# Bridging the gaps:

## The case for a General Agreement on Public Services

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This paper was drafted by Brendan Martin of Public World and Robin Simpson of Consumers International (CI) in consultation with CI members. This version was finalised in September 2005. For further information, contact Robin Simpson on rsimpson@consint.org

This paper is the first attempt by Consumers International to advance the concept of a General Agreement on Public Services (GAPS). Our aim is to promote quality public services based firmly on rights, and to underpin national and local democratic accountability with international standards. The initiative's founding partners are:

- **Consumers International**, which defends and promotes the rights of all consumers, particularly the poor and marginalised, and links over 250 consumer groups in 115 countries.
- **Public Services International**, the global union federation for public service employees, which represents more than 20 million workers in more than 600 affiliated unions in 160 countries.
- **One World Action**, which works to strengthen democracy and bring public services to those without them through partner organisations in the global South.
- **Public World**, a London-based non-profit consultancy with 15 years experience of working with international institutions and civil society organisations on participatory approaches to public service reform.
Introduction

What is the GAPS?

Over the past year or so, CI has been involved in discussions about the need for a General Agreement on Public Services (GAPS). The purpose of this discussion paper is to share our thinking and to consult about the way forward. Our focus is on the network services - water and sanitation, electricity supply and telecommunications - but an eventual GAPS would also embrace others, for reasons we explain below.

We are working with our initial partners, Public Services International (the global union federation for public service workers), One World Action (an NGO focused on providing democratically-run services to communities without them) and Public World (a think tank specialising in the social dimensions of public services). A little more information about those partners is contained in Annex 1. In due course we envisage widening the circle of partners. This draft is part of that process going as it is, for comment, to CI’s member organisations and to expert colleagues.

CI’s partners come to this topic from different directions, but we share a fundamental concern that, in a global context in which services are increasingly internationalised and are the focus of negotiations about trade and investment agreements, a rights-based platform is required for the development of rules and standards.

Current developments in international policy making in relation to services have two paths, which are reflected in our own concerns and those of our partner organisations in this project. These find expression in:

- **The Millennium Development Goals (MDGs)**, the targets agreed by the UN system in 2000, which establish public service provision at the centre of international policy making about poverty alleviation. (A summary of the MDGs is contained in Annex 2.)
- **The General Agreement on Trade in Services (GATS)**, which was established at the formation of the World Trade Organisation (WTO) in 1995, and which envisages an increasingly liberalised but rules-based regime of service provision.

There are also various attempts to codify good practice in the specific utility services sponsored by international bodies such as the World Bank, the International Standards Organisation (ISO) the UN and other ‘one off’ projects. These are discussed in Sections 1 and 2.

Our rationale for a GAPS is that trade and investment in services need to be based on and subordinate to, a platform of civic and social rights which express the democratic basis of service provision and regulation. Market mechanisms and investor’s rights (including foreign direct investment) may form part of the processes needed to promote access in a framework of regulation of service provision, but these are means towards the end of service to the public rather than ends in themselves.

There are many potential benefits from the developing internationalisation of service provision, but many dangers too. Governments need flexibility of policy determination and capacity development not only to optimise their decisions and interventions now but also to be able to deal with future developments that cannot necessarily be foreseen today. The latter include technological innovations, which in recent years have greatly changed the optimal roles for public and private actors in some service sectors, most obviously telecommunications.

An international agreement must enable that flexibility while providing predictable conditions for the involvement of all stakeholders. This means that issues of process, and of the rights and obligations of all parties, are fundamental. Whether this is best achieved through a code, a declaration or something more formal is a matter for judgement on which we seek advice.

So far from our initial consultations there has been widespread support for, and no hostility towards, the idea of a GAPS promoted as a body of commitments to which international institutions, governments, service providers and civil society organisations would sign up, with service-specific agreements developed on that basis.

As this work goes forward, we also intend to work with our partners to establish a small secretariat to take the project forward and to build capacity to carry out further research and policy work about the wide variety of issues that need to be explored if the aims of a GAPS are to be realised in practice.

What do we mean by ‘public services’?

What distinguishes ‘public’ services from other services? Our approach is that, rather than attempt to define some services as public and others as private, it is better to base policy on the reality that most services have both public and private characteristics. That is certainly true of the three network services with which we are concerned in this paper. The private sector and market mechanisms are involved in all three in
different ways. All three are essential in their own ways for the realisation of basic rights. They contribute to overall consumer welfare through their roles in economic and social development, in addition to providing benefits to individual consumers. The point of a GAPS is to define the rights that should be protected and enabled, and the rules that should obtain, in the exercise of governmental authority over such vital services that have both public and private aspects.

We define governmental authority on the basis of rights and democracy, and we define services as public to the extent that they are subject in some way to specific governmental authority, exercised in a wide variety of ways – direct provision, procurement of private service provision, regulation, and so on. In that context, there are public service elements in many services, but their extent and form vary.

Section 1. Why do we need a General Agreement on Public Services (GAPS)?

Introduction

We believe a GAPS is needed because, in addition to the essential nature of the services as part of the fabric of modern society:

- None of these services yet comes close to achieving universal coverage globally, and wide inequalities remain, and are in some cases growing, in access and quality.
- Overcoming these challenges requires dealing with both government and market failures to provide quality public services equitably and sustainably.
- In the context of globalisation, meeting this challenge requires an international framework to enable national and local solutions, especially where international actors (international financial institutions, multinational companies) are involved.
- International institutions are focused on facilitating markets for these services; there is a need to identify how, in such a context, public and private action can be co-ordinated to realise rights and promote consumer welfare. Internationally recognised undertakings are a step in that direction.

The role of these services in economic and social development

The strategic importance of these services to economic and social development, along with other factors such as the scale of investments they require and the economies of scale and scope involved in building and maintaining networks, explains why the state has historically held responsibility for them. While sharing such general characteristics, however, the services are also different from each other in some significant ways, and are changing in different ways. Therefore, while their strategic role is a common feature, they also need to be explored in sector-specific terms.

A characteristic of their strategic roles is that these services play vital enabling roles in relation to each other and to other areas of public service, such as health care and education. While electricity and telecommunications services do not command their own places in the Millennium Development Goals (MDGs), it is hard to see how the MDG targets on
health care, education, and water and sanitation coverage will be realised without corresponding expansion in coverage of electricity supply and telecommunications. It follows that the need for an holistic approach to the development and provision of public services is central to the argument for a GAPS. A GAPS must be seen as a framework for sectoral (including international), national and local policies, and this must be expressed in its terms.

**Water and sanitation services**

Over one billion people lack access to piped water supply, and more than double that number, 2.4 billion, lack access to sanitation facilities. These figures are becoming well known, but perhaps less well known is that, although the percentage of people without water supply fell during the 1990s, the percentage (not only the absolute number) of people without sanitation increased in Africa and Asia.

There is tension between water as a scarce economic resource and access to water as a human right. Water is essential for agriculture (which accounts for at least 80 per cent of total consumption), as well as industrial production of many types (including some forms of electrical supply which require a steady flow) and everyday life.

Competing claims on the resource, variable costs of access (and especially of water’s transportation), and variable ability to pay are among the factors that produce the tension. The continuing tradition of water as a resource held in common in many rural areas is a particularly sensitive issue in relation to intervention by state or market institutions to facilitate supply and regulate consumption.

A recent World Bank publication notes: ‘Two features distinguish the water sector from other infrastructure. First, the supply is finite and location-specific. Second, because safe water is crucial for life and health, its availability and affordability for the entire population are of enormous welfare (and political) importance.’

Alongside the challenge of water supply is the related challenge of sanitation - disposal and treatment of wastewater and sewage. While the relationship between access to water supply and survival is immediate and direct, lack of access to sanitation, though highly degrading, unhygienic and unpleasant, is not immediately fatal. So sanitation has not acquired the political status that water supply has achieved, and yet it is more classically a public good in economic terms, because people have no choice but to externalise the problem.

The percentage of people without access to sanitation is higher in rural areas, where only around 20 per cent have access, compared to around 60 per cent in urban areas. But the effects can be worse in urban areas. As a result, diarrhoea, an illness that requires only reliable water supply and sanitation to be eradicated, kills more than two million children per year.

These characteristics complicate the tasks associated with providing services on financially sustainable terms, as they affect cost recovery options. They make a strong case for linking water supply and sanitation services, and user payment for them, a case which is strengthened by the need to raise the low status attached to sanitation services.

Despite controversies in recent years about privatisation of water supply services, public ownership and management has retained around 90 per cent of global utilities, albeit supplemented by informal vending. Poor maintenance and financial inefficiency continue to undermine performance, with estimates of leakages varying between 30 and 60 per cent. Performance in sanitation is even worse.

Water and sanitation services provided through fixed networks are the least competitive of the three sectors considered in this paper because of their natural inflexibility and capital intensive nature. One should not assume however, that there can be no competition in this sector, as public authorities can reach agreements with private companies on a competitive basis, such as concessions or management agreements. In some countries, notably France, this has operated with great stability for generations, and this model has been exported worldwide (unlike the less competitive UK model of divestiture which is rarely to be found elsewhere).

However, application of the ‘delegated management’ model through long-term concessions in developing country cities has proved to be highly controversial and problematic in practice. The experience has led the major transnational water companies to retreat and has refocused attention on how to improve the performance of existing public utilities and enable the involvement of local private companies in discrete functions. Among issues that a GAPS could address are how to make public utilities more responsive to their consumers (and people deprived of services) and how competition can combine with democratic accountability to produce benefits in such environments.

A further social issue that emerges in the water and sanitation sector is the use of subsidies. There is a rich and sophisticated literature on this subject, which explores both ‘errors of inclusion’ (ie subsidies going to
Consumers International has tried to draw up a set of sanitation services regardless of ownership structure. A generalised allowance can lead to both: if one connection serves many households (as it often does in the poorest places), one free ration of a standard size can be either too small or, if it applies also to each household with its own supply, too large. The latter is as much a social issue as the former, because revenue from those who can afford it is an essential component of funding connection to those without it.

In reaction to these problems, some countries, notably Chile, have attempted to establish individual entitlements based on some test of income or ‘means’. The problem in practice is one of highly labour-intensive administrative mechanisms – how does one define disposable income exactly, especially where there are informal labour sectors? Furthermore, the intrusive nature of the necessary enquiries are likely to be unacceptable to many consumers who may consequently prefer not to apply for their entitlement. We have witnessed such non-take-up in contexts as diverse as the Former Soviet Union and the UK, as well as in developing countries. It is particularly likely to be a factor wherever people are unsure of their legal standing as residents or in some cases as immigrants. This can be the case in countries of inward migration, such as much of the EU and South Africa, and in unauthorised settlements in the burgeoning cities of the developing world which attract internal migrants.

In view of the complexities of subsidising consumption, an increasingly common call is for subsidies to be concentrated on the non-connected because they are, by definition, the poorest, thus ensuring the best match of subsidy to social need. Experience suggests that this is the simplest way to eliminate errors of both inclusion and exclusion. Such connection subsidies can be ‘sold’ to the public as part of a national drive towards connecting whole populations as has happened in the South African water sector. There could be initial periods of tariff subsidy so that consumers get used to a new element of funding connection to the household budget, especially for sanitation services. But such generalised assistance works better if it reduces over time for existing consumers so that the money involved can be ‘rolled forward’ for the use of the next group of unconnected consumers. An example is Gabon where, as living standards have risen following connection to services, consumption subsidies have been reduced.

Such issues transcend the somewhat entrenched public/private debates. Recognition is needed of principles which should apply to all water and sanitation services regardless of ownership structure. Consumers International has tried to draw up a set of guiding principles in its Policy Statement (see Annex 3).

We welcome advice as to whether such principles could form the basis for sectoral agreements.

Electricity supply services

Access to electricity does not have quite the immediate impact on basic survival, nor the visceral relationship with notions of common ownership, that make water access such a highly charged political issue. However, the argument that access should be seen as a basic right is stronger than ever before in view of the indispensability of electricity to modern economic and social life. Its role in the delivery of other public services such as education and health care can be fundamental in enabling or disabling efficiency and quality.

In 2002, UN Secretary General Kofi Annan said: ‘Energy is essential for development. Yet two billion people currently go without, condemning them to remain in the poverty trap. We need to make clean energy supplies accessible and affordable. We need to increase the use of renewable energy sources and improve energy efficiency.’

Electricity supply has three stages: generation, transmission and distribution/supply, which have traditionally been carried out by integrated, usually state-owned, utilities. (Regarding the last of the three, in the jargon of the industry, distribution is physical transmission through low voltage wires to final consumers, while supply is commercial – buying from producers and selling on to retail customers. Some of the literature now presents retailing as a fourth stage of the overall electricity supply chain.) However, the market is changing. While transmission and distribution are natural monopolies, generation and supply are more contestable. Moreover, reforms have also encouraged competition for the distribution and supply market, allied to regulated access to transmission facilities.

Some technological developments have produced possibilities that lend themselves to new forms of service organisation. In particular, the emergence of technologies that enable more environmentally friendly small scale and local generation reduce reliance on large scale transmission networks and promote more direct links between generators and consumers. Increased use of renewable sources is strongly linked not only to environmental benefits but also to improving access for poor people in rural settings. This is because enabling access to locally generated solar and wind power may prove to be a more effective route to rural electrification than connecting communities to national grids, which have excluded the two billion referred to by Secretary General Annan.
In sub-Saharan Africa, 38% of urban dwellers have access to electricity, but only 8% of rural dwellers. Africa accounts for only 3% of world energy consumption, with only 50% of the world average of per capita energy consumption. Electricity accounts for only 8% of African energy consumption by type (only three per cent in sub-Saharan Africa outside of South Africa) with only 22.6% of sub-Saharan population having access to electricity compared to 41% in Asia. Conversely, sub-Saharan Africa has the highest share of biomass in total energy consumption (59% of total energy consumed). Despite the huge potential in Africa for hydro- and photovoltaic production (such as solar panels), and the downward pressure on price that large-scale procurement and production could stimulate, two thirds of Africans still use wood-fuel and no other source for energy.

Is it realistic for poor countries to go down the road of large formal centralised networks, or would micro-level systems provide faster and more flexible solutions? The use of wood fuel is not always sustainable and can lead to severe environmental damage. So the great potential of small-scale local generation notwithstanding, larger scale networks are also required because locally generated renewable sources alone cannot meet rural and urban energy needs. Therefore, a combination of solutions is required, which suggests the need for international and national plans carefully combined with locally developed initiatives, and a balance of government and market roles at both levels.

Current reform orthodoxy has been to ‘unbundle’ through break-up of integrated utilities, often accompanied by private entry and competition in generation and retailing. The activities associated with retailing have been detached from other aspects of the distribution service to facilitate liberalisation and privatisation. But there are costs associated with liberalisation and privatisation such as losses of co-ordination and of economies of scale. Higher transaction costs associated with the unbundled regime have exacerbated those effects. These have stemmed in large part from attempts to treat electricity like any other commodity, whereas in fact it has highly significant particular characteristics. These include that electricity cannot be efficiently stored, and therefore production and consumption are more or less simultaneous, and that demand and supply must match at all times if the system is not to crash.

Electricity’s particular characteristics have rendered the market highly vulnerable to gaming (or price rigging) by monopolistic or colluding suppliers. In addition, the political and social impossibility of exposing consumers to large prices rises and fluctuations, coupled with the sunk costs associated with investment in new capacity, has prevented a significant transfer of risk to the private sector in poorer markets.

To what extent the costs of unbundling and liberalisation have been outweighed by the benefits is a matter of controversy, and we explore the evidence later.

But even without the above complications, there are, as in other utility services, complex tariff issues in electricity. Cross-subsidy can be undermined by competition, and targeted subsidies often miss their targets, as we have seen in the case of water and sanitation. But market-based tariffs are also often inequitable. For example, pre-payment is usually far more expensive than post-payment, direct bank payments far cheaper than cash payments.

Even when market-based tariffs are acceptable as a destination, for example to divert subsidy towards the non-connected, there are challenges of transition and sequencing. In developing countries, there is a difficult dilemma regarding tariff levels and enforcing payment. In some countries (such as India), many people ‘steal’ electricity: they simply obtain it by tapping it from powerlines themselves. Politically it is often not feasible to force these people to pay. The same problem occurs in a more formally institutionalised way in countries where small consumers pay a subsidised rate. The problem is that the power company cannot recover its long-term costs, as a result of which it cannot keep up with the growth in demand. This typically results in an extremely poor quality of service, which in turn is a major impediment to economic development.

Environmental concerns add to the complications associated with tariffs and subsidies in electricity supply, since market signals can be important tools to encourage and discourage particular fuel use and energy efficiency. Rapid economic growth, especially on the scale experienced currently in China and India, is associated with increased energy consumption (indeed, there is a direct correlation between GDP and energy consumption), and this is, in turn, associated with increased environmental damage because it is leading to increased dependence in those countries on fossil fuels. Therefore, there is great tension between poverty alleviation and environmental protection, and the implications of current trends are that climate stabilisation will prove impossible unless increased economic activity is detached from increased fossil fuel use.

The Kyoto protocols are supposed to tackle those problems, but refusal to comply, led by the United
States, does not augur well. Industrialising countries cannot see why they should be deprived of the conditions of economic growth from which their richer competitors have already benefited, while the latter are unwilling to give ground. Political pressure has produced steady improvement in energy efficiency in developed countries, and renewable sources are also being used increasingly - but in most countries this trend is nowhere near sufficient to meet Kyoto targets.

All of the above considerations suggest the need to reframe the unnecessarily polarised debate about the future of electricity supply. Neither the state nor the market, neither large scale utilities nor small scale generation, and neither international nor local initiatives, provide all the answers. It is the way in which they are combined to suit particular environments that will produce efficient, equitable and sustainable solutions. We seek in the final section a set of principles that will help us to move in that direction.

**Telecommunications services**

The greatest technological revolution in the three services has come in telecoms, and the impact on its natural monopoly characteristics, and on access, has been dramatic but uneven. Developments in microelectronics, optoelectronics (eg optical fibres) and satellite communications have transformed the sector and driven convergence with information technologies. This has led to enormous cost reductions and service possibilities hardly imaginable a generation ago.

It means that when we are considering the economic and social importance of telecommunications today, we are considering not only voice services but also data transmission, and particularly internet access. Indeed, internet access as well as voice telephony access has to be factored into any modern concept of 'universal service' in telecommunications, and evaluations about the extent to which the 'right to communicate' has been established. The International Telecommunications Union (ITU) has encouraged the use of the term 'universal access' alongside 'universal service'. The first refers to information and communications technology (ICT) availability, while the latter, more traditional, concept refers to household level access.

Although telecoms do not feature directly in the MDGs there is no doubting their huge potential to benefit the poor both directly and indirectly. For example, the UK Department for International Development (DfID) and the ITU have identified several ways in which ICT can play key roles in meeting the MDGs. In health care, for example, the availability and quality of ICTs can contribute to training, disease prevention, diagnosis, treatment and monitoring - the whole spectrum of health care services. So we should not look at telecoms as a semi-luxury item - it is part of the battery of anti-poverty tools.

The example of telecoms reflects a general principle that consumer organisations increasingly articulate. That is that the greater the degree of natural monopoly, the greater the need for public regulation in order to protect the consumer. As telecoms becomes less and less of a natural monopoly, then the requirements for detailed regulation have diminished.

Nevertheless, it is clear from the continuing failure of the market to reach the poorest that regulated competition is insufficient. The fixed network local loop remains a high cost natural monopoly, even though the blockages even at that level have been offset in part by the growth of cellular telephony. This has produced new opportunities for developing countries to go around the obstacle of huge investments in fixed networks and focus instead on cellular communications. This is because the marginal cost of adding a new subscriber to a mobile network is very low compared with fixed networks where each new connection requires a dedicated installation. The result is that, worldwide, there are now more mobile telephone users than fixed lines and this is particularly the case in sub-Saharan Africa and South East Asia.

But even to the extent that the cellular option could close the voice services gap, it does not provide a viable solution to what the United Nations has called the 'digital divide' (although new developments in mobile Internet access could play a part). The digital divide is growing in particular because of inequalities in access to technological innovations, particularly bandwidth and bandwidth access technologies (digital subscriber lines or cable modem connectivity).
Table 1: Teledensity and the ‘digital divide’

<table>
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<th>Fixed line connections</th>
<th>Mobile telephone subscribers</th>
<th>Internet users</th>
</tr>
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<tr>
<td>Developed countries</td>
<td>39</td>
<td>55</td>
<td>1.8</td>
</tr>
<tr>
<td>Developing countries</td>
<td>2.9</td>
<td>11.9</td>
<td>0.1</td>
</tr>
<tr>
<td>All countries</td>
<td>10.6</td>
<td>18.4</td>
<td>0.4</td>
</tr>
</tbody>
</table>

All data are per 100 population

Source: ITU

The bare teledensity numbers tell us much of the story but not the whole story about the rapid growth of, but continuing inequalities in, access to telecommunications services. Among 49 least developed countries, there was a three-fold increase in telephone usage in 1960-95, but a six-fold increase in five years after that. But this still left more than one billion people without access to basic telephone services, and 800,000 villages completely unconnected. (The number of actual users is substantially smaller than the number with access, and the ITU estimates that a majority of the world’s population has never used a phone, let alone the internet.) Moreover, the ITU comments: ‘While there is a divide in basic access to ICTs, there is an even larger quality divide. This affects users’ ICT experience. If the quality is poor, it can discourage people from using ICTs. One measure of this divide is bandwidth.’

The UN coined the phrase ‘digital divide’ in 1998 to express inequalities in internet access along a number of dimensions of difference in people’s circumstances - urban/rural, male/female, rich/poor, highly educated/not highly educated, and young/old. Although the numbers show that both fixed line and mobile teledensity grew at a faster rate in developing countries than in developed countries, (in percentage terms, bearing in mind that less developed countries started from a lower base), Internet usage grew more rapidly in developed countries.

The divide finds expression also in bandwidth infrastructure, with the 400,000 population of Luxembourg enjoying more between them than all Africa’s 760 million people. Intra-Africa numbers show that the extent of the inequality is even greater, as nearly half of Africa’s total is in South Africa, and only 20% in the rest of sub-Saharan Africa. ‘In many cases,’ says the ITU, ‘individual internet subscribers in developed countries have more bandwidth going to their homes and offices than the total international bandwidth available to some countries. Lack of infrastructure within poor countries obviously decreases access further, to say nothing of availability of hardware such as personal computers.’

Even in telecommunications, therefore, despite much greater benefits arising from liberalisation and privatisation than have been seen in either water or electricity services, market-led solutions are inadequate. Government-led interventions of various kinds, at every level from the international to the local, are also required if the access and quality gaps are to be closed. There are now many examples of government-led universal service initiatives funded by dedicated universal service funds, the money coming either from government contributions (as in Chile) or levies on the revenues of the operators (as in India) or from the incumbents as the ‘price’ of their dominant position (as in the UK). The establishment of all of these varied schemes required government intervention.

Public and private roles: the arguments and the evidence

Introduction

For most of the 20th century, in both rich and poor countries, and obviously in countries with centrally planned economies, responsibility for developing service infrastructure fell, in the main, to government. In most cases this was done through public ownership of integrated utilities, while in exceptional cases, such as the United States electricity and telecoms systems, government’s role was mainly regulatory. Public ownership and management, or at least strong regulatory direction, was seen as the only way to avoid the problems associated with private monopoly exploitation of such key strategic sectors. Moreover,
the scale of investment required was beyond the capacity of private capital in most markets.

While many countries did indeed make enormous strides on that basis, many others lacked the capacity to do so or to manage the services efficiently, effectively and sustainably. Low levels of public finance, resulting from inadequate economic growth, external debt and other factors, were and remain part of the problem, leading to chronic under-investment. There were also, and remain, rival claims on scarce public finance.

These problems have been greatly exacerbated by growing global economic pressures, which have also undermined the capacity of even the richest countries to maintain the required investments. The terms of structural adjustment programmes imposed on indebted developing countries in the 1980s and 1990s further undermined public capacity to invest in and operate public services.

The tension between economic efficiency and equitable access also undermined the possibility of raising sufficient revenue through user charges. The result was tariffs being set often below cost, often through the state treasury picking up the deficit. Where services were comprehensive, there were at least some benefits for all. But where networks were (and are) incomplete, this resulted in the perversity of the better off being subsidised while the poorest received nothing and, even worse, paid more for alternative, unofficial services.

Such public service failures contributed to the trend from the 1980s onwards towards liberalisation, privatisation and regulatory reform. International institutions fuelled the spread of these policies among developing countries through the leverage produced by debt and fiscal crises. Encouraged to some extent by technological and economic structural changes, policy makers focused on government failure more than market failure, and promoted ways in which competition could be introduced for the market even where natural monopoly characteristics limited competition in the market. Thus donor-sponsored investment was shifted towards private sector participation.

Did this improve matters? The evidence is inconclusive and varies hugely between sectors. For example, the February 2005 OECD seminar on services, considering improvements in access, reached a relatively positive view on telecoms, but the views on electricity were rather more mixed and those on water and sanitation varied from ambiguous to pessimistic. The evidence suggests that, rather than looking for a single solution, we need to examine the causes of both public and private successes and failures to learn what is required in particular contexts.

As private sector participation for many years attracted lender/donor investment which was denied to public sector services, the failures of the public sector became self-fulfilling. In the light of more recent experience, the deficiencies and limitations of market and private sector solutions have been recognised even in the World Bank, whose vice-president Cathy Sierra admitted, at the institution’s Water Week 2005, for example, that they had been pursued dogmatically. Now that the World Bank is mounting programmes for public sector reform regardless of privatisation maybe a more balanced picture will emerge.

**Public and private roles in water**

The much higher costs of water for unconnected people compared to those with piped supply provides the most vivid example of the phenomenon mentioned earlier of the poorest people experiencing the double disadvantage arising from subsidies to the better off diverting resources required to bring access to the worst off.

For example, CI’s Kenyan member, Consumers Information Network, has calculated that in East Nairobi the cost per litre of drinking water is ten times more for customers of vendors than it is for those who are connected to a network. The ratios are similar or even higher in other countries, reaching 100 times more in some extreme cases in the Caribbean region. This pattern is intensified where network prices are below cost.

Indeed, it can lead to a triple imposition on the poor when connection charges tend to go up to recoup revenue lost through below cost service provision, which means that only those who have the capital to pay the connection fee get access to the service. This ‘poor pay more’ syndrome traps the poor informal settlements in a syndrome of low income/high expenditure which makes viability under any ownership extremely difficult.

But if public sector provision has failed the poorest, privatisation has not enjoyed much success either. Privatisation failures have been much documented and discussed in recent years, and we will not repeat the evidence here. In any case, definition of success and failure can not be applied according to single criteria. For example, private sector participation has been associated with increases in prices but increases also in access. In contrast, some contracts, such as those in Manila and Buenos Aires, saw price decreases followed by collapse or radical renegotiation of the contracts.
It has proved all but impossible to reconcile the tensions between expansion of access to the poor, cost recovery and the private sector priority of profit making. There have been pre-term terminations of contracts in Buenos Aires, La Paz/El Alto (Bolivia), Tucuman (Argentina), Manila, Dar es Salaam, for example, and there are rumours that other contracts would be divested if companies could find willing buyers. Perhaps the most serious comment on the viability of private sector contracts in water and sanitation is that 45% are now considered to be ‘distressed’ worldwide, and that between 1985 and 2000 in Latin America, 74% were renegotiated.

Where there have been improvements, the crucial question is, therefore, whether, given the same level of investment, the public sector could have produced the same or better. There are cases of successful public sector reform, such as Porto Alegre in Brazil and Debrecen in Hungary. Likewise, there are some relatively successful private sector services (in terms of improving access), such as Casablanca in Morocco and Cote d’Ivoire. The Chilean water sector has seen marked access improvements in both the public and private sectors. There is plenty of evidence of public and private failures. The elements of success need to be captured and reproduced.

Public and private roles in electricity

Clearly, the record of privatisation in water supply does not suggest that it holds all the answers to the failures of public sector provision, and the same can be said of electricity supply. This has been subject to less recent debate than the water case, and so we will go into more detail here. As the experience matures, evidence grows that the case for liberalisation may have been overstated. Even in Western countries, the jury is still out on whether liberalisation will constitute a long-term improvement. In developing countries, the benefits are even more uncertain, for three reasons:

- An electricity market needs to have a certain scale to be successful. The minimum scale is estimated by our Dutch member’s electricity specialist to be in the order of magnitude of the Dutch electricity market. The reason is that there are strong economies of scale in electricity generation: in smaller markets, there is not enough ‘room’ for sufficient large-scale power companies to create a competitive market.
- A second condition for competition is a strong transmission network, so that all power generators can reach all consumers (except in the circumstances already discussed in which small-scale local generators supply consumers directly). Otherwise local generation monopolies develop that are particularly difficult to deal with. Especially in thinly populated countries this requirement is not always met.
- A third requirement for competition in electricity is the presence of a competent and independent competition authority and/or an equally well-equipped electricity regulator (depending on how the mandates of these agencies are defined).

If those requirements are not met, the benefits of liberalisation are elusive, and innovations in monopoly regulation might provide a more beneficial route to development. For instance, if electricity supply is a government monopoly, government may choose to make the power company semi-independent for instance by making it a corporation, the shares of which remain owned by the government, as it was until recently in the Netherlands, and has been common practice in the transitional economies of Central and Eastern Europe. Price-cap regulation can then be applied to the power company in order to stimulate it to become more efficient.

Even if there is a case for liberalisation of wholesale electricity supply, it does not follow that it should also apply to retail. The current orthodoxy is that consumer choice is essential to efficiency, but there are significant distortions in the market, due largely to lack of information, and even interest, on the part of consumers, without which they cannot make informed judgements. Moreover, particularly in smaller markets, retail competition may undermine long-term development goals.

Competitive retail companies face significant risk, because consumers can switch to a different company at any time. Therefore, it is difficult for them to engage in long-term power delivery contracts with generators. Even in Europe, few contracts last for more than two years. Without long-term contracts, investment in new generation capacity is extremely risky. An alternative is wholesale competition: competitive generation companies sell to integrated retail/distribution companies (that are regulated, e.g. with revenue-cap regulation). This structure is much simpler and allows the integrated retail/distribution companies to secure their future needs for generation, because they can estimate their future demand much better than competitive retail companies can do. The more transparent structure may also facilitate regulatory supervision.

A disadvantage of wholesale competition, however, is that the retail/distribution monopolies may be less flexible and cooperative with respect to distributed
generation (local small-scale generation, from wind, solar or small biomass, waste gas or natural gas units). Local judgements and agreements are needed.

Privatisation and liberalisation have in many cases created conditions for control of the electricity supply of developing countries by transnationals based in developed countries. Indeed, French and German companies have bought electricity companies in other EU member states and much of the UK electricity sector was owned by US interests in the late 1990s. In the case of developing countries one result is that if it is necessary for private investors to have specific guarantees to protect them from currency risk, performance risk (such as poor technical performance), social risk (such as non-payment of bills) and political risk such as civil conflict, or non-contractual decisions to impose tariff reductions. This risk will require a high premium which extra cost will inevitably be passed on to the consumer, thus aggravating affordability problems.

There is no doubt that such risks are a real deterrent to investment, and this doubtless accounts for the fact that in sub-Saharan Africa for example, many ‘private’ investors are in fact publicly owned, be it from the ex-colonial countries, eg Portugal, UK government owned Globelec, or other African countries such as Eskom, whose influence we have traced in 11 African countries outside of South Africa itself. Indeed ‘spontaneous’ private investment is infrequent, and there are several cases of withdrawal of foreign investors.

A World Bank conference in Cape Town in June 2005 concluded that private sector participation had consistently failed to bring benefits to the poorest 40% of the population of sub-Saharan Africa. (The point is not a partisan one in the public-private debate. The same 40% had also been failed by the public sector.) Indeed, liberalisation has introduced new public risks, because businesses building new generating capacity have only been willing to do so in return for power purchasing agreements which, typically, tie public utility buyers to long-term contracts that expose them to both demand risk and exchange rate risk. In addition, public operators typically also supply raw fuel to the private power stations built on such terms, which leaves them exposed to these risks as well.

Competition in wholesale electricity supply has worked better in large industrialised than in small less developed economies, but even there has produced some catastrophic failures (such as California). Even where disaggregation (unbundling) associated with privatisation has not (yet) produced such problems on politically damaging scales, as in the UK, market failure through information asymmetry has proved more significant than anticipated, a problem exacerbated precisely by the competitive behaviour of rival suppliers. Consumers are continually confronted with loss leader offers of bewildering complexity, and it requires more time and knowledge than most can bring to the task to consistently capture the benefits of competition.

Even where unbundling has been done as in the EU, there are enormous pressures leading to vertical re-integration which is happening in Britain... In France, that has not happened because they have scarcely unbundled in the first place, and in Germany where unbundling was in any case incomplete, vertical integration has increased. Further caution about the benefits of unbundling is suggested by the experience of countries that have chosen a different approach. For example, in South Africa unbundling has not happened and yet that country has a very high level of coverage by African standards.

Experience has somewhat undermined the cases for unbundling, competition and privatisation in electricity supply, then, and strengthened the case for an integrated approach allied to more effective regulation. However, the problems of scarce public capital and of inadequacies of governance and management will not go away: if integrated public services are to emerge as less risky than the unbundling and privatisation options, governance and management reforms are essential. For example, the issue of equitable distribution of supply is of vital interest to consumers. There are widespread instances of elites receiving regular supply while the poor have to make do with interruptions and supply at inconvenient times. The difficulties and limitations of private sector participation must not be used to justify inaction in reforming public sector services.

There is a place for competition in electricity, namely in production/generation where the largest single category of costs is to be found and which is not a natural monopoly. Some countries such as Norway manage to introduce an element of competition into public sector provision, while Sweden has public/private competition. Indeed the traditional ‘merit orders’ (rankings of generators by unit cost) which existed in the vertically integrated electricity sectors are now being reproduced in regional pools. So one can reconcile competition with public management of supply, and the evidence suggests that pragmatic solutions suited to particular contexts will work best.

Public and private roles in telecommunications

The same applies even in telecommunications, where, although liberalisation has brought more social benefits than in water and electricity, it has also
brought some social costs and failed to bring services to the very poorest.

Increased competition appears to have been effective alongside technological development in expanding telecommunications coverage. Even where fixed line telecoms have remained monopolistic, competition from mobile telephony has led to greater access for consumers, not only in the mobile sector but also through the fixed line sector reducing its connection charges for fear of losing out on an expanding market. This has happened in Russia, for example. In Latin America, network coverage has expanded nearly twice as quickly in countries that allowed competition than in those that have simply privatised monopolies. According to the ITU, ICT infrastructure deficiencies also correlate somewhat with lack of liberalisation, because internet service providers have to buy gateway access from monopoly operators. The experience of CI’s members in Poland strongly supports this.

However, the ITU also insists that liberalisation alone could not solve the most fundamental problem facing the poorest countries, which is that they cannot offer a sufficiently large market. According to ITU: ‘There are those who argue that the gap is caused by a lack of market liberalization. This does not take account of the fact that many countries have opened their ICT sector but that competitive markets have failed to meet the needs of the marginalized.’

Moreover, although ITU statistics show strong correlation between the introduction of competition and rapid network expansion, as well as the converse correlation, they do not make the case that the more liberalisation the faster the network expansion, especially from a low base. The fastest rates of growth in the 1990s were achieved by China and Vietnam, which improved 64 and 48 places respectively in world teledensity rankings over the decade. Following similar policies, they introduced competition mainly between government ministries and did not privatise their utilities, but made various kinds of strategic partnerships with foreign companies. The ITU comments: ‘Although it is unlikely that this form of competition between state-owned enterprises would feature in many economics textbooks, it has proved remarkably effective. The key underlying factor is the will of the state to invest in, and prioritise, telecommunication development.’

The ITU notes also that the next fastest growth after China and Vietnam was achieved in Botswana, whose dramatic success - including eight-fold investment growth, doubling of the fixed-line network and taking the mobile network from zero to 15% density - is attributed to effective regulation, and in particular to five of its characteristics, namely its:

- freedom to award licenses and establish and manage its own budget
- use of consultative processes, including open meetings in all major cities;
- high speed of action
- willingness to make controversial decisions, including award of a mobile license to the incumbent fixed line operator
- consistent investment in human resources and gender equality.

Other countries among the top ten in growing teledensity include those with more liberalised environments, but there has been a downside to competitive and regulatory environments that have given priority to market signals. There has been a tendency, through the elimination of cross subsidies, for the prices of services most important for the poorest people and smaller local businesses (such as local calls) to rise, while those of greatest value to the better off and larger national and international businesses (such as long distance and international calls) have fallen.

Indeed, there is some evidence in some countries of a reversal of cross-subsidy by private monopolies. These costs to household consumers must be set against the greater availability of services that comes about when producers do not incur losses on each new customer. Telecoms services have often seen price rises after liberalisation and thus an imposition on current consumers who no longer benefit from tariff subsidies. But there may well have been gains to new consumers who no longer have to pay extortionate connection charges.

In short, in telecommunications as well as more obviously in water and electricity, while there are vital roles for the private sector and market mechanisms, political will and government action is also required to fill the access and quality gaps in service provision. Clearly the more that ‘normal’ market forces can provide for consumers, the less the demands on government driven programmes and the greater their potential effectiveness in reaching the poor.
Globalisation, international institutions and services

Globalisation and services

Potentially, the availability of investment capital, managerial and professional expertise and other aspects of globalisation could contribute strongly to the resolution of the problems of developing and sustaining efficient and effective services for all.

However, existing imbalances are shaping the nature of internationalisation of service provision, resulting in disadvantages as well as advantages. The facts that the competitive pressures of globalisation tend to favour the already strong, while placing severe constraints on the capacity of public finance to fund investment and operating costs, suggest that the international market is inadequate to bring services sustainably to all who need them. Reliance on international investment has proved unsustainable and has brought costs in many cases. Accountability of transnational service companies to their shareholders does not necessarily reconcile with the interests of consumers in host countries, a problem intensified by shocks arising from such factors as changes in exchange rates.

Yet given the problems of monopolies and public sector failures such policies have been intended to solve, we know that simply to revert to ‘traditional’ approaches would be undesirable as well as impossible. The answer lies in combining the roles of state, market and civil society most effectively on the basis of internationally established rights. That is why we are arguing for a GAPS. The urgency of the issue stems not only from the urgency of the service gaps we have already discussed, but also from the fact that the international institutional focus on trade in services is both overshadowing and threatening to limit further the democratic space within which solutions must be developed.

International trade agreements and services

The General Agreement on Trade in Services (GATS), while being negotiated through the World Trade Organization (WTO) and seeking to adapt the WTO’s regime on trade in goods to the services environment, might be viewed more accurately as an investment treaty than a trade agreement. WTO leaders insist that the GATS would not apply to public services because it excludes services based on government authority, which it defines as those that are delivered through state monopolies without competition. But the more services such as water and sanitation, electricity supply and telecommunications are separated from state control and opened up to competitive environments, the less they are protected by that exclusion clause.

Moreover, their vulnerability is illustrated by the fact that strong private producer interests, notably the US Coalition of Service Industries and the European Services Forum, have lobbied hard for developing countries to ‘commit’ energy and water services to the GATS, while telecommunication is clearly already affected by GATS.

Whatever might be said about the benefits of international trade rules, tying national and local governments to indefinite obligations under international treaties militates against a factor that appears to be critical to success in public services, as well as democratic: enabling people who consume services to play a part in the way they are run. A central concern with the application of trade agreements to services is their impact on the capacity of government to regulate for compliance with, and facilitation of, public policy. Again, the WTO’s advocacy of GATS insists that governments would be able to apply whatever conditions they please to their commitments. However, the loss of policy flexibility that is inherent in long-term advance commitments about regulatory environment - without which investors feel vulnerable - means that the capacity of governments to develop and apply policies having already made commitments is in question. For example, GATS undertakings could possibly inhibit necessary industry restructuring, ‘freezing’ industry structures in order to respect the engagements made to inward investors.

World Bank and services

It is here that the role of the World Bank in helping to shape the regulatory environments in which services are developing could be of particular relevance for developing and transition countries. The World Bank is currently endeavouring to draw lessons from the difficulties that have arisen from liberalisation and privatisation of infrastructure services such as water and electricity supply. Its rethinking has brought unusually frank admissions that privatisation had been pursued dogmatically and ideologically. In its Infrastructure Action Plan (IAP), adopted in 2004, the Bank Group committed itself to ‘supporting infrastructure service delivery through a more balanced and pragmatic approach, with the overall objective of mobilising funds from the entire spectrum of public and private financing sources’.

The Bank has crystallised some of its conclusions about reform of public service regulation in a recent book called Reforming Infrastructure: Privatization, Regulation and Competition. Like the IAP, the book is candid about its earlier policies having failed to live up to their promise. It states: ‘Just a few years ago, privatisation was heralded as an elixir that would rejuvenate
lethargic, wasteful infrastructure industries and revitalize stagnating economies. But today, privatization is viewed differently -- and often critically.' Explaining the discontent not only in terms of job losses but also price rises, it acknowledges the necessity of the right institutional framework and sequencing of reforms, and stresses that: 'among the most critical tasks for policymakers in developing and transition economies is designing and implementing stable, effective regulation for network utilities.'

The book goes on to state that 'regulation needs to adapt to emerging problems, changing circumstances, and new information and experience in regulated sectors.' But it also seeks to avoid 'political interference' in regulation, which it says has 'undermined regulatory independence.' Rather, regulators should: 'articulate a set of fundamental principles that serve as a transparent basis for policy analysis and decisions. These principles should protect the interests of investors at the levels established by privatization agreements, protect consumer interest, ensure economically efficient competition, and so on. International financial institutions could make an important contribution in this area by helping to develop guidelines for revising regulatory mandates and rules, and for renegotiating privatization contracts - guidelines that adhere to accepted principles of the economic public interest and embody much of the best available economic learning.'

Two important points arise from the World Bank position outlined above that have relevance to this paper. First, if there is a need to articulate a set of fundamental principles that serve as a transparent basis for policy analysis and decisions' - and the GAPS idea is premised on the proposition that there are - these should apply to public providers as well as to privatization contracts, and must affect judgement about the character and extent of private sector participation in particular circumstances. Second, those principles must embody not only the economic dimensions of the public interest but also the environmental and social dimensions of the public and consumers interests.

The same World Bank book seems to acknowledge this by stating that, while: 'the general goals of regulation are to promote efficient markets and correct for market failures', regulation in 'newly liberalized and privatized infrastructure sectors', should focus on:

- Pursuing social fairness and promoting universal service -- through pricing that balances economic efficiency and social equity.
- Ensuring incentives for investment -- so that reforms draw resources into the sector to expand, modernize and improve infrastructure facilities and services.
- Promoting fair competition -- by lowering entry barriers and giving entrants access to network infrastructure.
- Facilitating innovation -- by focusing on goals to be achieved and giving operators and investors leeway to introduce more efficient technologies and innovative service arrangements.
- Protecting public health and safety, and avoiding harm to the environment.
- Ensuring that even where the private sector takes the lead, services are reliable and networks interoperable.

Again, if goals such as social fairness, universal service, more investment and innovation, protection of health, safety and the environment, and reliability and interoperability are important goals for these services - and the GAPS idea is based on the conviction that they are - they must inform decisions about the extent to which private operators and competition are useful, not assume that they are. The problem here is the a priori assumption that market mechanisms can be made to deliver public interest objectives, or at least that public interest objectives should give way if they impede competition. This mindset is evident also in a section of the same book that stipulates three characteristics of predictable, accountable and transparent regulatory bodies, namely that they should:

- Have competent, non-political, professional staff -- expert in relevant economic, accounting, engineering, and legal principles and familiar with good regulatory practices.
- Operate in a statutory framework that fosters competition and market-like regulatory policies and practices.
- Be subject to substantive and procedural requirements that ensure integrity, independence, transparency and accountability.

What is missing from those stipulations is the need for a wider range of skills, including those suited to bringing social and environmental considerations to bear, and corresponding elements in the regulatory framework. In learning from the experience of the application of its earlier policies, the World Bank appears to be drawing some highly significant conclusions and yet failing to follow their own logic consistently.

If these are continuing blind spots in the Bank's perspective and policy priorities, they imply a need for intervention in the development of the Bank's regulatory guidelines to seek to influence both their content and their application. In particular, context-
specific policies and strategies are required. As we have seen, there are significant differences between and even within the sectors in terms of the capacity of markets and regulation to deliver consumer welfare. Therefore, blanket policies - for or against privatisation, for or against liberalisation, and so on - will not serve us well.

What is needed is an international agreement that recognises the particular character of public services in general, and the particularities of each service, and enables and promotes national and local solutions within a global rights-based framework. Those solutions will involve developing public capacity through public finance and government action; mobilising private sector capacity and entrepreneurship through regulated market access, competition and non-state provision; and mobilising and developing civil society capacity through a variety of means. The configuration of these dimensions will vary from country to country, from locality to locality and from sector to sector, but that will be possible only within an international framework that not only enables but nurtures such an approach.

One major issue on which we seek advice is the extent to which such a framework should be a prerequisite for loans or grants from international financial institutions such as World Bank or IMF, or national bilateral donors. For example should a loan be conditional on adherence to sectoral GAPS provisions for say, equitable management of supply or publication of concession contracts? Such conditions could be powerful incentives. Conversely could their imposition prove to be counter-productive? As the 2004 World Development Report says in a different but related context:

‘There is ample evidence today that conditions based on promises do not work well, because they undermine ownership of the reform programme. When policymakers are not encouraged to develop their own positions on, say, privatisation of water supply or other services, but rely on donor conditions in taking action, they can more easily deny responsibility for a later failure.’

Section 2: What already exists:

General Agreement on Trade in Services (GATS)

Provisions of the Treaty

CI has consistently supported multilateral regulation of trade in services. However, there is widespread concern about the GATS agreement, which we share to a considerable extent. The fundamental problem is that GATS by definition only deals with trade in services and thus comes into play only when there is foreign participation in a given national sector. Yet many of the problems for consumers arise from operators working solely within national frontiers. This is not just about trade.

GATS is clearly about ‘progressively higher levels of liberalisation of trade in services through successive rounds of multilateral negotiations’ but is different from other WTO treaties in that it operates on a ‘positive list’ basis. Under this procedure, governments nominate those national sectors where they are prepared to commit to a degree of market opening for foreign service providers to operate on a non-discriminatory basis. In theory the beneficiaries are supposed to be the general public, and the incoming operators will usually be acting as private operators under contract law, often relating to local or regional governments. There is an imbalance which derives from the inter-governmental nature of the GATS agreement. When GATS commitments are considered to have been violated, the government has to answer for its conduct. But if the incoming company violates an agreement the direct resolution of differences is more likely to operate through the courts rather than under WTO procedures for the offending party is not a government.

CI takes the view that the limitations of GATS are inevitable given that market access is seen as a matter of commitments between governments. The consumer does not enter the picture. For example provisions on transparency (Art 3) relate to information to potential market entrants, not, for example, information to the public regarding public service contracts. Provisions on monopolies and their potential abuse (Art 8) are not drafted in terms of abuse of consumers but in terms of maintaining market access commitments. Any benefits to consumers (and there may be some) are arrived at indirectly rather than being written into the agreement.

On the vexed questions of definition of scope of the agreement, there is constant and largely unresolved debate. Services ‘supplied in the exercise of governmental authority’ are outside GATS jurisdiction. And yet it is widely agreed that the limitations to the applicability of the treaty set out in Art 1.3 are ambiguous because
of the specification that ‘supplied in the exercise of governmental authority means’ supplied: ‘neither on a commercial basis nor in competition with one or more service suppliers.’ The use of the double negative suggests that both exclusions should apply before the exception from GATS rules can be circumvented. But as so many public services are supplied either on a commercial basis or in competition with other suppliers, then the concern is that governmental services will increasingly come under the ambit of the GATS.

The debate is rendered still more arcane by the fact that definitions of ‘commercial’ and ‘in competition’ are not set out in GATS or in the jurisprudence. Does a subsidised service that charges its users, as do many utilities, operate commercially, even though it runs at a loss and depends on subsidies? It may be clear that the private sector competes with the public sector for its clients, but does the opposite necessarily apply? The public sector may simply be a default provider, losing market share to private providers. Is that competition? As things stand such important questions are unlikely to be answered until there is a particular dispute settlement. We would prefer there to be memoranda issued setting out the understandings of the WTO on such matters so that governments would have a clearer understanding.

There are signs (some anecdotal) that critics of the drafting of the GATS Treaty are making headway. The UK Dept of Trade and Industry (DTI) has accepted that Art 1.3 is ambiguous and has: ‘no objection in principle to considering a clarification of Art 1.3’ The International Financial Services London (an industry lobby group) and the LOTIS Group (Liberalisation of Trade in Services) also accept that ‘to the extent that there is any doubt about this, the drafting should be revised’. They also make the point that ‘opening service markets to foreign providers is self evidently inconsistent with retaining public sector monopolies.’ This is a statement of the obvious in itself, but helpful in this context as an interpretation of Art 1.3 to the effect that governmental services are only outside the GATS jurisdiction if they are monopolies - an increasingly rare state of affairs.

**Right to regulate**

The second major question on the drafting of the treaty involves Art 6 (Domestic Regulation). Art 6.4 is concerned with ‘ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.’ Art 6.4b), often known as the ‘necessity test’, stipulates that each requirement should be: ‘not more burdensome than necessary to ensure the quality of the service.’ This only makes reference to the quality of service while we would expect access to be included. Failing that, we would want quality to be taken as comprising access, which in a sense it does as restricted access by definition affects quality.

There was a blunt statement made in the ministerial declaration at Doha, and reaffirmed at Cancun, to the effect that (para 7) ‘we reaffirm the right of members under the GATS to regulate and to introduce new regulations on the supply of services.’ This represents a political commitment to reinforce the statement to the same effect in the Treaty Preamble which is felt by some to have less legal standing than the body of the text. It could have that effect, but be that as it may, it does not cut through a further arcane debate on whether the ‘necessity test’ (Art 6.4.b) applies only to those sectors committed for liberalisation, or across the board. Many NGOs believe the latter to be the case, (which is why they are worried), and most official sources state the former. Detailed discussions in the relevant committee, the Working Party on Domestic Regulation, seems to have swung both ways, although rather more towards the NGO interpretation.

All of this indicates that the situation is ambiguous and requires clarification. We have a clear policy stance that we want Art 6.4 to apply only to sectors ‘offered up’. A purely legal argument could go on inconclusively until a Dispute Panel Hearing establishes jurisprudence.

**Application to utilities**

When deciding to make commitments under GATS to liberalise a sector, obviously a government has to define exactly in which sectors those commitments are being made. This requires some quite precise definitions, and the customary procedure is to use the Services Sectoral Classification List, established by the secretariat of the then GATT in 1991 and subsequently revised, generally known as the W120. It lists 12 service sectors subdivided into 160 sub-sectors. Public utility services are not clearly defined as a group in the W120, and indeed of the three sectors that we are considering, only telecoms is clearly listed.

**Water and sanitation services:**

Regarding water and sanitation, the most relevant category is ‘environmental services’ which includes the sub-sector ‘sewage services’. Also listed are ‘refuse disposal services’ and ‘sanitation and similar services’. However, there is no reference to water distribution services. The only reference to ‘collection, purification and distribution services of water’ is to be found in the ‘natural water’ sub-class in the WTO goods classification, ie not in the GATS list at all.
The absence of an explicit reference to water distribution in the GATS-relevant list has perhaps led some to think that water is excluded from GATS jurisdiction and indeed for some organisations to campaign for water to be ‘kept out of GATS’. This is a misconception as the existence of a classification is not a prerequisite for the making of commitments. It is just simpler in administrative terms for a government to take a classification ‘off the shelf’ than it is to invent its own. So, providing a government decides it wants to commit in water it is free to do so.

However, the fact that there have been no commitments made in water distribution and 42 have been made in sewage services does suggest that the existence of a classification eases the process somewhat. Doubtless with that in mind, the EU has made proposals for a new classification of ‘water for human use and wastewater management’ which includes sub sectors: water collection purification and distribution services through mains, and a second category approximating the current sewage services classification.

The EU also requested GATS commitments in ‘environmental services from 64 countries in its initial ‘request/offer’ negotiations under the Doha process. Although the process is very secretive, we understand that these proposals are now being scaled down perhaps due to public hostility, and also because the EU’s own water companies seem distinctly unenthusiastic. It remains to be seen if any final offers will result.

A fundamental question is whether the GATS applies to services which are in legal terms commissioned by government as many water services are on the behalf of the general public. Specifically do Build-Operate-Transfer (BOT) and concession contracts fall under GATS or under the rules on public procurement? A recent personal paper from a member of the WTO secretariat confirms that there is great uncertainty on this matter and concludes the following:

‘There is little doubt that concession contracts would be covered by specific commitments. [ie covered by GATS rules]. Other forms of contractual arrangements between a public authority and a private operator, such as management contracts, could be considered as government procurement and would not be subject to market access and national treatment rules. The situation of BOT contracts remains to be clarified….In the absence of clear categories and agreed definitions, it is necessary to make a case by case determination based on the main elements of a contractual relationship between a public authority and a private contractor.’ (Cossy 2005)

We do not enter here into the complex legal discussion on the jurisdiction. But we should note that the above raises the prospect of different types of contract in the same sector being governed by different WTO treaties. All the more reason then for there to be a clear statement of consumer rights. This legal minefield could seriously erode the applicability of GATS to the water and sanitation sector if the jurisdiction is permanently open to challenge, let alone the actual interpretation of the rules. There is also good reason for any GAPS sectoral guidelines to apply to government procurement, so that management contracts (which are becoming more widespread) should have clearly established rules safeguarding the public interest, among which transparency in particular is one of our long standing demands.

Energy;

Regarding energy, there is a similar vagueness. Energy services, like water, were not negotiated as a separate sector during the Uruguay Round and WTO reports that: ‘though a few WTO members undertook sparse commitments in various energy-related services the vast majority of the global energy services industry is not covered by specific commitments under the GATS.’ The only specific mention of energy services comes under services incidental to energy distribution which is a sub sector of other business services which in turn comes under the main category Business services.

Reference to the UN Provisional Central Product Classification (used to classify goods and services for WTO purposes), suggests that this includes core distribution and transmission activities. Nevertheless, the few commitments that have been made have tended to be in the area of consultancy services rather than service provision. During the Doha negotiations, the EU made initial requests of 46 countries although it remains to be seen if these too are scaled down or if any offers are made.

So there is a similar pattern to that in water, but, as in water, the lack of explicit classification does not mean that governments cannot nominate the service for commitments. The Art 1 ‘governmental authority’ exception should in theory be the only ‘carve out’, but as we have seen, there may be ambiguities regarding management contracts and BOT agreements, which may be subject rather to the rules on government procurement.

So the concerns expressed above about the applicability of GATS to water and sanitation apply equally to energy. Indeed, there is a further complication relating to the point made earlier (section 2.4.2) about the risk of GATS commitments ‘freezing’ an industry structure that needs to be reformed, or
Indeed, telecommunications are not just a matter of technical convergence. They also have significant economic and social implications. For instance, the move towards greater liberalization in telecommunications has been driven by a desire to ensure that services are available to all citizens, not just those who can afford to pay the highest prices. This is particularly important in developing countries, where access to basic services like electricity and water remains a major challenge.

Telecoms;

The situation regarding telecommunications is far more clear than for either water or electricity. There is a sectoral classification, Communication services, which covers telecommunications without ambiguity, and a WTO Telecommunications Agreement not covering the entire membership. (Nearly all the signatories to the agreement entered into additional commitments over and above those required). In addition, there is an agreed telecommunications reference paper which sets out broad principles for the operation of GATS commitments in the sector.

Broadly speaking the reference paper is consistent with many of CI’s preoccupations in terms of such matters as regulatory structures, the need to ensure universal service possibly involving the use of subsidies, and the recognition of universal service obligations. As mentioned earlier, USOs are in force in many countries covering such matters as access, directory information, public call boxes or call centres, and facilities for handicapped users. These have operated without challenge under the WTO.

If anything the criticisms of the Telecommunications Reference Paper have been that it is too weak, because of its vagueness, particularly as regards competition provisions. This is because it does not define in which cases carriers are considered as behaving anti-competitively, and it does not specify mechanisms for addressing potential anti-competitive practices in the telecom services sector. Crucially for our view that regulation should apply impartially to the public and private sectors, there is no provision that in case of state-owned telecom companies the regulatory body has to be structurally separate from the ministry which is exercising the ownership function over the telecom operator.

Nevertheless, the exercise of actual liberalisation of telecommunications sector has proved in practice to be far less contentious than has been the case in electricity and, above all, in water, where there is now a long series of contracts that have come to grief. Our members in several countries have welcomed the liberalisation of telecommunications in practice (eg Jordan) or have called for it to take place (eg Lebanon, Poland). By March, 2005, 71% of WTO members had made telecommunications commitments, accounting for over 85% of the global market. That is not to say that there are no problems in the sector. Many of our Latin American members were highly critical of the privatisations that took place in the 1990s, which we often described as ‘false liberalisations’: monopolistic privatisations without proper regulatory structures or disciplines.

It is quite common for governments to make GATS commitments in mobile telephony while maintaining the status quo for land lines. To what extent there is clear cause and effect between GATS commitments and ‘real’ events in the market is a matter of conjecture, but it is the case now that there are several regions, including sub-Saharan Africa, where the numbers of mobile phones exceeds that of fixed line phones.

Furthermore, as noted earlier, the fact of competition from mobile telephony is exerting pressure on the fixed line systems to be more receptive to consumer demand. Perhaps because of the pace of technological innovation, perhaps because telecommunications have not quite the same environmental implications as have energy and water and are less seen as being held ‘in trust’ by government for the people, the process has been less mired in controversy and sectoral growth has been rapid. As we discussed earlier in this paper, however, in telecommunications as in water and electricity there remain great deficiencies in access and a need for international and national strategic interventions.

Regional agreements:

One somewhat neglected aspect of trade policy compared with the high degree of attention paid to WTO agreements is the development of regional trade agreements. In many cases, such as those agreements negotiated with surrounding countries by the EU, regional agreements are far more far reaching than GATS and more intrusive into national policy. Effectively the EU agreements with neighbours are tantamount to the adoption of EU legislation in terms of energy and telecommunications. As EU legislation for water is still mainly environmental rather than commercial there is less impact on the commercial side, although EU-based water companies are very active in the surrounding countries.

Other trade agreements are notable in one particularly stark way. In many cases they operate on a ‘negative list’ basis. GATS leaves it up to individual members to decide which sectors to put forward on their positive lists for liberalisation. It presumes that if a sector is not positively listed then it is not to be nominated. In contrast, regional trade agreements such as the Central American Free Trade Area and the proposed Free Trade Area of the Americas assume that a sector is to
be liberalised unless it is ‘negatively listed’, that is, specifically declared to be excluded. This reverses the burden of expectations in the negotiations and makes the questions of definition much more important. In fast-moving sectors such as telecoms it places a particularly heavy emphasis on the anticipation of new service products, which will presumably be assumed to be included in commitments unless stated otherwise.

Regional agreements are thus in practice often ‘harder’ than GATS and yet often attract less attention. Still less examined, because more obscure, are bilateral negotiations which are often, in effect, not so much government to government as company to government, often Northern company to Southern government. The alternative to general agreement then is not nothing, it is another kind of agreement that may be less formal, far less transparent and focused on establishing trading and investment rights rather than access and quality rights.

**Summary on GATS**

The real impact of GATS may be overestimated. By spring 2005, WTO member states had made commitments among only one third of the 160 plus sub sectors on average, the level dropping to one sixth among the least developed countries. As we have noted, regional agreements are often ‘harder’ and there are other WTO agreements such as that on Government Procurement and TRIMS (Trade Related Investment Measures) which attract little attention. The GATS agreement and reference paper on telecoms have been criticised for weakness rather than strength.

We suspect that there is potential for greater GATS impact in the future, but for the moment the current GATS negotiations in the WTO Doha Round are moving very slowly. As of July 2005, only 69 WTO members had submitted initial GATS offers to the Council on Trade in services (not necessarily covering the utility sectors). And this was in respect of a deadline of March 2003. A new deadline set for May 2005 for revised offers saw only 27 members submit by 1 September.

More detailed discussion of utility sectors is difficult because the countries concerned still refuse to publish the full text of their requests and few publish their offers. CI deplores this is a state of affairs which is not a treaty obligation and contributes to news by leak and rumour. But it is clear that for utilities the process is moving slowly, and we suspect that the most movement is in the telecoms sector where it is least contentious, and we are not aware of any offers in the water sector.

In brief our position on GATS is not to oppose it root and branch but to recognise that it is both inadequate to the task of bringing quality services to all and has the potential to impact negatively on the capacity of governments to take the steps necessary to do so. At its best it could encourage a degree of transparency and recognise and even help to establish regulatory structures. At its worst it could conceivably result in unsuitable industrial structures being ‘frozen’ for fear of sanctions being applied. The necessity test could on some interpretations be used across the board even in sectors that have not been committed for liberalisation. This would be a step too far in undermining the regulatory autonomy of nations. Even the ‘benign’ elements of the GATS, such as the provisions on transparency and monopoly, are written from the provider rather than the consumer point of view. All abuses are seen as abuses against potential competitors rather than against the public as consumers. This makes the treaty incomplete at best as an instrument for furthering the consumer interest.

It is bound to be inadequate because most of the world’s production in services is not traded, and does not cross borders. Furthermore, we would estimate that in electricity, water and sanitation, the services for the poor are even less likely to be provided by incoming companies than are those for the better off. (Telecoms may be a different matter, given the success of mobiles in spreading coverage.) So trade is but a part of the public service agenda, and public services are but a part of the trade agenda, but they cannot completely overlap. There needs to be a public services discussion which is focussed on the rights of consumers of those services. That is why the GAPS is required.

**A rights-based approach**

There would be no need for a General Agreement on Public Services (GAPS) if existing international agreements, whether general or sectoral, already provided for its aims. However, although there are indeed some charters of rights in individual sectors, and even for the promotion of human rights in public utilities as a whole, they tend to be declarations of rights rather than agreements focused on how they can be actually secured.

CI tends to view exercises of this kind through the prism of the eight basic consumer rights which were adopted as the UN Guidelines for Consumer Protection in 1985 and have subsequently been elaborated and re-endorsed, most recently by CI World Congress in Lisbon 2003. The basic eight rights are:
• the right to satisfaction of basic needs
• the right to safety
• the right to be informed
• the right to choose
• the right to be heard
• the right to redress
• the right to consumer education
• the right to a healthy environment.

To what extent do they provide a structure for a GAPS and for associated sectoral agreements?

**The right to water**

‘The human right to water is indispensable for leading a life in human dignity.’

‘Water should be treated as a social and cultural good and not primarily as an economic good.’


There have been ten formal UN declarations on the right to water since 1990. Yet 2.4 billion people lack access to proper sanitation and 1.1 billion to an adequate supply of safe water.

The Right to Water has effectively been ratified by 146 countries via the International Covenant on Economic, Social and Cultural Rights. Yet, after so many grand declarations, the UN Committee cited above reported that it had: ‘been confronted continually with the widespread denial of the right to water in developing as well as developed countries.’ The Committee listed declarations dating back to 1949. Clearly in terms of practical effects, the declaratory approach has its limitations.

This is not to argue against a rights-based approach; it is to recognise that such an approach is only a starting point along a very long road. That means dealing with the prosaic ‘down and dirty’ realities of service delivery. One of the problems in the human rights discourse in this particular context is that there are huge physical constraints which can make even the best drafted resolution somewhat academic. A resolution on human rights in political terms can, in theory, take immediate effect, once passed into law, especially where it calls upon governments to ‘cease and desist’ from activities such as preventing freedom of speech or assembly. Governments can cease and desist tomorrow.

But in a field like water and sanitation where there are pipes to be laid and reservoirs to be built, pits to be dug, the most universally and sincerely accepted declaration would still face the physical fact that the necessary improvements will take at least a decade for the world’s population to be served. Because of these physical obstacles, the reality is that governments can only commit immediately to using their ‘best endeavours’ to move towards universal service. The debate needs to move on to implementation.

**Energy**

In energy, apart from the Universal Declaration of Human Rights there is little in the way of a right to electricity. The French government owned service Electricité de France has called for the development of a universal right to electricity. A close approximation of the eight consumer rights has been put into practical form by Energywatch, the UK’s independent consumer ‘watchdog’ for gas and electricity, (which is also a member of CI). Energywatch asserts seven rights for energy consumers, which are reproduced in Annex 4.

That list and its elaboration admirably addresses the eight basic consumer rights, but there are issues of ‘real life’ applicability to developing countries. For example, in their work with the Bureau Européen des Unions de Consommateurs (BEUC), Energywatch take access to imply continuity, perfectly reasonably in the European context. But in developing countries where large numbers are not even connected, initial access, even for a few hours a day, is so difficult that continuity seems a long way down the road. Indeed continuity of supply can even be in conflict with access if a minority get 24-hour service at the expense of a modest supply going to a larger number. There is a dilemma. Should a GAPS be reconciled to the reality of such differences and then open to the accusation of double standards or of levelling down? Or should it go for a maximum standards everywhere and be accused of lack of realism? The answer has to be that practical decisions on continuity and access have to be made at local level. But in that case does a GAPS have anything to contribute? We believe it does if principles are carefully crafted in practical terms.

**Telecoms**

The success of mobile telephony in some very poor countries suggests that we should not set the bar too low when setting standards; rapid progress can be made in very difficult circumstances. The telecoms sector has seen fewer grand declarations than water, (reflecting its lower status as a basic necessity of survival) and yet, coverage is spreading. The 2003 World Summit on the Information Society prepared a declaration of Principles and a Plan of Action, both of which feel long on declaration and short on practicalities. The declaration of principles draws upon the Art 19 of the Universal Declaration of Human Rights of 1948 (on freedom of expression) to support
the notion of a right to communication, making only passing reference to postal services.

While the more prosaic telecoms services are being addressed through such mechanisms as the EU’s Universal Service Obligation, a huge amount of attention is being paid to the development of e-services worldwide. Remarkably, access to internet is being developed as part of universal service provision in medium- or lower-income countries such as Chile and India, through the development of telecentres. There is a risk that adding on internet access to universal service in telecoms could become a subsidy to the better off with access to personal computers, but in the context of community use the internet could evolve into a ‘leapfrog’ technology as mobile phones have done and bring wide benefits. The GATS reference paper does not inhibit extending the concept of universal service, that is a matter for individual WTO members.

**A more practical approach?**

So far, the evidence that declarations of rights bring about progress seems mixed. Is a practical approach needed, setting out principles but in rather more specific terms than vague invocations of human rights? Indeed, is there a danger of devaluing the language of human rights if the declarations are not matched by specific actions? We believe a rights-based approach is essential but insufficient: we also need international agreement about how rights can be secured in practice.

**UN Declaration – Essential utilities**

The French Institut de la Gestion Deleguee has prepared a charter for adoption by relevant UN agencies which includes a declaration of principles on access rights to essential public utilities and a code of sustainable management. The draft covers water and sanitation and refuse disposal, energy distribution, information and telecommunications and public transport. The charter is useful as a statement of the importance of the services, the responsibility of the public authorities for the organisation of those services, and the rights of individuals or collectivities to: ‘access information, ...... , to participate in the evaluation and to contest the management concerning the essential public services network.’ The charter recognises common ownership of natural resources ‘water air and space’ (not energy) and recognises the rights of consumers to ‘appeal against illicit practices and insufficient performance.’

The Code of sustainable management makes reference to ‘collective infrastructures that are in a monopoly situation’ which should not be ‘subject to a private appropriation of an indefinite or definite duration.’ It also ‘assumes the creation of solidarity and financing mechanisms by public authorities. .....based on mutualisation of costs and on appropriate local tarification, as well as on national and international solidarity mechanisms.’

Much of this corresponds with the elements of our own policy statement on water (Annex 3). There are however, some reservations to be expressed. First, although access to information is mentioned in the Declaration, it seems to fall short of the requirement for publication of public service contracts that we have called for in our policy statement on water and elsewhere in other CI documents about public utilities. Art. 3 of the charter indicates that the form taken by information is ‘to be clarified’. Our view is that in monopoly sectors such as water and sanitation and electricity distribution networks there is scant justification for commercial confidentiality. We take the view that there should be a presumption of publication and the burden of proof should rest with those who have to make the case for confidentiality.

Second, the above reference to ‘private appropriation of an indefinite or definite duration’ raises significant questions about the nature not just of divestiture of fixed assets (as in the UK) but also of long term contracts such as concessions, which have ‘definite duration’. The Code, if fully applied, seems to suggest that such systems be abolished. While we do not necessarily espouse these particular forms of private sector participation, neither do we think it either realistic or desirable to suggest that in all circumstances they would be inconsistent with our aims. Given the use of such contracts by French companies, (the two largest of which were members of the committee advising the Institut with the drafting) it is difficult to believe that this was the intention of the drafters. This is also of interest given that the charter states that the ‘mode of management is freely chosen by the organising authorities.’ The charter seems to be based on a distinction between divested ownership and private operation which is not always so clear in practice in long term contracts.

The code seems to allude to equity of supply where it states that ‘essential services...comply with principles of equality of treatment and continuity.’ It makes clear reference to affordability and the possibility of cross-subsidy in that context including the possibility of public subsidy. Much of this is in accordance with what we seek from a charter, but we would seek a clearer reference to the obligation on service providers to manage supply in an equitable manner.
Water:

Swiss Re

The Swiss Agency for development and cooperation has commissioned Swiss Re Centre for Global Dialogue, (linked to the Swiss Re reasurance company) to develop Policy Principles and Implementation guidelines for Public Private Partnerships in sustainable water supply and sanitation services. There is a heavy emphasis placed in the final document on financial sustainability, and hence on full cost recovery including ‘costs for ecosystem services’.

While we do not oppose such a policy in the long run given the right safeguards, one must recognise that incorporating environmental cost recovery on top of operational and capital cost recovery will have a significant impact on prices. This may necessitate considerable subsidy to soften the blow on those poor consumers that are already connected. But that avenue is closed down in the Swiss proposals by the general requirement for full cost recovery. The document says that subsidies should be concentrated on connection subsidies, and transitional tariff policy could allow for some subsidy, but declining. In many circumstances we agree with this because of the issue of subsidy leakage as discussed earlier. But not all tariff based subsidies are regressive and there is a danger that the policy as put forward is too restrictive.

The further danger with the Swiss Re policy is that it is implicitly prescriptive in terms of ownership structures. The paper does not include direct operation in the list of possible local government roles or acknowledge that many of the issues it raises are of equal relevance to the public and private sectors. Although it recognises the role of public authorities as responsible for the service, it scarcely acknowledges the role of local government as direct providers, except in a reference to ‘underperforming public water and sanitation provision’. At the other end of the spectrum, divestiture (ie sale of assets) to ‘profit oriented businesses’ appears to be ruled out completely anywhere. Again there are problems of definition here which could lead to perverse consequences. This policy would rule out the system now operating in England and does not allow for divested systems operating on a co-operative basis and run at a profit, such profits being returned to the infrastructure through use as investment funds.

ISO

Since September 2002, CI has been participating in the process of developing a standard for ‘Service activities relating to drinking water supply and sewerage’ in Technical Committee 224 of the International Organization for Standardization (ISO). We been successful in pressing the arguments for the development of a standard that serves not just for ‘Northern’ style integrated networks but also lower tech, non-integrated systems such as those using wells, bulk delivery of water, septic tanks, pit latrines, and so on.

Much of the negotiation concerns the familiar but important issues of customer service such as appointment systems, billing, complaints and information about service conditions. One significant ‘traditional’ element of consumer protection that we have proposed is that there be ‘implicit’ as well as ‘explicit’ contracts between the supplier and the consumer. In other words the consumer should be entitled to a service without needing to have a signed document.

A further CI proposal, more controversial for some, is that should regular cuts in supply be inevitable (due to lack of water or electricity for pumping) then they should be distributed fairly. Some find it hard to reconcile our commitment to higher standards with recognition that for billions of consumers such cuts are a part of daily life. But as they do exist, then better to have them managed in an equitable manner than be imposed mainly on the poor which happens in many countries.

We support the ISO’s call for published Performance Indicators to deal with the extent of coverage not only by integrated and non-integrated systems, but also for plans to be made for provision for those who are not covered at all. We argue for such information to be divulged and for consumer participation in service development. For example, the ISO draft recognises such a right to participate and suggests public ‘rate hearings’ as a means of setting prices. We are calling for public supervision of service contracts at the stage of their drafting and also arrangements for monitoring during the lifetime of the contract. We believe that commercial confidentiality in such contracts is inappropriate, and that the burden of proof should rest with those who would restrict information.

Unlike some of the declarations of rights we have considered, the ISO process is apolitical and practical. We support many of the provisions of the current draft (yet to be formally adopted). But a GAPS requires rather greater recognition of the wider political context, something which ISO is traditionally reluctant to do.
Section 3. The case for GAPS

Our colleagues at the Bureau Europeen des Unions de Consommateurs (BEUC) have put forward for consideration the following list which has been agreed by consumer organisations across the EU under the European Consumers Committee as a set of guiding principles/universal service obligations for ‘services of general interest’ in the EU:

- access (physical and geographical) and affordability (affordable price)
- choice (widest possible choice of services, open access to technology and infrastructure, full choice of payment methods)
- transparency and full information (clear information about prices, bills and suppliers, transparent systems of regulation and industry organisation)
- quality (reliability and continuity of services; payment options; complaints handling; dispute resolution, monitoring of performance)
- safety (safe and reliable services)
- security and reliability of service provision including long term maintenance of the network infrastructure (continuous and reliable services, including protection against disconnection)
- fairness (fair and genuine competition)
- prevention of negative ecological and social effects (competition rules that integrate environmental and social concerns)
- independent regulation (with adequate powers of sanction, clear duties)
- representation and active participation (independent systems of representation, active participation of consumers)
- redress (effective redress procedures and compensation).

Clearly the list moves in the direction of putting ‘flesh on the bones’ of general consumer rights, and we would welcome views as to its suitability. However, a statement of rights does not necessarily constitute a document to which governments and service providers can sign up. Neither does it indicate consumers own responsibilities (eg not to waste resources, to pay their due share of costs etc). Furthermore, a GAPS would in due course take into account rights outside of CI’s immediate remit such as workers’ rights or indeed service providers rights. While this paper concentrates on the consumer perspective, an Agreement has to have the consent of the different parties, otherwise it is only a set of demands, the starting point for negotiations.

As an example of the combination of general principle and practicality that we are aiming for, Annex 3 contains Consumers International policy statement on water and sanitation services. We hope this will serve as a starting point not only in water but also for the development of similar sectoral statements, under the cross-sectoral GAPS umbrella, in electricity and telecommunications. We ask whether this strikes the right balance and should therefore be replicated suitably for telecoms and energy.

Objectives:

What we feel is needed is a GAPS which sets out the basic conditions for consumer rights in each of these services, regardless of ownership. The consumer rights of access, safety, information etc form quite a good structure for a GAPS, but each one would have to be given specific form. For example, information would find its expression in the principle that concession agreements should be published. Our members in Germany and Romania have been refused access to unpublished concession agreements, and such an agreement would have helped them. Access to public sector corporate plans should also be assumed. (If they do not have any corporate plans then that is also important to know). The other consumer rights can be likewise expressed in more concrete terms. In the past we have tended to concentrate mainly on consumer representation. While this is indeed essential, it is not sufficient.

So the objective should be a set of requirements to be met under the terms of a GAPS to which governments and service providers sign up.

And we should bear in mind that many particular services are run at sub-national level, usually municipal or federal state level. The GAPS should be usable in the context of local as well as national and international discussions. Our aim is adoption over time by successive bodies and countries, or even municipalities or regions within countries. We believe that the issues it should address on behalf of all parties include the following:

Universality:
The minimum level of service to which all people are entitled is that which enables them to enjoy their basic rights as enshrined in the Universal Declaration on Human Rights and other international statutes covering rights to specific service access.

Accountability:
The governance of services should enable democratically determined public policy to be effected, subject to accountability through processes that are transparent and enable participation by those who are affected by decisions.
**Equity:**

Equitable provision of services does not necessarily mean equality of access at least in the short term, but the burden should be on public authorities and/or service providers to justify any discrimination whatsoever, and even then in a context in which they are seen to be using their best endeavours to ensure universal access.

**Ethics:**

Irrespective of the status of service providers, services must be provided on the basis of codes of ethical conduct that are subject to democratically accountable process, transparent and provide redress to those whose rights are infringed, whether consumers, providers or third parties.

**Regulation:**

Services should be regulated to promote and protect the public interest, covering not only financial efficiency, pricing policies and competition rules but also social rights and environmental sustainability. In the absence of explicit contracts, consumers should be protected by implicit contract terms covering right of supply.

**Continuity:**

Services should be run in a way that provides for continuity of reliable service, and any interruptions that might occur despite the best endeavours of service providers should be managed in a non-discriminatory way in accordance with transparent rules.

**Financing:**

Services must be financed on the basis of combinations of public subsidies, cross subsidies and user charges in ways that balance minimum rights of access, non-discrimination and other social principles with financial efficiency, and operational and environmental sustainability, and in accordance with participatory and transparent procedures.

**Externalities:**

No jurisdiction over services should exercise its rights in such a way that those in other jurisdictions are unfairly disadvantaged in their rights of access to resources, or which transfer burdens such as pollution to those outside the jurisdiction.

**Efficiency:**

All service providers should exercise responsibility in the use of natural, human and financial resources, avoiding waste and ensuring that the outputs produced from public finance and user charges are maximised, subject to the rights of all stakeholders, including public service workers.

**Redress:**

In addition to their collective rights, consumers should have the rights of individual challenge against their treatment by service providers including transparent and regulated redress procedures. Users should exercise their responsibility to pay their due share of costs and their representatives should participate in dispute resolution with service providers.

**Sustainability:**

Natural resources should be conserved and protected from pollution by users and service providers.

**Conclusion**

Consumers International asks for views on the following questions:

1. Have we made a convincing case for a GAPS?
2. If so, should a GAPS have legal standing (domestically or internationally) or should it be a set of public moral commitments, voluntary undertakings or declarations of principle. Could a GAPS become a reference paper for WTO purposes?
3. Could GAPS undertakings be used in the context of loan or grant conditionality?
4. Do the lists of principles and rights set out in the above text and the Annexes provide possible templates for a GAPS?

**Annexes**

available online at: www.consumersinternational.org/gaps

Annex 1 – It’s time to bridge the GAPS
Annex 2 - Millennium Development Goals
Annex 3 -Consumers International Water and Sanitation policy document
Annex 4 - Energywatch list of consumer rights in energy