in September, 2003, a group of more than twenty developing countries united to block the inclusion of the Singapore issues in the Doha Round of trade talks. See Jeremy I. Gatdula, *Poor Countries Still Don't Have Better Market Access (Cancun aftermath),* Business World, Dec. 1, 2003, at 22.

60. Katia Tieleman, "The Failure of Multilateral Agreement on Investment(MAI)and the Absence of A Global Public Policy Framework," Case Study for the UN Vision Project on Global Public Policy Networks, Global Public Policy Institute Publications, Berlin, Germany (2000).

61. News Release, Org. for Econ. Co-Operation and Dev., "Informal Consultations on International Investment," (Mar. 12, 1998). See also, Agence France-Presse "OECD Reaffirms Need for International Investment Rules," (Dec. 3, 1998).

62. William A. Dymond, "The MAI: A Sad and Melancholy Tale," in CANADA AMONG NATIONS 1999: A BIG LEAGUE PLAYER? 25-33 (Fen Osler Hampson et al. eds., Oxford University Press 1999).

UNCTAD has tended to favor the interests of multinational corporations.[63]

Many developing countries objected to the WTO intervention in the area of investment policies. The WTO prohibitions on Trade Related Investment Measures (TRIMS) require its members to eliminate certain policies that impose conditions on foreign investment. TRIMS was a precursor to the MAI and eliminates requirements that foreign investors use local materials or suppliers when doing business in developing countries. Full-fledged investment rules in the WTO would prevent its members from adopting policy requirements designed to ensure that local businesses, workers and citizens enjoy the benefits of foreign investment.[64] Unlike the OECD, the WTO is an institution that brings issues that NGOs and the public care most about.[65] The WTO's appalling track record on the critical issues of labor rights, environmental and public health protection, and sovereignty and democratic accountability constitutes ample evidence that investment issues negotiated under WTO auspices will be disastrous.[66] Even so, there was progress in investment issues negotiated under the past few and current WTO rounds and some agreements had been achieved during the process. In the telecommunications sector, for example, the commitments negotiated under WTO rounds and agendas had generally opened the sector to FDI, although in many cases there are FDI ceilings which fall short of major equity ownership. In addition to TRIMS negotiations, the WTO signatories of GATS Annex on Basic Telecommunications Agreement have committed to the opening of the sector according to various timetables and with a variety of reservations. Furthermore, Doha Round proposals include liberalization on FDI and an extension of market opening to sectors, such as media and audio-visual services which are closely associated with trends towards telecommunication convergence, especially with broadband networks that can multiplex high speed high definition services such as TV and video signals.[67]

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63. Persephone Economou, John H. Dunning & Karl P. Sauvant, "Trends and Issues in International Investment," in YEARBOOK ON INTERNATIONAL INVESTMENT LAW & POLICY 2008-2009, 3-17 (Karl P. Sauvant ed. UNCTAD Publications, 2009).

64. See *supra* note 55.

65. *Ibid*.

66. See *supra* note 54.

67. Shin-yi Peng, *Trade in Telecommunications Services: Doha and Beyond*, 41:3 J. World Trade 289 (2007).

In addition to the WTO, OECD, or UNCTAD, there are other venues where many nations are simultaneously pursuing telecommunication negotiations such as "Free Trade Area of the Americas" (FTAA), the "International Monetary Fund" (IMF), the "Trans-Atlantic Economic Partnership" (TEP), and the "Asia-Pacific Economic Cooperation" (APEC) forum.[68] Since the year 2006, the OECD has promoted a non-binding set of "good practices" for attracting investment, known as the "Policy Framework for Investment." (PFI)[69] Regardless which title of the multilateral agreements on FDI or under which international organizations are used for future negotiations, it is clear that such a global investment agreement is necessary for both host countries and foreign investors and will exert a powerful influence on the telecommunications industry.

C. SELECTED RULES OF FDI MULTILATERAL AGREEMENT IN TELECOMMUNICATIONS

The designed multilateral agreement on FDI was planned to ease the movement of capital, including both money and production facilities, across international borders by limiting the power of governments to restrict and regulate foreign investment. Through American intervention and influence, many investment provisions are based on NAFTA regulations. Unlike NAFTA, the planned multilateral agreements on FDI will amplify and apply those provisions worldwide[70] since most FDI multilateral agreements are rooted at WTO's "Non-Discrimination Principle" which is including "National Treatment" and "Most Favored Nation." "National Treatment" requires countries to treat foreign investors and investments no less favorably than domestic ones. Under the Principle, signatory countries may not place special restrictions on what foreign investors can own, maintain economic assistance programs that solely benefit domestic companies or require that a corporation hire a certain percentage of managers locally.[71] On the other hand, the "Most Favored Nation" (MFN) clause requires host governments to treat all foreign countries and all foreign investors the same with respect to regulatory laws. Regulations prohibited by the MFN clause include

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68. See *supra* note 46

69. Angel Gurría, "Making the most of the Policy Framework for Investment," paper presented at OECD Tokyo Policy Forum on Investing for Development: Making the most of the Policy Fr.amework for Investment, Tokyo, Japan, Jul. 20, 2006.

70. Antonia Juhasz, "The Multilateral Agreement on Investment: A Bill of Rights for International Investors?" Preamble Center for Public Policy Publications, New York, USA, June 1997.

71. Org. Econ. Co-Operation and Dev., *The Multilateral Agreement on Investment: Treatment of Investors and Investments*, in THE MAI NEGOTIATING TEXT 13-57 (OECD Pub., Feb. 14, 1998)

economic sanctions that punish host countries for human rights violations by preventing corporations from doing business there.[72]

Moreover, since those negotiations emphasized the Principle of "Non-Discrimination," a designed multilateral agreement on FDI generally included rules for limitations on "Performance Requirements," "Uncompensated Expropriation of Assets," and "Movement of Capital," as well as "Dispute Resolution Mechanism" rules. Meanwhile, "Performance Requirements" are laws that require investors to invest in the particular needs of local economies or to meet social or environmental goals in exchange for market access. For foreign investors' protection, those requirements would probably be banned even where they do not discriminate against foreign investors.[73] Additionally, "Bans on Uncompensated Expropriation of Assets" requires host governments, when they deprive foreign investors of any portion of their property, to compensate the investors immediately.[74] Also, expropriation would be defined not just as the outright seizure of a property but would include governmental actions "tantamount to expropriation."[75] Thus certain forms of regulations could be argued to be expropriation, potentially requiring governments to compensate investors for lost revenue.[76] A "Ban on Restrictions on the Repatriation of Profits or the Movement of Capital" means host countries could not prevent an investor from moving profits from the operation or sale of a local enterprise to that investor's home country. Nor could countries delay or prohibit investors from moving any portion of their assets, including financial instruments like stocks or currency. It ensures that corporations and individuals can move their assets more easily. However, there are some exceptions that will be permissible in the case of national financial crises.[77]

Most important of all, a well-established "Investor-to-State Dispute Resolution Mechanism" should be regulated and set up. Under the so-called "Investor-to-State Dispute Resolution Mechanism," corporations or individual investors are given the right to sue local governments or host countries, and seek for monetary compensation in international court in the event that a law violates investor rights as established in the

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72. *Ibid*.

73. See NAFTA art.1106, 1106.2 & 1106.4.

74. Org. Econ. Co-Operation and Dev., *The Multilateral Agreement on Investment: Investment Protection*, in THE MAI NEGOTIATING TEXT 57-63 (OECD Pub., Feb. 14, 1998).

75. *Ibid*.

76. *Ibid*, See also, OECD, Main Features of the MAI 37, Working Group A, in OECD Documents 118; OECD Main Features of the MAI 20; Working Group C, in OECD Documents 138.

77. *Ibid*, See also, OECD, Main Features of the MAI 12-15, Working Group C; Working Group D, Dispute Settlement, in OECD Documents 155.

agreement. Cross-border investors would have the options to sue a country before an international tribunal rather than in the country's domestic courts such as International Centre for Settlement of Investment Disputes (ICSID).[78] This investor-to-state dispute mechanism is a significant departure from previous international economic agreements like the General Agreement on Tariff and Trade (GATT) or WTO, which only allow national governments to bring complaints against other governments.[79] Moreover, the "Roll-back" and "Standstill" Provisions[80] require host countries to eliminate laws that violate any rules signed through negotiations and to refrain from passing any such laws in the future. On the other hand, due to national diversity and differing opinions, some issues were not addressed under those negotiations; for example, languages addressing the Responsibilities of Corporations regarding treatment of employees, environmental protection, fair competition, and other issues. There was discussion regarding an existing OECD code of corporate responsibility, but these provisions were designed as non-binding and suggestive.[81]

D. FDI MULTILATERAL AGREEMENT AND THE TELECOMMUNICATIONS INDUSTRY

Unlike the WTO agreements, the FDI multilateral agreements were not focused on any particular sector including the telecommunications industry. In addition, those multilateral agreements on investment are still at the proposal stage under negotiation; therefore, their influences on the telecommunications industry are not yet visible. Due to the importance of information and communication, the telecommunications industry was mainly state-operated and monopolized. Even now, many developing countries still fear that opening up their markets to competition and foreign investment without restrictions will cause the loss of control of an industry that is clearly strategic. One of the FDI multilateral agreements forbids governments to require foreign corporations to transfer technology. These types of rules will deprive developing countries of an avenue to access technology in

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78. ICSID is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States with over one hundred and forty member States. The Convention sets forth ICSID's mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes. Available on http://icsid.worldbank.org/ICSID/Index.jsp (last visited May 16, 2010).

79. Org. Econ. Co-Operation and Dev., *The Multilateral Agreement on Investment: Dispute Settlement*, in THE MAI NEGOTIATING TEXT 63-76 (OECD Pub. Feb. 14, 1998).

80. *Ibid*, See also, MAI Working Group B, New Issues, in OECD Documents 129.

81. Elizabeth Smythe, *Your Place or Mine? States, International Organizations and the Negotiation of Investment Rules*, 7:3 Transnat'l Corp. 85, 101 (1998).

telecommunications and reap economic benefits from the foreign country's economic activities.[82] It will also constitute an obstacle for a national telecommunications infrastructure and universal service in underdeveloped as well as developing countries. Nonetheless, FDI in telecommunications generally will bring necessary technological skill, funds and market competition that will benefit national telecommunications development. Adopting the "Non-Discrimination" rules provides an opportunity to benefit from an emerging "single market" for telecommunications services. Those countries not making commitments under the agreement may find difficulty in attracting foreign capital for infrastructure investment.[83] The rapid technological development in the field of communications has facilitated the development of a global telecommunication marketplace.

Under those FDI multilateral agreements, industries will have access to technologically advanced methods of manufacturing, which will produce more efficiency and result in less waste.[84] With a more open foreign investment arena in telecommunications, this investment has the potential to cause possible damage to national telecommunication sovereignty and universal access for citizens. Telecommunications have substantial and essential influences on national security, social stability, economic development, and also to many related industrial sectors. Considering the particular character of telecommunications, the effect of the negotiated multilateral agreements on FDI is questionable. Performance requirements are essential safeguards in domestic laws for market access and foreign investment commitments to be effective.[85] They define the rules pertaining to competitive safeguards, interconnection, universal service, licensing, the establishment of an independent regulator and the use of scarce resources like the radio spectrum that are necessary for local telecommunication development.

82. Benjamin Martin, *An Environmental Remedy to Paralyzed Negotiations for A Multilateral Foreign Direct Investment Agreement*, 1 Golden Gate U. Envtl. L.J. 209 (2007); See also, Kelly Lim: "Arguments Against the Multinational Agreement on Investments;" available on http://darwin.bio.uci.edu/~sustain/issueguides/MAI/MAI_Con.html (last visited May 16, 2010).

83. See *supra* note 18.

84. See *supra* note 82, See also Jason Lam: "Arguments In Favor of the Multilateral Agreement on Investments," available on http://darwin.bio.uci.edu/~sustain/issueguides/MAI/MAI_Pro.html (last visited May 16, 2010).

85. Chun Hung Lin, *Role of Foreign Direct Investment in Telecommunication Industries: A Developing Countries' Perspective*, 4: 1 Contemp. Mgmt. Res. 29-42 (2008).

E. INFLUENCES OF FDI MULTILATERAL AGREEMENT ON THE GLOBAL ECONOMY

As discussed above, the success of the ongoing FDI multilateral agreements remains in question, due in part, to the diversity of interests which are at play. Unlike FDI multilateral agreements, "Bilateral Investment Treaties" (BIT) are investment agreements negotiated by two countries to establish equal or preferential investment treatments for each other. Most BITs are signed by a developed and lesser-developed country. However, unlike BITs, the original MAI signatories under OECD are capital-rich countries and major exporters of international investment. Those countries can leverage the dispute processes to their advantage and challenge local governments' policies on health, safety and environment. Additionally, under the MAI, the investor-state dispute mechanism will be exercised to challenge local regulatory arenas perceived by investors as onerous barriers to investment.[86] The expropriation provision goes further than the BITs, and could force local governments to compensate investors for regulations that cost investors money.[87] Those provisions will also ban a wider range of performance requirements than the BITs, such as mandatory local job creation, mandatory joint ventures with local firms, and so on.[88] Based on those differences, several critics have focused on the FDI multilateral agreements' negative potential, specifically placing the importance of economic development over state sovereignty.

To seek investment protection, many business groups and the MNE claim that the agreement will provide needed protections for international investors against discrimination and expropriation, reduce the distortions and inefficiencies caused by excessive regulation, increase access to foreign markets on favorable terms and help businesses, consumers and workers. Increasing foreign direct investment will also benefit developing countries through the transfer of technology and improve the efficiency of the global economy.[89] The FDI multilateral agreements such as the proposed MAI will protect the rights of investors to free, equal and safe access to markets; and resolve the conflicts that are inevitable between governments and transnational corporations.[90] They also regard investment, like trade, as an engine of economic

86. Mary Hallward-Driemeier, "Do Bilateral Investment Treaties Attract FDI? Only a bit...and they could bite," World Bank Policy Research Paper No. 3121, Washington DC, USA, Jun. 2003.

87. *Ibid*.

88. *Ibid*.

89. Jürgen Kurtz, *NGOs, the Internet and International Economic Policy Making: the Failure of the OECD Multilateral Agreement on Investment*, 3 Melbourne J. Int'l L. 213-246 (2002).

90. See *supra* note 70.

growth, employment, sustainable development and rising living standards in both developed and developing countries. The proposed MAI would establish mutually beneficial international rules that would not inhibit the nondiscriminatory exercise of regulatory powers by governments and such exercise of regulatory powers would not amount to expropriation.[91] There are substantial concerns of opponents from a large number of environmental, labor, consumer, and women's organizations.[92] They claim that a multilateral agreement on investment could hasten job flight from industrialized countries and increase the pressure on all countries to compete for investment capital by lowering wages, labor and living standards, as well as weakening environmental and consumer-safety standards. It is clear that while the corporate interests have a powerful voice, the workers who will actually fuel the development have not been given a marginal say in the development of the regulatory schemes to protect both the workforce and to serve as a safeguard against the potential negative effects of rampant financial expansion.

In addition, the proposed MAI will allow investors to challenge legitimate regulatory safeguards that enjoy widespread public support but are viewed by investors as impediments to the free flow of capital.[93] The agreements provide legal protections for investors' rights, but impose no obligations for investors regarding labor rights, environmental standards, or anti-competitive business practices. The provisions allow investors to sue governments for compensation if they believe that any national or local laws violate their rights or pose a barrier to investment. Based on this reality, it will undermine national sovereignty by requiring the roll-back of laws that violate those rules. Many laws and policies that could be challenged are designed to protect the public interests such as local economic development programs, laws designed to conserve valuable natural resources or land, community reinvestment laws, and bans on the production of dangerous products, etc.[94] Opponents argued that the only provision of the multilateral agreement on investment is its nondiscriminatory basis; but it will cause a big obstacle for local governments to protect the environment, health or safety of their

91. See *supra* note 85.

92. Guy De Jonquieres, *Network Guerillas*, Financial Times, Apr. 30, 1998.; See also, *The Sinking of the MAI*, The Economist, March 14, 1998 at 81.

93. *Ibid*; See also, Madeleine Drohan, *How the Net Killed the MAI,* One World News Service, Jul. 3, 1998.

94. See *supra* note Tieleman (2000); See also, Serge Brunner & David Folly, "The Way to a Multilateral Investment Agreement," NCCR Trade Regulation Working Paper No. 2007/24, in Swiss National Centre of Competence in Research (NCCR) Trade Regulation Research Paper Series (by Thomas Cottier ed.) World Trade Institute, University of Berne, Switzerland (2007).

citizens.[95] For example, the OECD had been strongly criticized for its failure to include developing countries in negotiations. Developing countries led by India, Egypt, Pakistan and Malaysia had expressed strong suspicions and opposition toward the original MAI agreement and the presumed mandate over developing countries.[96] The MAI would spell an end to boycotts and trade sanctions against countries or businesses violating environmental, labor, and human rights standards.[97] The MAI would make it more difficult to prevent these kinds of self-reinforcing dynamics in the future.[98] The provisions would also create difficulties for governments to prevent or regulate international mega-mergers like BP Amoco or Daimler-Chrysler that will place the interests of multinational corporations ahead of the public interest.[99] Customarily, under internat-ional law, only countries have rights arising under the treaties they negotiate. However, the rights created by the provisions can be invoked directly by individuals or corporations. A corporation need no longer persuade any government of the legitimacy of its complaint before seeking enforcement under an agreement to which it is not even a party. Moreover, panels would operate under international law and according to procedures established for resolving international disputes arising under commercial contracts, not by domestic legal principles and procedures. These procedures are in many ways antithetical to the principles of open, participatory and democratic decision-making that are the hallmarks of contemporary legal systems.[100] Based on the above mentioned competing forces, the balancing of the disadvantageous dimensions of multilateral agreements against the benefits of foreign investment in the telecommunications sector poses a challenging dilemma.

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95. Yusuf Caliskan, Analysis of the OECD Multilateral Agreement on Investment Treaty, in THE DEVELOPMENT OF INTERNATIONAL INVESTMENT LAW: LESSONS FROM THE OECD MAI NEGOTIATIONS AND THEIR APPLICATION TO A POSSIBLE MULTILATERAL AGREEMENT ON INVESTMENT 110-177 (Dissertation.Com Pub., May 19, 2008).

96. Rafael Leal-Arcas, *The Multilateralization Of International Investment Law*, 35 N.C. J. Int'l L. & Com. Reg. 33 (2009).; Also see Surya P. Subedi, International Investment Law: Reconciling Policy and Principle (Hart Publishing 2008).

97. Jeremy I. Gatdula, *Poor Countries Still Don't Have Better Market Access (Cancun aftermath),* BusinessWorld, Dec. 1, 2003 at 22.

98. Mark Weisbrot, *Globalization For Whom*? 31 Cornell Int'l L.J. 631 (1998).

99. *Ibid*; See also Mark Weisbrot, *Megamergers and the MAI,* USA Today, August 12, 1998.

100. Steven Shrybman, *The Rule of Law and Other Impediments to the MAI*, 21:5 West Coast Envtl. L. News (1998).

IV. TAIWAN'S FOREIGN INVESTMENT REGULATIONS FOR TELECOMMUNICATION INDUSTRIES

A. FDI AND ITS INFLUENCES ON TAIWAN'S ECONOMIC GROWTH AND TELECOMMUNICATION DEVELOPMENT

FDI has long played an important role in Taiwan's economic growth and telecommunication development. Lacking natural resources, Taiwan is more dependent than larger economies on FDI to spur business development and related job creation. After World War II, FDI substantially contributed to Taiwan's economic growth. Furthermore, a major reason why Taiwan was one of the fastest growing economies in the post-war era was due to the rapid growth of foreign investment. To promote the introduction of foreign capital, the Taiwanese government enacted the "Foreign Investment Statute" in 1954, and the "Regulations for Encouraging Foreign Investments" in 1960. These regulations have guaranteed favorable treatments in taxes and in acquiring industrial lands for foreign investments, for which the influx of foreign capitals has increased rapidly since the 1960s.[101] Japanese, American and European investment resulted in effective technology transfer and played a leading role in opening the oversea markets for Taiwan's products. In addition, FDI increased Taiwanese productivity, brought new technologies, upgraded management and marketing skills, promoted sustainable development, and lead to wider access to markets. Taiwanese efforts to retain and increase its share of FDI are constrained by intense global competition for international investment. Indeed, a wide range of generous investment incentives offered to investors by Taiwanese governments in competing countries is a key element for attracting FDI in Taiwan.

Taiwan has started to liberalize its telecommunications market since January 1996. The most important development was Chunghwa Telecom's separation from the Directorate General of Telecommunications to become a full-fledged corporate entity set for privatization and commercial operation.[102] It also has enforced a law against cross-subsidization to promote fair and full competition and the privatization of Taiwan's telecommunications market.[103] The Taiwanese

101. Rong-I Wu, "Building a Global Competitive Mechanism: A Political Economy View from Taiwan's Perspective," paper presented at International Conference on International Political Economy of East Asia: A Multicultural Perspective, Graduate Institute of Southeast Asian Studies, Tamkang University, Taipei, Taiwan, Sep. 26, 2008.

102. Anne Phelan, *Taiwan Passes Telecom Laws*, 18:1 E. Asian Executive Rep. 5 (1996).

103. Directorate Gen. Telecomm., "1997 Telecommunication Liberalization White Paper," ROC Governmental Publications, Ministry of Economic Affairs, Taipei, Taiwan, 1997.

government granted eight cellular licenses to private operators and they are based on the European GSM and DCS 1800 standards.[104] Many basic telecommunication services including mobile phone, paging, and mobile digital communication markets have been opened up in due course. In addition, the cellular telecommunications spectrum and value-added network services were released on the private sector, and foreign investment in telecommunication services was liberalized under the 1996 Telecommunication Act.[105] The liberalization measures have changed radically with foreign investments, now portfolio as well as FDI are not only allowed but also actively encouraged. When the Taiwanese government opened up the market to private industry, some foreign investors were ready to enter Taiwan's telecommunications sector. In addition to telecommunications liberalization, the capital limits on FDI in service sectors were progressively increased. Currently, full foreign ownership investments are allowed in several industrial sectors in Taiwan. Thus telecommunications services providers from the USA, Japan, or European countries are likely to enter Taiwan due to its position as one of the fastest growing telecommunications markets in world. For example, numerous international corporations such as IBM, AT&T, Dupont, Ford, Texas Instruments, Motorola, and Digital Equipment have chosen Taiwan as their regional operation center in the Asia-Pacific region.[106] Thus further liberalization involves potential advantages for Taiwan's telecommunication and economic development.

Moreover, after its main changes on telecommunication regulations, Taiwan offers opportunities for telecommunication service operators, infrastructure vendors, manufacturers and associated services companies. Taiwan's basic telecommunications infrastructure including telephones, tele-fax, and other communication services are well established all over the island. Taiwan's remote areas such as the Central Mountains, coastal areas and outlying islands are now able to communicate directly with other parts of the world. In addition, many of the long-distance networks and exchange facilities have been set up and digitized. The quality of telecommunication services has been largely improved, and its rates also have been adjusted to match the global competitive range.[107] Like many other countries, Taiwan depends on investment and capital formation to stimulate economic growth and achieve sustainable development. Taiwan is also an active participator in the financing and the placement

104. Lawrence S. Liu, "*Telecommunications Market Liberalization in Taiwan: Political and Legal Issues*," 18:10. E. Asian Executive Rep.9 (1996).

105. *Ibid*.

106. Richard Vuylsteke & Don Shapiro, "2007 Taiwan White Paper," American Chamber of Commerce in Taipei, AmCham Publications, Taipei, Taiwan, 49-53 (2007).

107. See *supra* note 100.

of undersea fiber-optic cables, as well as expanding the switching capacity of its international exchanges. In the telecommunications sector, Taiwan possesses two prime strengths; one is the firm foundation of its basic telecommunications infrastructure, and the other is the ability to absorb new technology.[108] Taiwan's liberalization of telecommunications and its technological upgrading will benefit not only the development of other industrial sectors, but also provide the foundation for the telecommunications infrastructure essential to the functioning of an advanced economy in the future. Taiwan wants to provide the telecommunications infrastructure with low-cost, high-quality services for foreign investment as the hub in the Asian-Pacific area. Through this means, Taiwan's telecommunications industry can be effectively enhanced and honed, and its international competitiveness will favor foreign investment setting up telecommunication operations centers in Taiwan. Taiwan's basic telecommunications infrastructure already stands on a stable foundation and has a high capability of absorbing new technology. Additionally, FDI in telecommunications provides key inputs to other productive activities that lead to further investment and competitiveness of the overall economy. Thus, further liberalization should be aimed toward attracting efficiency seeking FDI through the right policy that expands operation, improves local skills, establishes linkages and upgrades technology. If Taiwan's telecommunications industry can speedily raise international competitiveness and collaborate with world-class telecommunications enterprises, Taiwan will have the potential to occupy the leading position in the Asian-Pacific telecommunications market.

B. PROMOTION MEASURES FOR FDI IN THE TELECOMMUNICATIONS INDUSTRY

Since Taiwan's telecommunications development is strongly related to the trend of globalization, it can be concluded that the upward swing in the telecommunications sector in Taiwan is because of its introduction of FDI into this sector which proves the importance of FDI's role. To attract more foreign investment, the Taiwanese government adopted the "Foreign Investment Statute" that provided a package of incentives and privileges for foreign investors such as ownership for foreign investors, protection of intellectual property rights, retention of company earnings up to the amount of capital investment, low-interest loans and Co-

108. Lawrence S. Liu, *Aspiring to Excel - the Uneasy Case of Implementing Taiwan's Asia-Pacific Regional Operations Center Plan*, 10 Columbia J. Asian L. 199 (1996).

financing for Research and Development investments, etc.[109] In addition, to keep pace with global advances in high-tech and high value-added industries such as information, telecommunications, and medical care, the government has made emerging industries the focus of the overall economic development policies. In order to develop a favorable environment for foreign investment in Taiwan, and to encourage investment by foreign companies for the purpose of upgrading the industrial base, the government enacted the "Statute for Upgrading Industries."[110] In 2010, the government passed the "Statute for Industrial Innovation" to replace the former statute in order to attract more investment from the high-tech industry. According to the statute, investment tax credits are available for spending in high-tech industries. Stockholders of important technology, enterprises, investment businesses, and venture capital corporations are eligible for tax credits or a five-year tax holiday.[111] For the telecommunications industry, the statute propagated rules governing foreign investment in the hardware, software and technology that can promote an enterprise's digital information efficiency. For example, Internet and television functions, enterprise resource planning, communication and telecommunication products, electronics or audio visual equipment and digital contents production may credit five to twenty percent of the amount of funds disbursed for certain allowable purposes against the amount of profit-seeking enterprise income tax payable in each year within a period of five years from the then current year.[112]

To promote an investment environment in telecommunication, "Strategies and Measures in Developing the Ten Emerging Industries," "Development of Key Components and Products," and other plans have been implemented since 1991. Taiwan currently seeks the merging of local capitals and foreign technologies, utilizing existing high-tech skills to attract foreign investment, upgrade industrial technologies, and strengthen trade to ensure Taiwan's economy continues to develop steadily amidst the changing global environment.[113] The primary factor to

109. Chun Hung Lin, *Critical Assessment of Taiwan's Trade and Investment Relationship with ASEAN Countries in the Past, Present & Future*, 7:1 Misk. J. Int'l L. 61-82 (2010).

110. The Taiwan Legislative Yuan (Congress) passed the Statute for Industrial Innovation on 16 April 2010, a law designed to attract capital investment in Taiwan for research and development (R&D), innovation and industry upgrading projects. The provisions of the Statute, which apply retroactively as from 1 January 2010, are intended to replace the Statute for Upgrading Industries, which expired at the end of 2009. See Ye-Hsin Lin and David Johnston, *Legislative Yuan Passes Industry Innovation Act and Approves Corporate Tax Rate Reduction*, Taiwan Tax Alert, Apr. 20, 2010.

111. Statute for Indus. Innovation, art. 30.

112. Statute for Indus. Innovation, art. 7, 8, & 27.

113. See *supra* note 85.

attract foreign investment is a productive and dynamic economy, including a good marketplace framework, high levels of innovation, and strong relationships with trading partners. To continue to improve the international investment climate, the Taiwanese government has to adopt competitive, efficient and fair foreign investment regulations.[114] By strengthening the competition FDI laws; implementing related policies to address foreign investment issues such as intellectual property protection and risk management and harmonizing with other jurisdictions; and participating in bilateral, regional and multilateral trade and investment agreements, Taiwan will become an ideal place for foreign investment in telecommunication and forward its goal of being a telecommunication center in the Asian-Pacific area. In addition to regulations for improving the investment environment, the most important regulatory reforms include privatization and competition to establish a sound enabling environment; additionally, privatization and competition can help attract FDI and promote telecom.[115] Specific incentives to boost domestic and foreign investment are including tax incentives. Therefore, the Taiwanese government should adopt tailored tax incentives to help attract foreign investment in the telecommunications sector, but also to question how they are being used and their effectiveness. Under these considerations, the incentives and measures that have been made still fail to catch the investors' eyes and require future legislative adjustments.

C. LIMITS OF FOREIGN OWNERSHIP ON THE TELECOMMUNICATIONS INDUSTRY

Subject to security and licensing requirements, there are certain limits of foreign ownership on telecommunications sectors in Taiwan's regulations. Under the 1996 Telecommunication Act, the total direct shareholding foreigners of Type One telecommunications may not exceed twenty percent, and the sum of direct and indirect shareholding by foreigners may not exceed sixty percent.[116] The percentage of indirect shareholding by foreigners is calculated by multiplying the percentage of shareholding by domestic juristic persons in the Type One telecommunication enterprise by the percentage of shareholding or capital paid by foreigners in the said domestic juristic persons.[117] Proponents of the twenty percent limit on foreign ownership considered that telecommunications is too strategic an industry to permit a limit

114. *Ibid*.
115. Phillippa Biggs, "Strategies to Attract FDI in Telecommunications," paper presented at Meeting of Experts on FDI, Technology & Competitiveness, held by UNCTAD, Geneva, Switzerland, March 9, 2007.
116. Telecomm.Act, art. 12(2).
117. Telecomm.Act, art. 12(3).

higher than twenty percent. Opponents, on the other hand, argued that a less than majority limit, i.e. 49% on foreign ownership would be necessary for sufficient market competition in the liberalized segment of the telecommunications market. For future globalization and privatization, it is believed that lifting foreign investment limitation in such a strategic industry is necessary.[118] A Type One telecommunications enterprise's chairman of the board and a majority of its directors and supervisors must be Taiwanese nationals. This means that up to slightly less than a majority of board members or supervisors can be foreigners, if agreed to by the domestic shareholders. Compared to the limit on foreign ownership, the disproportionately larger quota for foreigners as directors and supervisors is a deliberate attempt to permit international strategic alliances to be made in the future.[119] To keep a market competition model, foreign ownership in Type Two business is not limited. In sum, removing foreign ownership limitations on telecommunications enterprises is a necessary incentive to attract foreign high technology industries and create adequate market competition.

Moreover, under “Cable Radio and Television Law,” total direct and indirect foreign investment in a company operating a cable radio or television system shall be less than sixty percent of the total shares issued by the company.[120] Direct foreign shareholding is limited to legal entities, and the total shares directly held by foreign shareholders shall not exceed twenty percent of the total shares issued.[121] In addition, the government may reject applications by foreign investors planning to establish or operate cable radio or television in Taiwan, without resolution by the Review Committee,[122] if it deems that the foreign investment would have an adverse effect on national security, public order, or social morals.[123] If the applications by foreigners for investment in cable radio or television violate the limits of foreign ownership, it would be rejected. Obviously, the rules of foreign ownership limitations consider and are connected to the importance of “national security” and “public order,” as well as the values of “social morals.” However, the definitions of “national security,” “public order,” or “social morals,” remain unclear. Those would rely on the judgments of a “Review Committee,” thus the composition of members of a Review Committee would decide which one or type of foreign investment would be allowed. This kind of

118. Chun Hung Lin, “*International Influences and Transformation of Telecommunications Regulations in Taiwan*; 2:1 Chinese J. Int’l L. 267-288 (2003).

119. See *supra* note Wu 101.

120. Cable Radio and Television Law, art. 19(2).

121. *Ibid*.

122. *Ibid*, art.8, 9, 10, 11, 12, 13, 14, 15, 16, 17.

123. *Ibid*, art. 23.

indefinite and vague legislative language may cause unnecessary arguments. Additionally, under "Satellite Broadcasting Law," the total shares of a satellite broadcasting business directly held by foreign shareholders shall be less than fifty percent of the total shares issued by the said business.[124]

Separate from the original Operational Organ of Directorate General of Telecommunications (DGT), the Chunghwa Telecom Company is established and regulated by Statute of the Chunghwa Telecom Company (CTC Statute) in 1996. The percentage of shareholding by foreigners in Chunghwa Telecom Company is ruled by the Telecommunication Act and separately prescribed by the Ministry of Transportation and Communication. (MOTC)[125] In addition to limits of foreign ownership, there is another rule concerning nationality of leading positions in telecommunications industries. According to the policy, the majority of directors and board members including chairman, directors, or CEO should be Taiwanese citizens. For example, on Article 12(3) of "Telecommunication Act," requires that the chairman of the Board of a Type I telecommunications enterprise shall be a Taiwan citizen.[126] Also, Article 20 of "Cable Radio and Television Law," mandates that at least two-thirds of the directors and two-thirds of the supervisors of a company operating a cable radio or television system shall be Taiwan citizens and the chairman of the board of directors shall be a Taiwanese citizen as well.[127] Additionally, the "Radio and Television Act" mandates that those without Taiwanese nationality may not be promoters, shareholders, directors, or supervisors of a radio or television business.[128] In addition to the "Radio and Television Law," there are different restrictions on foreign ownership for telecommunications industries, which are based on the reasoning of "national security" and "social order." Thus the openness of foreign investment and ownerships are still facing domestic pressures and nationality based consideration.

D. SOME COMMENTS CONCERNING TAIWAN'S FOREIGN INVESTMENT POLICY ON THE TELECOMMUNICATIONS SECTOR

Reviewing the developmental history of Taiwan's telecommunications market, the government used to prohibit foreign capitals' entry into this sector. Following the accession to the WTO and economic globalization, many multinational enterprises have gradually participated and entered

124. Satellite Broadcasting Law, art. 10.
125. Telecommunication Act, art. 12(5).
126. Telecommunication Act, art. 12(3).
127. *Ibid*, art. 20.
128. Radio and Television Act, art. 5(3).

Taiwan's telecommunications market through the way of mergers & acquisitions, joint venture, or parenting subsidiary. As stated above, under Article 12 of the Telecommunication Act, the total direct shareholding foreigners of Type One telecommunications may not exceed twenty percent. Whether the limits on foreign investment are bringing benefits to local industries, assisting the whole of industrial development, or providing necessary protection is a debatable issue. Generally speaking, the telecommunications industry owns the characters of communication tools, culture mission, and information exchange which bring powerful influences on local society and national development. Moreover, radio spectrum, considered a scare resource, should be well-protected and regulated by local government. In the case of wartime, a resource relating to such information systems is vital and irreplaceable. Thus, setting limits on foreign investment in telecommunications, an industry of comparable import, seems to be justifiable.

Under the trend of globalization and WTO's requirements, the telecommunications industry has entered a new era of industrial convergences and transnational phenomenon. Based on economic liberalization and internationalization, Taiwan should adjust itself from a governmental-controlled telecommunication market to a free and open market that totally relaxes any restrictions on foreign investment. First, due to convergence of the cable and telecommunications industries under the new policy, the legal differences of foreign investment restrictions between "Telecommunication Act" and "Cable Radio and Television Law" should be adjusted to the same level. Second, industries using radio spectrum or relating to infrastructure networks for cable televisions may be set up with some limits for foreign investment due to its scarcity and importance; however, those operating satellite broadcasts may remove the restrictions on foreign investment since satellite communication equipment, transponders and landing licenses are still controlled by local governmental authority. For those relating to substantial communication equipment, the restrictions on foreign investment may have their justifiable excuses for national security, network publicity, and cultural consideration. However, those created for commercial communication or equipment should not be restricted by those rules.

While considering the introduction of technical skill and abundant capitals, constructing a stronger telecommunications industry, as well as promoting national economic competitiveness, the Taiwanese government has decided to open the telecommunications market and create commercial stations to foreigners at certain levels. Additionally, more foreign investment in the telecommunications industry represents more meaningful recognition of Taiwan's business environment; thus it seems unnecessary to set up any restriction of foreign ownership. Although the rules of foreign investment limits set by Art. 12 of "Telecommunication Act," wherein foreign capital may enter domestic markets through direct or indirect forms may escape from governmental regulations. Multinational operation also has become an unavoidable developmental strategy and domestic telecommunications industries should not continue to rely on governmental protection to hinder foreign capitals' accession. As to cultural and social strikes by foreign influences, such considerations should not be an issue due to the formation of the "world village." Indeed, the issue of relaxing foreign investment limits should be based on mutual reciprocity. On the other hand, restricting foreign ownership or building legal obstacles to foreign investment in telecommunications sectors may disserve the free-trade market system and be against WTO's principle of non-discrimination and trade liberalization. How to balance between relaxing foreign investment limits and protecting national interests is a challenging task to say the least. With Schedules of Commitments for Telecommunication Sector under WTO, Taiwan has relaxed foreign investment limits on the telecommunication industry while maintaining sweeping unnecessary restrictions on foreign investment. Thus, the process of freeing foreign investment limits in the telecommunication sector has served trade liberalization and internationalization. Also, the increase in the FDI limit will allow for investment flowing into Taiwan, and have a magnanimous effect on the telecommunications sector by way of economic reforms that would also affect the economy as a whole, creating a chain effect on various other economic sectors.

V. CONCLUSION

Foreign investment has rapidly increased among countries and has largely enhanced global economic growth. The evidence shows us that there was indeed a correlation between economic development and investment in telecommunications. In the telecommunications sector, FDI indeed has made the economy more vulnerable to economic fluctuations. FDI brings the promotion of economic growth, the attainment of technology exchange while creating employment. For host countries, FDI in telecommunication can satisfy the dire need of infrastructural reforms in rural areas. The inflows allow multiple benefits such as technology transfer, market access, improvement in voice and data quality and organizational skills. FDI increases the flow of foreign currency and helps in maintaining a harmonious relationship with the country from which the investment is made. Although FDI brings huge economic benefits, many countries are still only partially open to foreign investment. These countries fear that by opening up markets to competition and foreign investment without any restriction, they will lose control of strategic industries. They have traditionally used performance requirements such as exporting requirements or technology transfer agreements to control the categories and size of FDI. Therefore, balancing the economic gains from FDI and national economic sovereignty is a historic dilemma. To solve the dilemma of the tension between foreign investment and national sovereignty, multilateral agreements have been negotiated through the OECD, WTO and UNCTAD. These kinds of agreements aim to provide needed protection for international investors against discrimination and expropriation, and will reduce the distortions and inefficiencies caused by excessive regulations. Increasing FDI will benefit developing countries through technology transfer and economic gains; however, the opponents argue that it could hasten job flight from industrialized countries and could increase the pressure on all countries to compete for FDI capitals by lowering wages, lowering living standards, and weakening environmental standards. For developing countries, a freer environment for FDI and multilateral agreements would preclude many of their developmental strategies and industrialization processes. Due to the economic disparity between developed and underdeveloped countries, developing countries tend to try to maintain a level of sovereignty that would allow them to attain their economic developmental pilot and industrial strategies.

In local economies, FDI in telecommunications generally will bring technology transfer, abundant capitals, and market competition, which will benefit national telecommunications development. By introducing foreign investment into developing countries, local telecommunications infrastructure and universal access can be easily reached. On the other hand, telecommunications have substantial and essential influence on national security, social stability, economic development and many additional industrial sectors. Therefore, opportunities for FDI in the telecommunications services sector historically have been limited and most developing countries have had monopolistic state-owned telecommunication carriers. The negotiations had planned to forbid governments to require foreign corporations to transfer technology, which deprives developing countries of an important avenue for accessing technology in telecommunications although it allows them to reap the economic benefits from the foreign country’s economic activities. It also constitutes an obstacle for local telecommunications infrastructure and universal service in developing countries. Considering the particular character of telecommunications, some regulations of the proposed multilateral agreements should be exempted. The best way to resolve this problem is combining market competition, privatization and foreign investment in order to create an appropriate environment for telecommunication development. Increased foreign investment and privatization in telecommunications markets will result in substantial progress in meeting developing countries' basic telephony requirements. Besides, clear and firm domestic regulations will increase transparency in the regime and encourage foreign direct investment. The other issue for a fair and non-discriminatory investment environment is that regulators need adequate powers and should be as independent as possible.

Most countries have set up the limits of foreign ownership especially for basic telecommunications service; however, the degree of limits depends on each country's telecommunication policies. Those differences express each country's diversified foreign investment policies influenced by historical environments, economic strengths, market scales, and external conditions. Supporters emphasized the reasons to limit foreign ownership including ensuring national sovereignty and security, developing basic social values, as well as protecting domestic industries, etc. Opponents argued that relaxing foreign investment in the telecommunications sector corresponds to the trend of globalization and economic liberalization. Under internationalization of telecommunications sectors guided by multilateral organizations such as the WTO and ITU, introducing foreign investment through multinational enterprises will bring abundant capital, technical skills, and operational know-how. For example, accessing telecommunications markets, there are no limits on foreign-owned companies in the USA, and UK; however, there are 49 percent foreign investment limits in Australia and New Zealand, and 33 percent foreign investment limits in France. Reviewing global developmental tendencies, increasingly more countries have relaxed and untied their foreign investment limits on the telecommunications industry. For them, increasing FDI in the telecommunications market is viewed as providing the necessary resources for the capital intensive telecommunications sector and thus the aim is to draw more and more capital investments in this sector.

Lacking natural resources, Taiwan depends heavily on foreign investment to stimulate economic growth and achieve long term sustainable development. To promote the introduction of foreign investment, the Taiwanese government has enacted many favorable foreign investment incentives and regulations. Since 1996, Taiwan started to liberalize its telecommunications market by privatizing its monopolistic state-owned telecommunication carriers, relaxing the limits of foreign ownership in telecommunication industries, and adjusting the authorized agencies from DGT to National Communication Commission (NCC), as an independent and powerful regulator. In addition, the Taiwanese government also adopted more competitive, efficient and fair foreign investment regulations to improve its international investment climate including tax credits and financial aids. However, there are still certain limits on foreign ownerships and rules on the majority directors on the board that are comprised of the chairman, the managers and the Chief Executive Officer should be Taiwanese citizens according to the regulations. In the telecommunications sector, Taiwan currently possesses two strengths, the firmly basic telecommunications infrastructure and the ability to absorb new technology. Increasing FDI in the telecommunications market in Taiwan companies would have the effect to modulate the foreign stakes in their companies that have already acquired their assets. Moreover the aim was also to make the whole system in the telecommunications market lucid and methodical.

From both the viewpoints of economists and the example of Taiwan's experience, it is believed that a more open foreign investment environment doesn't always violate national economic sovereignty. Taiwan's experience shows that there are several issues affecting the investment climate and those factors may be beyond the governmental controls in developing countries such as global recessions and currency fluctuations. Developing countries need more authority to control and guide their developmental directions and industrial strategies. Those countries, however, lack necessary capital and technological skills to attain their industrialization goal. Foreign investment brings abundant capital, advanced technologies and huge economic profits, which can easily resolve developing countries' economic problems. A stable, transparent and non-discriminatory regulatory system is the best way to attract more foreign investment. Under global economic competition, more and more countries already relax control over foreign investment and provide a more favorable investment environment and laws to foreign investors. Because there will be more countries competing to attract more foreign investment, a mandate on FDI multilateral agreement in telecommunications seems difficult to achieve its original goal in any global forum. With regard to various multinational agreements, provisions that provide neither transparency nor full-participation could damage some countries' economic profits and national sovereignty. Enacting domestic regulations on foreign investment or signing bilateral investment treaties appears more suitable for achieving those requirements and considerations. Indeed, the developmental direction of investment in telecommunication should transform into more market competition and more FDI participation while at the same time emphasizing national control and technology transfer for many developing countries. The overarching challenge to achieve practical progress of telecommunication development in Taiwan, as well as in many other countries, is to balance the benefits of FDI with the needs of host countries, while focusing on sector specific opportunities that blend domestic and foreign investment.