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REGULATORY TREATMENT OF FOREIGN DIRECT INVESTMENT IN INFRASTRUCTURE AND PUBLIC UTILITIES AND RECENT TRENDS: THE OECD EXPERIENCE

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REGULATORY TREATMENT OF FOREIGN DIRECT INVESTMENT IN INFRASTRUCTURE AND PUBLIC UTILITIES AND RECENT TRENDS: THE OECD EXPERIENCE

Introduction

This paper has been prepared as background information for the discussion on promoting investment in India's infrastructure sectors to be held at the OECD-India Roundtable on 19 October 2004. It uses available information to make a preliminary assessment of the extent of liberalisation and remaining restrictions on foreign direct investment (FDI) in infrastructure and public utilities[1] in OECD Member countries and non-Member countries which are adherents to the OECD Declaration on International Investment and Multinational Enterprises. It relates the findings of this assessment in general terms to FDI flows in this sector in these countries.

Investment in infrastructure is a basic prerequisite for economic growth and development

Infrastructure investment is a major prerequisite for economic growth and development, both because it provides the basis for the production of goods and services and because it provides essential services directly to consumers.

Developing countries whose economies start to expand more rapidly typically encounter serious energy, transport and other bottlenecks which prevent them from realising their productive potential. Lack of port and airport capacity limits the expansion of international trade. Overloaded rail and road networks hinder the movement of goods and workers within a country. Lack of coverage of telecommunications networks impedes the flow of information throughout the economy. Power outages diminish manufacturing and services outputs.

India is a case in point. One OECD study comparing industrial performance in Indian states has demonstrated a significant impact of core infrastructure bottlenecks on total factor productivity (TFP) in manufacturing.[2] Another OECD study has shown that differences in infrastructure provision play an important part in causing differences in economic growth rates between Indian states.[3]

Infrastructure inadequacies also contribute to low levels of human development. Lack of coverage and poor quality of public utility networks typically mean that populations have insufficient clean water supplies and sewerage, insufficient electricity to light and power their homes, insufficient transport to get them to work or allow them leisure travel, and no means of rapid communication with remote friends and family.

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1. Defined in Annex 1.

2. OECD (1998), *State Infrastructure and Productive Performance in Indian Manufacturing*.

3. OECD (1998), *Long-Run Growth Trends and Convergence across Indian States.*

Here also, India provides a telling example. One of the OECD studies alluded to above demonstrates that infrastructure inadequacy contributes to income disparities and differences in human development indicators (e.g. education) among Indian states.[4]

FDI is playing an increasing role in infrastructure investment

In seeking to eliminate production bottlenecks and improve living standards by expanding infrastructure, such countries may need additional funding from abroad, for example in the form of Official Development Assistance (ODA) or FDI, to supplement domestic investment funding when this is insufficient for the task.

While ODA has been accepted for infrastructure investment by developing countries for many decades, the use of FDI for this purpose is a relatively recent development. In developed countries, too, infrastructure and public utilities were until recently largely excluded from international trade and investment because they were mainly provided by governments. Government provision was seen as necessary either to ensure socially equitable access to these services and/or because they were considered to be natural monopolies. In particular, the scope for competition in network services such as telecommunications and electricity and water supply, has been limited because they were provided via infrastructure that was often prohibitively expensive to duplicate.

In recent years, however, “natural monopoly” limitations have been seen as less important as a result both of technological innovation (for example in the development of mobile telephones) and of the realisation that private participation is necessary to increase investment and services coverage, foster competition and encourage technology transfer.

Even where elements of natural monopoly persist, it is possible to introduce competition through monopoly franchises. Many countries have used innovative strategies to facilitate private participation in these services. Public-private partnerships (PPPs), such as concessions, leasing, build-operate-(own)-transfer (BOOs and BOTs) and management contracts have emerged as alternatives to privatisation, where ownership is transferred through outright divestiture.

At the same time as the paradigm shift in policies towards private participation in infrastructure provision there has been further opening of economies worldwide to international trade and investment and developing countries, having almost all abandoned failed development strategies based on protectionism and autarky, are now striving to attract FDI not only in manufacturing but also in infrastructure in various forms, including PPPs.

This trend has already become visible in developed countries, where FDI in infrastructure tends to take the form of merger and acquisition (M&A) activity, with foreign-controlled enterprises acquiring networks that have already been privatised or participating in the privatisation of state-owned networks, or of participation in PPPs.

FDI in infrastructure and public utilities in OECD Member countries

Currently available statistics do not allow a precise measure of the contribution of infrastructure and public utilities to inward and outward flows for the OECD area as a whole. However, partial information suggests that FDI in some elements of infrastructure is increasing in importance. For instance, FDI inflows into transport and communications in OECD Member countries have increased steadily from 0.5 per cent of total service sector inflows in 1990 to 15.7 per cent in 2002, largely as a result of privatisation, mobile

4. OECD (1998), *Long-Run Growth Trends and Convergence across Indian States.*

telephony and the advent of multimedia technology.[5] An OECD survey of cross-border M&A showed that the largest such deals in 2002-2003 among OECD countries were in the telecommunications sector, while M&A activity was also high in energy production and distribution.[6]

The mean proportion of FDI inflows directed towards infrastructure and public utilities in the period 1992-2002 in a selection of OECD countries in which relevant data are available was 8.8 per cent and the median value 8.6 per cent (see Annex 3, Table 1). However, there was a wide divergence between countries, with some countries receiving negligible FDI in infrastructure sectors while in Sweden the proportion was 16.3 per cent (mean value, 1993-2002), in the Czech Republic 19.5 per cent (1993-2000) and in the United Kingdom 19.7 per cent (1992-2001).

Proportions also varied widely over time, with a standard deviation of 8.3 percentage points for the group as a whole (Annex 3, Table 1). Large variations from year to year are to be expected, as infrastructure investments are typically “lumpy”, since they tend to involve the acquisition in part or in whole of firms that occupy dominant positions in markets that include virtually the whole population. In Australia, for example, FDI in infrastructure rose from only 1.2 per cent of total FDI inflows in 1995 to 64.1 per cent in 1996, then fell back sharply in 2001 and 2002. Similar patterns can be observed in the other countries in the group, albeit of different magnitudes and with different time structures.

These increased FDI flows related to infrastructure and public utilities are taking place within the context of a regulatory environment in OECD countries that is increasingly open and conducive to such investment. Major deregulation of public utilities started in the United States in the late 1970s. This process was extended in the 1980s and 1990s by the privatisation of public utilities in the United Kingdom. In the 1990s, the creation of a single market in the European Union was accomplished by the issuance of directives that liberalised and created a common regulatory framework for telecommunications, railways, electricity and natural gas markets. Following the abandonment of central planning in the former Soviet bloc economies from 1989 onward, the transition economies in Central Europe took steps to introduce private participation in infrastructure during the 1990s.

However, according to one study conducted at the OECD in 2003[7], and as documented in Annex 2, a number of Member countries still have a relatively restrictive environment in electricity, transport and telecommunications by comparison with other sectors, often taking the form of explicit limits on foreign ownership of domestic firms. The 2003 study indicates that such restrictions have a negative impact on the economies of these countries. Aligning FDI restrictions on those of the most liberal country in the OECD (the United Kingdom) would, the study suggests, increase the OECD-wide inward FDI position by over one-sixth relative to baseline, with gains for individual countries proportional to the extent of current restrictions.

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5 . OECD (2004), *Trends and Recent Developments in Foreign Direct Investment, International Investment Perspectives*.

6. OECD (2003), *Trends and Recent Developments in Foreign Direct Investment International Investment Perspectives*.

7. OECD (2003), *Policies and International Integration: Influences On Trade and Foreign Direct Investment*, Economics Department Working Papers No. 359.

Box 1. Milestones in Infrastructure Reform in the United States, the United Kingdom and the European Union

United States deregulation	
Airline Deregulation Act	1978
Staggers Act (rail deregulation)	1980
Motor Carrier Act (road transport deregulation)	1980
AT&T divestiture (telecommunications deregulation)	1984
Federal Energy Regulatory Commission Order 636 (gas deregulation)	1984
FERC Order 888 (electricity deregulation)	1996
Telecommunications Act	1996
United Kingdom privatisation	
British Telecom	1984
British Gas	1986
British Airways	1987
British Airports Authority	1987
Water and sewerage companies	1989
Electricity companies	1990
British Rail	1995
British Energy (nuclear)	1996
European Union liberalisation directives	
Telecommunications	1990
Railways	1991
Electricity	1996
Gast	1998

Source: World Bank (2004)

Remaining exceptions to national treatment of FDI in infrastructure and public utilities in Declaration adhering countries

One way of measuring the extent of restrictions on FDI in infrastructure and public utilities in OECD countries and the other countries that have signed the OECD Declaration on International Investment and Multinational Enterprises is to consider the notifications of exceptions to the OECD's National Treatment Instrument (see Box 2) by these countries.

Box 2. The OECD's National Treatment Instrument

"National treatment" is the commitment by a country to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like situations. The National Treatment Instrument addresses the treatment of foreign-controlled enterprises after establishment. In this respect it differs from the Code of Liberalisation of Capital Movements, which seeks, *inter alia*, a non-discriminatory right of establishment of foreign-controlled enterprises.

Another difference is that the Code is legally binding on adhering countries, whereas the National Treatment Instrument is not: for adhering countries, national treatment of foreign-controlled enterprises on their territories constitutes a voluntary undertaking. However, it was underpinned in 1988 by a unanimous pledge of all adhering countries to refrain from introducing new exceptions ("standstill pledge").

The National Treatment Instrument's follow-up procedures, which are designed to encourage the fullest possible application of National Treatment by adhering countries, are set out in an OECD Council Decision of December 1991. The Decision comprises an Annex which lists exceptions to National Treatment as notified by each adhering country and accepted by the OECD Council.

Countries which have adhered to the Declaration on International Investment and Multinational Enterprises, as well as the related Decisions and Recommendations by the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and eight non-member economies: Argentina (22 April 1997), Brazil (14 November 1997), Chile (3 October 1997), Estonia (20 September 2001), Israel (19 September 2002), Latvia (9 January 2004), Lithuania (20 September 2001) and Slovenia (22 January 2002).

The exceptions are periodically examined by the Investment Committee. These examinations result in a decision by the OECD Council, which formulates proposals for action by the country concerned. The results of the examinations are published in the series OECD Investment Policy Reviews.

National Treatment has become a well-established principle among adhering countries. Exceptions are typically limited to certain sectors. Many exceptions are of a limited nature and exceptions are reduced in scope or deleted as a result of unilateral measures by the countries themselves, or as a result of the examinations.

The list of exceptions, most recently updated in June 2004, provides a guide to those economic sectors that each adhering government has decided to reserve in some form for its own nationals.

The pattern of exceptions to the OECD National Treatment Instrument notified by adherents to the Declaration shows that, in general, restrictions on FDI have been greatly liberalised in these countries in major sectors such as manufacturing, where there is now little or no formal restriction on foreign investment (see Table 1).

Persisting FDI restrictions in reporting economies are concentrated in a number of non-manufacturing areas, notably the financial sector; land, sea and air transport; postal services; telecommunications; media and broadcasting; publishing; professional services; gambling; tourism and travel; agriculture, forestry and fishing; mining and quarrying; oil and gas; and electricity generation (see Table 1).

Approximately 45 per cent of the entries in table 1 fall within the category of infrastructure and public utilities as defined in Annex 1, especially air and sea transport, postal services and energy. This proportion appears large if one considers that the average share of total FDI inflows accounted for by the sector is less than 9 per cent, and may indeed be a contributory factor in preventing that share from increasing substantially.

Restrictions in some of these sectors are widespread among Declaration adherents: all but two notify exceptions to national treatment with regard to air transport and about half of them report exceptions in regard to water transport of all kinds. Typically international air and water transport is governed by bilateral treaties among contracting states which provide for reciprocal access rights to their nationally-controlled transport companies. Land transport is less restricted, with 10 adherents reporting exceptions in road transport and only three reporting exceptions in rail transport. Cabotage in air, maritime and, to a lesser extent, land transport is restricted in many countries to domestically-controlled enterprises or, in the case of some EU countries, to EU-registered enterprises. The scope and terms of these restrictions vary widely from country to country. FDI restrictions in postal services and telecommunications are noted by 10 of the 38 countries and 7 of them notify restrictions in energy sectors.

Conclusions

OECD Member countries and other adherents to the Declaration on International Investment and Multinational Enterprises have in recent years tended to abandon earlier policies of maintaining state-owned monopolies of infrastructure industries and public network utilities in favour of a varying mix of privatisation and public-private operation. At the same time, these countries have increasingly allowed FDI in the sector. However, the process is not yet complete, since most of these countries still operate a more restrictive policy towards FDI in infrastructure and public utilities than towards FDI in most other sectors of their economies. As a result, the average proportion of total FDI in this sector is less than 9 per cent. Remaining restrictions are motivated by diverse concerns which vary from one country to another, ranging from national security and commercial protectionism to competition and consumer protection. It is likely that relaxation of remaining restrictions of FDI flows in infrastructure and public utilities, combined with further liberalistion measures such as privatistion, accompanied by effective regulation, willove the delivery of network utility services and contribute to faster GDP growth in the OECD area. In this regard, the Investment Committee is working on identifying alternative ways of addressing legitimate concerns. More data and further study, however, are needed to enable a full understanding of the impact of liberalisation in these areas on human development.

Table 1. Exceptions to National Treatment by Country[1]

Countries	General Measures					Sectoral Measures									
						Banking & Finance		Aviation		Water Transport				Land Transport	
	Investment	Official aids & subsidies	Tax obligations	Government purchasing	Access to local finance	Banking & Securities	Insurance	Air Transport	Airports & Air Traffic Services	Sea & Coastal Water Transport	Inland Water Transport	Port Services	Other	Road Transport	Rail Transport
Argentina		x		x										x	
Australia	x							x	x	x	x				
Austria								x			x				
Belgium				x		x				x	x		x		
Brazil					x	x		x	x					x	
Canada	x	x	x	x		x	x	x		x	x		x	x	
Chile	x							x		x	x	x		x	
Czech Republic								x							
Denmark								x							
Estonia						x		x		x	x				
Finland								x		x	x				
France	x							x		x	x				
Germany		x						x		x	x				x
Greece								x		x	x		x		
Hungary		x						x			x				
Iceland	x					x		x							
Ireland								x							
Italy								x	x	x	x	x			
Israel								x		x	x				
Japan								x							
Korea	x	x				x		x		x	x				
Latvia	x					x		x							
Lithuania		x						x		x	x			x	
Luxembourg								x						x	x
Mexico	x					x	x	x	x	x	x	x		x	x
Netherlands						x		x		x	x				
New Zealand	x		x					x							
Norway								x		x	x			x	
Poland								x							
Portugal						x		x							
Slovak Republic								x							
Slovenia								x							
Spain	x					x		x							
Sweden						x		x		x	x				
Switzerland	x					x	x	x	x		x				
Turkey						x		x				x			
United Kingdom				x		x	x	x		x	x				
United States		x	x	x		x	x	x	x				x		

1. Updated under the Secretariat's responsibility as of June 2004, pending acceptance by OECD Council.

Countries	Sectoral Measures												
					Professional Services								
	Post & Telecom	Radio & Television Activities	Motion Picture & Video Production & Distribution	Publishing	Engineering	Architectural	Accounting, Bookkeeping and Auditing Activities	Legal Services	Education	Health Professions	Other	Casinos, Gambling, Gaming & Lotteries	Tourism & Travel
Argentina		x											
Australia	x	x	x	x								x	
Austria					x	x	x	x					
Belgium							x	x					
Brazil	x	x		x						x	x		
Canada	x	x	x	x									
Chile		x		x									
Czech Republic												x	
Denmark							x	x					
Estonia													
Finland								x					
France		x		x				x					x
Germany													
Greece		x			x	x	x	x					
Hungary													
Iceland													
Ireland													
Italy			x										
Israel	x	x	x						x		x		
Japan	x												
Korea	x	x		x									
Latvia											x	x	x
Lithuania		x	x							x		x	x
Luxembourg													x
Mexico	x	x		x				x	x				
Netherlands													
New Zealand	x	x	x										
Norway							x	x					
Poland		x										x	
Portugal			x									x	
Slovak Republic												x	
Slovenia												x	
Spain		x						x					
Sweden							x	x					
Switzerland		x	x										
Turkey	x	x					x		x				
United Kingdom		x											
United States	x	x											

Countries	Sectoral Measures												
	Access to Real Estate				Mining & Quarrying		Energy					Manufacture	
	General	Agricultural & rural	Fishing & Fish Processing	Agricultural, Pastoral & Forestry	Extraction, Exploration & Exploitation	Mining	Uranium, Nuclear, Atomic	Electricity	Hydro-power/ Geo-thermal	Oil & gas	Other	Leather Products	Shipping
Argentina													
Australia	x		x	x									
Austria	x		x										
Belgium													
Brazil		x	x										
Canada	x	x	x	x		x	x			x			
Chile			x			x							
Czech Republic													
Denmark													
Estonia	x												
Finland													
France													
Germany			x										x
Greece	x		x			x							
Hungary													
Iceland	x		x						x		x		
Ireland		x	x	x									
Italy			x										
Israel	x							x					
Japan	x		x	x		x				x		x	
Korea			x	x			x	x					
Latvia	x		x										
Lithuania	x	x	x										
Luxembourg													
Mexico	x	x	x							x			
Netherlands													
New Zealand		x	x			x							
Norway			x										
Poland	x												
Portugal													
Slovak Republic	x												
Slovenia													
Spain													
Sweden	x		x										
Switzerland							x				x		
Turkey	x		x			x							
United Kingdom			x										
United States	x	x	x	x	x	x	x	x	x	x	x		

ANNEX 1. METHODOLOGY

For the purposes of this paper, “infrastructure” is defined as “physical structures that provide the basic network for the distribution of goods and services”. The term “physical structures” excludes “soft” infrastructure such as that involved in human capital formation, e.g. healthcare and education; “basic network” excludes physical structures which are output-specific, such as factories.

The following list of infrastructure elements is indicative, not exhaustive:

- Transport networks, both passenger and cargo, including roads, bridges, tunnels, railway tracks, stations and signal boxes, ports, airports and lighthouses.
- Water and waste water treatment, storage and distribution facilities, including reservoirs, water pipelines, storm drains, sewers and sewage treatment plants (i.e. sewerage facilities).
- Energy production and distribution facilities, including power stations of all kinds (coal-, oil- and gas-fired, including dual power; nuclear fission; hydroelectric; solar; wind; tidal), electricity transmission lines and voltage transformers; town gas plants and gas pipelines, gasholders; oil pipelines and oil storage tanks; nuclear fuel extraction and enrichment facilities. Distribution and storage facilities on the premises of end-users (e.g. oil tanks for domestic central heating or for use in manufacturing plants) are excluded. Mineral extraction is not included.
- Telecommunications networks, including switching stations, surface and underground transmission lines, microwave transmission and reception facilities, cable networks and communications satellites.

For the purposes of this paper, public utilities are defined to include the provision of gas, water, electricity, telecommunications and postal services.

The figures for average FDI inflows into infrastructure and public utilities as a proportion of total FDI inflows were calculated for OECD Member countries selected on the grounds of data availability. For 7 countries[8] FDI inflow and outflow breakdowns include the two categories that together constitute infrastructure and public utilities: (1) electricity, gas and water; (2) transport, storage and communications (which includes postal services). For most other countries figures are available for category (2) but not for category (1).

8. Australia, Denmark, Germany, Italy, Spain, Sweden, United Kingdom.

ANNEX 2. LIST OF OECD EXCEPTIONS UNDER THE NATIONAL TREATMENT INSTRUMENT[9]

ARGENTINA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Road transport: International road transport is reserved to companies controlled by Argentine citizens.

Authority: Under-secretariat for Transport Resolution No. 263/90

AUSTRALIA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to Australian based airlines.

Air transport: Foreign investors can generally expect approval to acquire up to 100 per cent of a domestic carrier or establish a new aviation business, unless this is contrary to the national interest. Foreign ownership of Australia's International flag carrier, Qantas, is not to exceed 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 25 per cent of Qantas' equity.

Airports: In relation to airports offered for sale by the Commonwealth, there is a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports.

Maritime transport: In order to be registered as an Australian vessel, a ship needs to be majority Australian owned (i.e. an Australian citizen, a body corporate established by or under a law of the Commonwealth or of a State or Territory of Australia).

Telecommunications: The Telstra Corporation Act 1991 limits aggregate foreign ownership in Telstra to 35 per cent of the 49.9 per cent privatised equity (i.e. 17.4 per cent of total equity) and limits individual foreign investors to owning no more than 5 per cent of the privatised equity (i.e. 2.5 per cent of total equity).

9. The full list of country exceptions notified under it to the Secretariat as of June 2004, pending OECD Council's acceptance, can be seen at www.oecd.org/daf/investment/instruments.

AUSTRIA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national airlines.

Maritime transport/fishing: Requirements to obtain the national flag: citizenship, residence in Austria, and more than 50 per cent local ownership, with principal location and full operational control in Austria in all cases of non-financial holding. The flag is required for registration of vessels.

BELGIUM

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Maritime transport: The King, in line with the practice of major maritime countries, determines the conditions of ship registration [the right to fly the national flag].

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

IV. Government purchasing

Public works: Contracts for public works when 25 per cent or more is financed or subsidised by the state or another public authority can only be awarded to the following: (1) private persons, who must be of Belgian nationality or from another EC Member state, and must be established within the EC; (2) companies, which must be organised in conformity with Belgian legislation or that of another EC Member state, and must either have their central administration or principal establishment within the EC or must have their headquarters within the Community, on the condition that their activity has an effective link with the economy of an EC Member state.

BRAZIL

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Telecommunications: A licence is required to operate all telecommunication services. Criteria used to grant licences include the applicant's technical and financial capacity and, in certain cases, pricing policies and the amount offered for the license. In cellular telephone (band B frequency), satellite and value-added services, foreign interests are allowed to own all of a firm's non-voting shares (up to two-thirds of the total capital) and to control up to 49 per cent of the voting capital. In the latter case, restrictions on foreign ownership remain for three years after the legislation comes into force in 1997.

Authority: Law N°9,472 of 16 July 1997)

Air transport: Direct *participation* of foreign capital in air transport is restricted. Some foreign companies not established in the territory have been authorised to detain a minority stake, up to 20 per cent in some air national companies

Authority: Article 21 of the Federal Constitution, Brazilian Air Code and Law N° 7565 of 19 December 1986

Airports and air traffic services: Foreign enterprises may not administer or operate airports nor provide navigation and air traffic services

Authority: Brazilian Air Code

Road Transport: Foreign participation is limited to 20 per cent of the voting capital with respect to companies established in Brazil *after* 7 November 1990. Restrictions also apply to all foreign-controlled companies with respect to the raise of capital subscriptions.

Authority: Law 6,813 of 10 July 1980 updated by Law 7,092 of 19 April 1983 and regulated by Law 99,471 of 24 August 1980.

CANADA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: In order to obtain operating authority as a Canadian company, an airline must be 75 per cent owned by nationals and controlled in fact by nationals. Unless they are Canadian, airlines may not undertake the following activities: (1) cabotage; (2) international scheduled air services reserved by bilateral air agreements to "Canadian" airlines; (3) international non-scheduled air services from a base in Canada; (4) specialty air services.

Maritime transport: Cabotage, in general, reserved to Canadian flag vessels.

Maritime activities: Non-national vessels are not permitted to engage in certain offshore activities in coastal waters (e.g. dredging-salvage).

Road transport: Cabotage reserved to national firms.

Telecommunications: Those telecommunications common carriers authorised to operate in Canada are subject to a foreign ownership restriction where at least 80 per cent of prescribed interests in the corporation are owned and controlled by Canadians.

CHILE

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Road transport: International road transport is reserved to companies controlled by citizens of the Latin-American Integration Association (ALADI).

Authority: Accord on International Land Transport signed by ALADI Members -- Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay.

Shipping: Ownership of Chilean flag vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. Cabotage and tugging activities performed in Chilean ports are reserved to Chilean flag vessels.

Authority: Decree Law 3059, Official Gazette 22 December 1979; Supreme Decree 24, Official Gazette 10 March 1966; Decree Law 2222, Official Gazette 31 May 1978.

Air transport: Only Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile may register an aircraft in Chile.

Authority: Law 18916, Official Gazette 8 February 1990; Decree Law 2564, Official Gazette 22 June 1979.

CZECH REPUBLIC

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: substantive ownership and effective control must be vested in the state or nationals of the Czech Republic (Civil Aviation Act No. 49/1997).

DENMARK

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national carriers.

Air transport: Licence to operate an airline is granted only to companies majority-owned by Danish nationals.

Air transport: An aircraft may not be registered in Denmark unless it is predominantly owned by Danish nationals or by companies or other entities controlled by Danish nationals.

ESTONIA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport and related services: Licence to operate an air transport enterprise is granted only to companies majority-owned by the Estonian state, a local government and/or Estonian citizens.

Authority: Article 40 of Aviation Act (RT 1 1999, 26, 376).

Maritime transport and related services: Cabotage is reserved to sea-going vessels flying the national flag of the Republic of Estonia unless an approval is granted. Ships under the flag of an EU Member State are allowed to carry out cabotage on a reciprocal basis. The national flag of the Republic of Estonia may be flown by sea-going vessels owned by Estonian citizens, sea-going vessels in common ownership if the greater share of vessel is owned by Estonian co-owners; sea-going vessels which are the object of shared succession if the greater share of the succession is owned by Estonian citizens or Estonian legal persons which have inherited the sea-going vessel in common.

Authority: Merchant Shipping Code, Ship Flag and Registers of Ships Act.

FINLAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Air cabotage reserved to national carriers.

Air transport: Government authorisation is required to engage in commercial aviation.

Maritime transport: Cabotage reserved to national flag.

FRANCE

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Authorisation to engage in activities in this field is granted only when the enterprise is owned entirely or majority controlled by nationals of the European Economic Area. Such enterprises have free access to international intra-Community or intra-EEA routes; access to domestic intra-Community or intra-EEA routes is limited to "consecutive cabotage" and is subject to a ceiling of 50 per cent of capacity.

Maritime transport: In order to be registered in France, ships must either:

a) be owned at least 50 per cent by physical persons of the European Economic Area;

b) be owned at least 50 per cent by moral persons headquartered in European Economic Area;

c) be owned at least 50 per cent by physical persons, as described in (a), and by moral persons, as described in (b).

Authority: Act 2001-43 of January 2001.

Maritime transport: Maritime cabotage is open to flag vessels originating in EC member countries since 1993 and in European Economic Area since 1997.

Authority: Decree EC 3577-92 of 1992.

Inland waterways: The right to transport goods and persons between two points on the inland waterways covered by the Revised Convention for the Navigation of the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based in any of these States, which are majority-owned and controlled by nationals of these States.

GERMANY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Licence to operate an air transport enterprise is granted only to companies majority-controlled by nationals from EEA-countries.

Air transport: Cabotage reserved, in principle, to airlines from EEA-countries.

Maritime transport: Registration in the German Ship Register is reserved to ships owned by EC-nationals or companies controlled by EC-nationals, domiciled in the EC. Flag is required to engage in marine cabotage and fishing within territorial waters.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

Rail transport: Access to public rail infrastructure is reserved to:

- Railway undertakings established in Germany;
- International groupings of railway undertakings; and
- Railway undertakings providing international combined freight transport.

Access is also possible on the basis of reciprocity or governmental agreement.

II. Official aids and subsidies

Manufacturing-Shipping: The financial assistance programme to the German shipping industry provides for funds to be granted only to the owners of German flag ships.

GREECE

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Ownership in Greek airline companies is limited to 49 per cent of the capital for non-EC controlled enterprises. Cabotage is reserved to national airline companies.

Maritime transport and fishing: Non-EC ownership of Greek flag vessels including fishing vessels is limited to 49 per cent. Cabotage is reserved to national flag vessels, including also voyages with legs in foreign ports.

HUNGARY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Licences for domestic transport of persons or goods may be granted only to companies with Hungarian majority both in terms of capital and management control

Authority: Law on commercial aviation.

International waterways: Shipping licences may be granted only to Hungarian nationals or enterprises with majority Hungarian ownership

Authority: Decree 17/1992, Minister of Transport.

ICELAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Natural resources: Foreign ownership of the exploitation rights of hydro and geothermal energy and investment in energy production and distribution by foreign persons is prohibited.

Air transport: Foreign investment in air transport companies limited to 49 per cent of capital stock.

IRELAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage is generally reserved to airlines licensed in the state, and direct investment in air transport by non-EC states or nationals of non-EC states may be restricted.

ISRAEL

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air Transport: The licensing of an airline as an Israeli airline is conditional upon the holding of at least two thirds of the capital by Israeli nationals.

Cabotage operations may only be conducted by Israeli airlines.

Authority: Aviation Law (1927); Licensing of Aviation Services Law (1963)

Maritime Transport: Cabotage operations are limited to Israeli vessels or to foreign licensed vessels from countries having reciprocity with Israel.

Authority: Ministry of Transport; legislation pending.

Domestic Fixed Line Operator: The control of a domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least a 20 per cent interest.

Radio and Mobile Telephone Services: Satellite Broadcasting - At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel.

International Communications Services: At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel. A foreign operator may hold up to 49 per cent of the control of a licensee.

Electricity: An applicant for a license to transmit, distribute or produce a substantial part of electricity may be required to fulfil the following conditions:

a) The control of the licensee shall be held by a national who is a resident of Israel;

b) The maximum proportion of control in the licensee to be held, directly or indirectly, by a non-resident of Israel, is subject to a determination by the Minister of National Infrastructures.

Authority: Electricity Economy Law (1996).

ITALY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage is reserved to national companies unless international conventions on air transport services state otherwise. Companies from EC countries are authorised to undertake cabotage that represents an extension of an international service.

Air transport: Registration of aircraft is reserved for Italian citizens, the State, Provinces, State authorities and institutions, and companies headquartered in Italy, with at least two-thirds of the share capital owned by Italian citizens. Air transport companies holding licences issued in Italy are subject to the nationality requirements established by Regulation 2407/92, which provides for the control of enterprises by EC States or Community citizens.

Air transport: Non-national airlines are not permitted to establish their own ground handling facilities in airports which are either directly managed by the State or awarded in partial concession to companies with essentially public capital.

Maritime transport: Maritime cabotage as well as maritime services of port areas are reserved for Italian- and Community-owned ships. Cabotage between islands remains exclusively reserved to Italian ships.

JAPAN

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: A license to operate an air transport business may be granted only to enterprises where less than one-third of the voting rights are held by non-Japanese nationals and less than one-third of members of the board of directors are non-Japanese. Cabotage and other domestic services using aircraft are reserved to national airlines.

KOREA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Energy: In electric power generation sector, foreign investment ratio must not exceed 30 per cent of the total domestic power generation facilities. In power transmission, distribution and sales sector, foreign investment ratio must be less than 50 per cent, and the number of shares with voting rights owned by foreign nationals must not exceed those owned by the largest domestic shareholder. Processing of nuclear fuel is allowed except for the manufacturing and supplying of nuclear fuel for nuclear power plants.

Maritime Transport: Coastal water passenger and freight transport is allowed only between North and South Korea. In addition, foreign investors must enter into joint ventures with domestic shipping companies, and foreign investment ratio shall be less than 50 per cent.

Air Transport: Air transport is allowed to the foreign enterprises in which only foreign investors hold less than 50 per cent of the share capital.

Telecommunications: Foreign investment is allowed only when the total of shares or equities with voting rights owned by foreign governments, foreign nationals or domestic enterprises in which each of the following is 49 per cent or less of the total number of shares or equities. (However, in the case of KT, foreigners cannot become its major shareholder. Also, the foreign investment ratio should be 49/100 or less, and the investment ratio per person should be 15/100 or less.):

a) Corporations whose ratio of shares or equities owned by the foreign governments or foreign nationals are 80 per cent or more;

b) Corporations whose major shareholders are foreign governments or foreign nationals, and whose ratio of shares or equity owned by them are 15 per cent or more.

LATVIA

I. Investment by established foreign-controlled enterprises

Air transport: Licence to operate an airline is granted only to companies majority-owned by Latvian nationals and foreign carriers holding traffic rights under bilateral agreements.

Authority: Law on Aviation, 1994.

LITHUANIA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: The operation of an airline by enterprises with foreign equity participation requires a licence from the Lithuanian government and is based on reciprocity. The air carrier must have its principle place of business in Lithuania and be effectively controlled by the state of Lithuania a national or nationals of Lithuania. Exceptions may be granted by international agreements of the Republic of Lithuania.

Authority: Law on Aviation No.VIII-2066 (17 October 2000).

Maritime and inland waterway transport: Only ships and vessels with Lithuanian state flag and registered in Lithuania or any European Union member state flag are allowed to provide maritime waterway cabotage and inland cabotage services.

Authority: Law on Merchant Shipping No.I-1513 (12 September 1996): Inland Waters Transport Code No.I-1534 (24 September 1996)

LUXEMBOURG

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport/Land transport: Some restrictions may apply to regular scheduled air transport and public transport.

MEXICO

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Oil and gas: Only Mexican nationals and Mexican companies with a foreigner exclusion clause may engage in retail trade in gasoline and distribution of liquefied petroleum gas. Participation in the supply of fuels and lubricants for ship, aircraft and railroad equipment may not exceed a total of 49 per cent of equity. Investment in the construction of oil pipelines and other derivative products and oil and gas drilling may be authorised above a total of 49 per cent of equity.

Authority: FIL; Reglementary Law to Article 27 of the Mexican Constitution in the Oil Sector and its Regulations; Regulations on Gas Distribution.

Air transport and related services: Foreign investment is permitted up to a total of 25 per cent in national air transport, specialised air services and aero taxi services and up to a total of 49 per cent of equity in the administration of air terminals. Full ownership may be authorised in the administration of air terminals.

Authority: Mexican Constitution; General Means of Communication Law; FIL; Law on Nationality.

Ground transport and related services: Foreign investment in the international ground transport of passengers, tourism and loading and in the administration of bus stations for passengers and auxiliary activities within Mexico is allowed up to 49 per cent of equity. This share will increase to 51 per cent as of 1 January 2001 and up to 100 per cent as of 1 January 2004. Foreigners may participate up to 49 per cent in a railway concessionaire enterprise without authorisation and above 49 per cent subject to authorisation.

Authority: FIL; General Means of Communication Law; Law on Nationality.

Maritime transport and related services: Foreign investment is permitted up to a total of 49 per cent of equity in interior navigation and coastal sailing – other than tourist cruises and the exploitation of dredges and other naval devices for ports where foreign investment is permitted up to 100 per cent – in integral port administration and port pilot services for interior navigation; and foreign investment may be authorised up to 100 per cent in foreign commerce shipping and port services pertaining to interior navigation.

Authority: Mexican Constitution; FIL; Law on Navigation; Law of Ports; Law on Nationality.

Telecommunication services: Foreign investment in the telecommunications sector is permitted up to 49 per cent of equity through a Mexican corporation, except in cellular telephony where foreign investment may be authorised above a total of 49 per cent of equity. Investment in videotext and enhanced packet switching is free.

Authority: Regulations to the FIL.

NETHERLANDS

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Generally, nationality and ownership requirements apply for license to operate an airline.

Air transport: Cabotage reserved to national airlines.

Maritime transport: National flag is reserved for ships owned by nationals or by companies incorporated under Dutch law, established in the Kingdom, and having their actual place of business in the Netherlands.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

NEW ZEALAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Air New Zealand privatisation includes a 35 per cent foreign ownership limit. The sale of Air New Zealand entailed the establishment of three classes of shares: "A" shares available to New Zealand nationals only; “B" shares limited to 35 per cent of total equity and available to overseas persons; and the "Kiwi" shares held by the New Zealand government. The company's articles of association cannot be amended without the consent of the holders of the "Kiwi" share.

Air transport: Substantial ownership and effective control of international airlines operating scheduled services to/from New Zealand to be vested in the designating country under the respective bilateral agreements or nationals of that country.

Telecommunications: No single foreign investor or consortium may hold more than 49.9 per cent of the total voting shares of Telecom Corporation of New Zealand Limited without the approval of, and other than on terms specified by, the Crown as holder of the "Kiwi" share.

NORWAY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to airlines with an EU/EEA licence.

Maritime transport: Ships in the Norwegian Ordinary Ship Register (NOR) have to be owned by EEA citizens or by an EEA company where EEA citizens own at least 60 per cent of the capital. Exemptions from the 60 per cent rule may be granted. There is no such limitation for ships registered in the Norwegian International Ship Register (NIS).

When the ship is registered in NOR and the ship-owning company is a limited liability company, it must be headquartered in the EEA area. The majority of the members of the board, including the chairman, must be EEA citizens resident in the EEA area, having resided in the EEA area the preceding two years.

When the ship is registered in NIS and the ship owning company has more than 40 per cent non-EEA ownership, the ship must be operated by a Norwegian ship-owning company with head office in Norway, or by a Norwegian management company. If the ship is registered directly in the NIS by a foreign company, an EEA representative is required. The representative must be domiciled in Norway and be authorized to receive a lawsuit on behalf of the ship owner.

Authority: Maritime Act of 24/6/1994; NIS Act of 12/6/87.

Maritime transport: Licensing requirement for scheduled maritime transport of persons.

Road transport: In general, cabotage reserved to national hauliers.

POLAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: The operation of an airline is reserved to enterprises with a foreign equity participation of 49 per cent or less.

Authority: Aviation Act of 2002 (Journal of Acts 130/2002, Item 1112).

PORTUGAL

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Establishment in regular domestic and international air transport unless through national companies, engaged in this activity on an exclusive basis, which are headquartered in Portugal and where the majority of capital and the management control belong to national entities. These restrictions are applied without prejudice to EC law.

SLOVAK REPUBLIC

A. Exceptions at national level

I. Investment by established foreign controlled enterprises

Air Transport: The purchase of more than 49 per cent of the equity capital in air transportation companies. The Aviation Act in force since 1 July 1998 specifies that the stake held by a foreign investor when acquiring the licence of a domestic air carrier has to be less than 50 per cent. However, after the Slovak Republic's accession to the European Common Aviation Area (ECAA), this restriction will be relaxed for companies established in a member state of the European Union. At such time, a modification of the Slovak Republic's position under item I/A of the Capital Movements Code will be required and permitted by virtue of the application of Article 10 to EC members.

Authority: Aviation Act of 1 July 1998.

SLOVENIA

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Registration of an aircraft is only possible for aircraft owned by Slovenian nationals or companies controlled by them. Granting of an operating or AOC license for performing airline services is provided only to companies controlled by Slovenian nationals or to carriers complying with EC regulations on ownership and control (including principle place of business and activity, and majority-owned by EC Member States/nationals).

Authority: Aviation Act (OG RS 18/010; Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA)

SPAIN

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national airlines.

Air transport: Enterprises controlled by non-EC residents must obtain government authorisation to invest in air transport companies.

SWEDEN

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national airlines.

Air transport: Foreign enterprises may be restricted from access to international air routes unless bilateral intergovernmental agreements provide otherwise.

Maritime transport: Cabotage is reserved to vessels flying the national flag.

SWITZERLAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: The commercial transport of persons and goods by foreign-controlled enterprises is regulated by international agreements. In the absence of these, it is possible to permit foreign enterprises to exploit certain routes for commercial transport and to authorise commercial flights by foreigners outside these routes. An authorisation may be refused if the service offered is not consistent with essential Swiss interests or if reciprocity is not accorded.

Air transport: The business transport of people or goods between two points in Switzerland is reserved to Swiss companies.

Air transport: An aircraft may be registered in Switzerland if it is owned by Swiss citizens, or by foreigners resident in Switzerland using an aircraft for travel from Switzerland, or if it is owned by an enterprise under Swiss control. National treatment may nevertheless be accorded to foreign individuals or companies on the basis of international agreements

Air transport: Non-national airlines not permitted to establish ground-handling facilities.

Inland waterways: To be registered in Switzerland and to transport persons and goods between two points on the Rhine, a vessel must be owned by Swiss citizens resident in *Switzerland, or* by companies in Swiss hands, headquartered in Switzerland. Nationals of states party to the Revised Convention for the Navigation on the Rhine of 17th October 1868, and Member States of the EC, are assimilated as Swiss.

Maritime transport: An enterprise may register a vessel for the commercial transport of persons or goods or for commercial maritime activities if the majority of its capital and two thirds of its voting rights, together with its administrative bodies and board of directors, are Swiss

Nuclear energy: Authorisation to build and operate a nuclear plant is granted only to Swiss-controlled companies.

Pipelines: An approval of plans for the construction and operation of pipelines to transport liquid or gaseous fuels is required. Foreign-controlled enterprises must have an administrative centre and an operation management in Switzerland and must be organised in a manner that warrants the respect of the applicable Swiss laws and regulations.

Air transport: At the airports of Geneva and Zurich, foreign airline companies are not permitted to establish their own ground handling facilities if their share of total traffic is below a certain percentage (4.5 per cent in Geneva and 1.5 per cent in Zurich). Foreign airline companies are not allowed to offer ground handling services to third parties.

TURKEY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Licences to operate airlines are only granted to companies majority controlled by Turkish nationals.

Maritime transport: Cabotage is reserved to Turkish citizens and/or ships flying the national flag. Ships belonging to legal persons set up in accordance with Turkish laws, with the majority of managerial staff and representatives of Turkish nationality and with the voting majority held by partners of Turkish nationality are accepted as Turkish and have the right to fly the Turkish flag.

Yacht harbours: Establishment and operation of a yacht harbour facility is permitted to companies or associations which obtain the necessary licences from the Ministry of Tourism, formed in accordance with Turkish laws and regulations, and which are in partnership with Turkish nationals and/or Turkish establishments.

Telecommunications: Enterprises with foreign participation require authorisation to invest in Turk Telecom if the investment would result in foreign investors holding more than 49 per cent of the share capital**.** Enterprises with foreign participation likewise require authorisation to render services under concession agreements if their participation would result in foreign investors holding more than 49 per cent of the share capital.

UNITED KINGDOM

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: In general, registration of aircraft reserved to government, citizens of the Commonwealth or Republic of Ireland, British protected persons, bodies incorporated and having their principal place of business in part of the Commonwealth and firms carrying on business in Scotland.

Air transport: Air transport licences may not be granted to applicants if they are not United Kingdom nationals or bodies incorporated in the United Kingdom (or certain overseas territories) and controlled by United Kingdom nationals unless the Secretary of State consents to the grant of a license.

Air transport: Cabotage reserved to national airlines.

Air transport: The Articles of Association of British Airways empower the imposition of a restriction on the number of foreign held shares. These provisions may not restrict the foreign shareholding to less than 25 per cent of the ordinary voting equity.

Maritime transport: In order to obtain the national flag, fishing vessels must be at least 75 per cent owned by British individuals and/or by companies which are at least 75 per cent owned by British citizens in all cases resident and domiciled in the U.K.; vessels must be managed, directed and controlled from within the U.K. Without the national flag, vessels may not fish against the U.K. quotas under the Common Fisheries Policy.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

UNITED STATES

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Mining, oil and gas: The Mineral Leasing Act (1920) makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organised under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals. Non-US citizens may, however, own a 100 per cent interest in a US corporation that acquires a right-of-way for oil or gas pipelines across onshore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to US citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries.

Atomic energy production: Aliens and entities owned, controlled or dominated by aliens or foreign governments may not engage in operations involving the utilisation of atomic energy. This restriction applies primarily to nuclear reactors and reprocessing plants extracting plutonium.

Air transport: Cabotage and exercise of US international air route rights are reserved to national airlines controlled by US citizens, and owned 75 per cent or more (voting stock) by US citizens.

Air transport: freight forwarding and charter activities: A reciprocity test on air freight forwarding and air charter activities applies any time a foreign-owned firm seeks authority to provide indirect air transportation either by cross-border or establishment for US-originating traffic. If a favourable determination is made by the Department of Transportation, indefinite registration is granted to the applicant, and subsequent applications of the same applications of the same nationality are routinely approved.

Maritime transport: The Federal Maritime Commission is authorised to take unilateral action when a foreign government, foreign carrier or other persons providing maritime-related services engages in activity that adversely affect US carriers in US ocean-borne trade; creates conditions unfavourable to shipping in the foreign trade; or unduly impairs access by US-flag vessels to trade between foreign ports. Sanctions proposed under these statutes most frequently affect the cross-border provision of services, however sanctions could affect a foreign-owned investment established in the US (e.g. revocation of freight forwarders' licenses, suspension of preferential terminal leases).

Telecommunications: Foreign-controlled enterprises and all other foreigners may not hold in aggregate more than 20 per cent ownership in the Communication Satellite Corporation.

Telecommunications: The Federal Communications Commission (FCC), under delegated authority from the President of the United States with concurrence of the State Department, is authorised to issue licenses to land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country. Under the Submarine Cable Landing

Licence Act of 1921, the FCC may withhold or revoke licences if such action will assist, *inter alia*, in securing cable landing rights for US citizens in foreign countries.

Energy: To receive financial assistance under the Energy Policy Act, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a US-owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to US-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords US-owned companies local investment opportunities comparable to those afforded any other company; (3) affords adequate and effective intellectual property rights of US-owned firms.

Air transport: Foreign-controlled carriers cannot compete for Federal Government contract for the international air carriage of persons or property: (1) between the United States and foreign points to the extent service by US carriers is available; and (2) between two foreign points to the extent service by US carriers is reasonably available. These prohibitions may be waived in instance where reciprocal national treatment has been negotiated on the basis of an exchange of rights or benefits of similar magnitude.

ANNEX 3. STATISTICAL TABLES

Table 1: Proportion of FDI flows directed to infrastructure and public utilities in selected OECD countries (%)

	In	Out
Australia (1992-2002)	10.2	12.1
Czech Republic (1993-2000)	19.5	n/a
Denmark (1992-2002)	9.5	9.1
Germany (1992-2002)	-3.5	12.1
Italy (1992-2001)	6.2	8.4
Mexico (1994-2002)	-4.0	n/a
Poland (1996-1999)	7.7	-0.3
Spain (1992-2001)	6.8	22.6
Sweden (1993-2002)	16.3	13.0
United Kingdom (1992-2001)	19.7	17.3
Mean	8.8	11.8
Median	8.6	12.1
Standard deviation	8.3	7.7

Source: OECD Investment Division.

Table 2: Infrastructure FDI inflows as a proportion of total FDI inflows in selected OECD countries (%)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Australia	1.5	13.5	2.8	1.2	64.1	17.7	11.0	11.3	8.4	-9.4	-9.4
Czech Republic	n/a	4.1	11.2	54.3	24.1	28.9	15.8	8.4	9.2	n/a	n/a
Denmark	-2.5	-0.3	1.3	6.4	6.8	9.2	55.8	2.3	6.8	8.9	10.0
Germany	-1.3	-9.0	3.3	-1.8	-65.9	7.8	7.2	-0.5	8.2	6.2	6.8
Italy	12.6	6.5	4.3	3.9	0.9	3.2	-6.2	10.0	18.5	7.9	n/a
Mexico	n/a	n/a	4.9	9.1	4.3	4.8	3.8	3.2	-14.6	12.6	8.0
Poland	n/a	n/a	n/a	n/a	3.4	1.0	0.5	25.8	n/a	n/a	n/a
Spain	1.1	1.0	2.1	1.9	1.7	1.2	2.6	12.4	38.9	5.4	n/a
Sweden	n/a	6.4	3.4	3.0	53.0	18.1	4.7	2.8	13.1	18.8	40.1
United Kingdom	6.6	10.7	-2.6	16.2	53.0	13.1	11.3	49.7	45.1	-6.5	n/a

Source: OECD Investment Division.

Table 3: Public utility network prices in EU member countries, 1993-2002

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Price of local phone call[1]	n/a	n/a	n/a	n/a	0.39	0.4	0.4	0.39	0.4	0.39	0.39	n/a
Price of phone call to USA[2]	n/a	n/a	n/a	n/a	6.63	4.49	3.48	3.09	2.63	2.22	2.13	n/a
Electricity prices for industrial users[3]	0.0759	0.0748	0.0721	0.0689	0.0679	0.0663	0.0636	0.0625	0.0644	0.062	0.0647	0.0636
Electricity prices for households[4]	0.1124	0.1135	0.1102	0.11	0.1081	0.1073	0.105	0.1031	0.1027	0.1033	0.1034	0.103
Gas prices for industrial users[5]	3.76	3.84	3.71	3.6	4.03	4.03	3.49	4.22	6.12	5.75	5.56	5.34
Gas prices for households[6]	6.81	7.03	6.85	6.64	7.22	7.34	6.81	7.24	8.49	8.42	8.37	8.36

1 Price in Euro of a 10 minute call at 11 am on a weekday (including VAT) for a local call (3km).

2 Price in Euro of a 10 minute call at 11 am on a weekday in August to the United States.

3 Prices in Euro per kWh (without taxes) on 1 January, based on annual consumption of 2 000 MWh, maximum demand of 500 kW and annual load of 4 000 hours.

4 Prices in Euro per kWh (without taxes) on 1 January, based on annual consumption of 3 500 kWh of which 1 300 kWh is overnight for a standard dwelling of 90m².

5 Prices in Euro per GJ (without taxes) on 1 January, based on annual consumption of 41 860 GJ, and load factor of 200 days (1 600 hours).

6 Prices in Euro per GJ (without taxes) on 1 January, based on annual consumption of 83.7 GJ (equipment: cooking, water heating and central heating).

Source: Eurostat website.

Table 4. Market share of largest operator in selected public utilities in selected OECD Member countries in 2001

	Electricity generation	Fixed telecom: local calls	Fixed telecom: international calls	Mobile telephony
Belgium	92.6	84.5	51	56
Czech Republic	69.9	n/a	n/a	n/a
Denmark	39	74	52.7	49
Germany	32	95	53	41
Estonia	90	n/a	n/a	n/a
Greece	98	100	97	37
Spain	43.8	77	82	56
France	90	85	63	48
Ireland	96.6	88	66	62
Italy	45	84	68	48
Latvia	95	n/a	n/a	n/a
Lithuania	77.1	n/a	n/a	n/a
Hungary	39.5	n/a	n/a	n/a
Luxembourg	n/a	88.6	72	61
Netherlands	n/a	83	62	44
Austria	34.4	70	40	43
Poland	19.8	n/a	n/a	n/a
Portugal	61.5	100	71	44
Slovakia	84.5	n/a	n/a	n/a
Finland	23	92.5	54	62
Sweden	48.5	69	43	49
United Kingdom	22.9	74	32	28
Turkey	10.2	n/a	n/a	n/a
Norway	30.7	n/a	68.7	65

Source: Eurostat website.

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