

Annex 5
referred to in Chapter 7

Telecommunications Services

Article 1
Scope

1. This Annex shall apply to measures affecting trade in telecommunications services.

2. This Annex shall not apply to measures affecting broadcasting services as defined in the laws and regulations of each Party.

3. Nothing in this Annex shall be construed to:

- (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in its Schedule of Specific Commitments in Annex 6; or
- (b) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Article 2
Definitions

For the purposes of this Annex:

- (a) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (b) the term "cross-subsidization" means the practice of using profits generated from one product or service to support another provided by the same juridical person;

- (c) the term "end user" means a final consumer of or subscriber to public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (d) the term "essential facilities" means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (e) the term "interconnection" means linking with suppliers providing public telecommunications transport networks or services in order to allow the end users of one supplier to communicate with the end users of another supplier and to access services provided by another supplier;
- (f) the term "major supplier" means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for basic telecommunications services as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (g) the term "non-discriminatory" means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services under like circumstances;
- (h) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

- (i) the term "public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (j) the term "resale" means the subsequent sale or lease on a commercial basis, with or without adding value, of services provided by suppliers of public telecommunications transport networks or services;
- (k) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (l) the term "telecommunications regulatory body" means the body responsible for the regulation of telecommunications; and
- (m) the term "users" means service consumers and service suppliers.

Article 3
Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion and on transparent, reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to the provisions of paragraphs 5 and 6, that such suppliers are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and
- (c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in either Party or in any other member of the World Trade Organization.

4. Notwithstanding the provisions of paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the personal data of users of public telecommunications transport networks or services,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with public telecommunications transport networks and services;
- (c) requirements, where necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 13 of this Annex;
- (d) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements related to the attachment of such equipment to such networks;
- (e) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or
- (f) notification, registration and licensing.

Article 4
Pro-Competitive Safeguard

1. Each Party shall adopt and/or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other suppliers of public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

Article 5
Resale

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area do not impose unreasonable or discriminatory conditions or limitations on the provision of the resale services by suppliers of public telecommunications transport networks or services of the other Party.

Article 6
Interconnection

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its Area provide interconnection with the suppliers of public telecommunications transport networks or services of the other Party to the extent provided for in its laws and regulations.

2. Each Party shall ensure that a major supplier which has control over essential facilities in its Area provides interconnection at any technically feasible point in the network. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (b) with a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
- (c) in a timely fashion and on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications transport networks or services of the other Party need not pay for network components or facilities that it does not require for the services to be provided; and
- (d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

4. Each Party shall ensure that a major supplier in its Area makes publicly available either its interconnection agreements or reference interconnection offer.

Article 7 Independent Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of telecommunications services.

2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article 8 Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 9 Public Availability of Licensing Criteria

1. Where a license is required for the supply of a telecommunications service, each Party shall make publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a license; and
- (b) the terms and conditions of individual licenses.

2. Each Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for or to revoke a license, each Party shall make known to the applicant, upon request, the reasons for the denial or revocation.

Article 10 Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 7.5. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner consistent with other provisions of this Agreement, especially Article 7.3. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 11 Transparency

Each Party shall ensure that its measures related to access to and use of public telecommunications transport networks and services are made publicly available, including measures related to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces;
- (c) bodies responsible for the preparation, amendment and adoption of standards affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and
- (e) notifications, registration or licensing requirements, if any.

Article 12
Settlement of Telecommunications Disputes

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes in accordance with its laws and regulations.

2. Each Party shall ensure, in accordance with its laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party shall permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body unless an appropriate authority suspends or withdraws such determination or decision.

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. Neither Party shall permit such review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends or repeals such determination or decision.

Article 13
Relation to International Organizations

The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunications networks and services, and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.