

# KENYA'S EXPERIENCE IN THE PREPARATION OF NEGOTIATIONS ON TRADE IN SERVICES

*UNCTAD/AU TRAINING WORKSHOP ON TRADE  
IN SERVICES FOR AFRICAN NEGOTIATORS:*

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# OUTLINE OF THE PRESENTATION

- 1. DEVELOPMENT OF NATIONAL NEGOTIATING STRATEGY/POSITION**
- 2. KEY CHALLENGES**
- 3. AN OVERVIEW OF GATS COMMITMENTS**

# DEVELOPMENT OF NATIONAL NEGOTIATING STRATEGY/POSITION

## **Coordination process of the negotiations**

- Identification of the coordinating agency - The coordinating function resides with the Ministry of Foreign Affairs and International Trade
- The main objective is the establishment of a national position on each services-related issue under negotiations
- Secondary objective is to ensure consistency and coherence in the management of negotiations in various forums

# DEVELOPMENT OF NATIONAL NEGOTIATING STRATEGY/POSITION - Cont

## **Assessment of the national services sectors to establish national priorities**

- Conduct sector specific studies to establish the following:
  - The existence of a national policy and its objectives – fair competition, protection of consumers, prudential regulation, universal access, etc
  - Whether the national policy objectives are consistent with the strategy for services in National Development Plan

# DEVELOPMENT OF NATIONAL NEGOTIATING STRATEGY/POSITION - Cont

- The existence and the capacity of regulatory and institutional framework
- Regulatory measures that affect foreign investments and their objectives
- The extent of participation of the state in the services sector
- Identification of services exporting firms and the barriers they face in external markets
- Technical assistance and capacity building needs

# DEVELOPMENT OF NATIONAL NEGOTIATING STRATEGY/POSITION - Cont

## **Stakeholder consultations**

- Identification of regulations that require reform or elimination
- Identification of measures that may be scheduled in trade agreement – the extent of participation of foreign services providers
- The anticipation of negotiating requests by partner countries and the assessment of the scope for opening up, reforming or not altering the regulations
- Identification of requests to be made to partner countries

# KEY CHALLENGES

- Inadequate negotiating capacities
- Conflicting interests of the various stakeholders
- Inadequate resources to facilitate the participation of sector-specific experts in the negotiations
- Weak regulatory capacity to fully realise benefits of liberalization
- Various negotiating forums taking place in parallel
- Inadequate resources to undertake comprehensive assessment of trade in services
- Inadequate statistics on trade in services

# AN OVERVIEW OF GATS COMMITMENTS - HORIZONTAL COMMITMENTS

- 3) Commercial Presence requires that foreign services providers incorporate or establish business locally
- 4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment.
  - The employment of foreign natural persons for the implementation of foreign investment shall be agreed upon by contracting parties and approved by the Government



# AN OVERVIEW OF GATS COMMITMENTS – SECTOR SPECIFIC

## Telecommunication services

### a) Basic telecommunication services

#### Market Access Limitations

- 1) International call-back is prohibited
- 2) International call-back is prohibited
- 3) To be supplied by Telkom Kenya (Monopoly) Until 2003. Foreign equity participation limited to 30%
- 4) Unbound, except has indicated in the horizontal commitments

#### National Treatment Limitations – None for Modes 1, 2 & 3

- 4) Unbound, except has indicated in the horizontal commitments

# SECTOR SPECIFIC COMMITMENTS

## b) Value added services

### Market Access Limitations

- 1) None
- 2) None
- 3) Foreign equity participation limited to 30%
- 4) Unbound, except has indicated in the horizontal commitments

### National Treatment Limitations

None for Modes 1, 2 & 3

- 4) Unbound, except has indicated in the horizontal commitments

# SECTOR SPECIFIC COMMITMENTS - Cont

## c) Vending of telecommunications equipment

### Market Access Limitations

None for modes 1, 2 & 3

4) Unbound, except has indicated in the horizontal commitments

### National Treatment Limitations

None for modes 1, 2 & 3

4) Unbound, except has indicated in the horizontal commitments

# SECTOR SPECIFIC COMMITMENTS - Cont

d) Installation and maintenance of telecommunication terminal equipment

## Market Access Limitations

None for modes 1, 2 & 3

4) Unbound, except has indicated in the horizontal commitments

## National Treatment Limitations

None for modes 1, 2 & 3

4) Unbound, except has indicated in the horizontal commitments

# SECTOR SPECIFIC COMMITMENTS - Cont

## Banking and other Financial services

- a) Acceptance of deposits; lending; payments and money transmission services; and advisory and other auxiliary financial services

### Market Access Limitations

None for 1, 2 & 3

- 4) Unbound, except has indicated in the horizontal commitments

### National Treatment Limitations

None for Mode 1&3

Unbound Mode 2

- 4) Unbound, except has indicated in the horizontal commitments

## SECTOR SPECIFIC COMMITMENTS - Cont

b) Participation in issues of all kind of securities and provision of services related to such issues except underwriting

### Market Access limitations

- 1) Securities issued in a foreign jurisdiction cannot be offered or traded in Kenyan market
- 2) None
- 3) Foreign portfolio investors can hold up to 40% of the shareholding of a locally listed company. They can also take up to 40% of any additional public offering
- 4) Unbound, except has indicated in the horizontal commitments

# SECTOR SPECIFIC COMMITMENTS - Cont

## Limitations on National Treatment

- 1) Unbound
- 2) None
- 3) Unbound
- 4) Unbound, except has indicated in the horizontal commitments

## c) Asset Management except pension fund management

### Market Access Limitations

- Mode 3) : 30% of paid up capital must be held by Kenyan nationals

**Thank you**