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**Joint Contribution of the International Telecommunication Union
and the World Bank**

Innovation in Dispute Resolution Techniques

**To be Submitted to the Intersessional meeting of the World Summit on
Information Society, Paris, 15-18 July 2003**

Achieving the rapid diffusion of new telecommunications infrastructure and ICT services and ensuring their success in addressing urgent areas of societal concern globally—e.g., improving education and health care and reducing poverty—depends critically on creating sound legal and regulatory frameworks and effective mechanisms for resolving disputes arising in the deployment of such new infrastructure and services. (See Section I.A.6 paragraph 29 of the WSIS Draft Action Plan, dated 30 May 2003.) When the resort to legal process becomes, as in so many jurisdictions, counter-productive, unduly costly, or simply ineffective in securing important values, it then becomes imperative to seek more effective means of achieving such aims. How can policymakers reduce the likelihood that the arrival of new, high speed electronic networks will not be inordinately delayed by obsolete legal and administrative “networks” for dispute resolution and that the mechanisms for dispute resolution are as modern and flexible as the new ICT technologies being deployed?

As regulating an increasingly converging sector becomes ever more complex and more closely intertwined with the design of codes and protocol beyond the easy grasp of traditional *ex post* regulation, it may become ever more important for regulators, legislators and consumers to devise new, more flexible institutional structures and incentives “governing” the conduct of stakeholders. The challenging question for all concerned—in the public and private sector—is whether regulators and law makers can find fresh approaches to foster a “new civil order” in the field of regulation and dispute resolution, strengthening reliance on *ex ante* incentives, built on a foundation of legal certainty. Indeed, are there ways for the new ICT technologies themselves—with their potential to create borderless data bases of best industry and regulatory practice as well as “virtual” consensus building and dispute resolution *fora*—to further these goals if more effectively deployed by public and private officials with the backing of international development institutions?

The Telecommunication Development Bureau (BDT) of the International Telecommunications Union (ITU) and the Legal Department of the World Bank are jointly supporting the preparation of a discussion paper to be completed in time for the World Summit on the Information Society later this year that will provide a framework for analysis of such consultative discussions:

- The empirical heart of the paper will discuss the various ways disputes are currently being managed based on examples from selected countries in different regions at varying stages of market development, evaluating:
 - o What key issues are being disputed, by whom, for what underlying reasons; what is occupying regulators’ resources; are there features of regulatory design that (dis)encourage disputes to arise;
 - o What dispute resolution techniques are being used in common, what differences in approach exist; what (dis)incentives exist for market players to identify, avoid and resolve disputes through consultative processes; and
 - o Observations about the benefits and drawbacks of the various approaches, lessons learned

- The paper will provide an overview of various dispute resolution techniques: basic introduction to techniques which are generally available – how they work procedurally, the organizations involved, as well as the legal nature and basis:
 - o Regulatory adjudication
 - o Mediation (regulatory and private)
 - o Arbitration
 - o Other mechanisms and resources
- It will also discuss which techniques are most appropriate for different types of disputes: reviewing the kinds of features and parties that may be suggestive of the type of dispute resolution technique to employ.
- Finally the paper will focus on the ways forward: pulling together the observations from current experience, available techniques and analysis discussed above to suggest ways forward in dispute resolution and developing incentives conducive to dispute resolution and consensus building.

Among the issues to be addressed would be:

- o an assessment of legal issues in connection with using new technologies and virtual consultative networks in ADR;
- o incentives to resolve disputes such as use of consultative processes as part of the dispute resolution process, and recommended changes to regulatory design to provide market plays incentives to use consultative processes to identify, avoid and resolve disputes;
- o roles of private public, regional and multilateral organizations in the development of such networked processes;
- o recommendations on potential future cooperation developing public/private partnerships among international and multilateral institutions, national regulators and policymakers, and the private sector.

The paper is being prepared by a joint study team from two international law firms, as well as from the staff of the ITU/BDT and the Legal Department of the World Bank. The overall effort is intended to solicit the active support and involvement from regulators, operators (incumbents

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and new entrants) and other private sector participants in a range of jurisdictions in different regions who will provide information on legislation, practices, experiences and concerns relating to dispute resolution. The process of preparing the paper will require substantial support and involvement from regulators and operators in (i) discussing practices experiences and concerns, (ii) providing and explaining materials; and (iii) reacting to drafts. The participants in the preparation of this discussion paper from the ITU/BDT, World Bank, as well as the joint study team are hopeful of the active support from all those involved in the preparation for the WSIS Summit. The contact details of the World Bank and ITU/BDT for the preparation of the discussion paper are set forth below:

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