

Annex 8-B Telecommunications

Definitions

1. For purposes of this Annex;
 - (a) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
 - (b) **end-user** means a subscriber to or a final consumer of public telecommunications networks or services, including a service supplier other than a supplier of public telecommunications networks or services;
 - (c) **essential facilities** means facilities of a public telecommunications 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;
 - (d) **interconnection** means the physical and logical linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
 - (e) **license** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such a person to offer a telecommunications network or service, including concessions, permits, or registrations;
 - (f) **major supplier** means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications networks or services as a result of:
 - (i) control over essential facilities; or

- (ii) use of its position in the market;
- (g) **non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications networks or services in like circumstances;
- (h) **number portability** means the ability of an end-user of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (i) **physical co-location** means access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;
- (j) **public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;
- (k) **public telecommunications service** means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;
- (l) **reference interconnection offer** means an interconnection offer extended by a major supplier that is sufficiently detailed to enable a supplier of public telecommunications services to know the terms and conditions, and rates, to obtain interconnection;
- (m) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (n) **telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications; and
- (o) **user** means an end-user of or a supplier of public telecommunications networks or services.

Scope

2. This Annex shall apply to measures by a Party affecting trade in public telecommunications services, including:

- (a) measures relating to access to and use of public telecommunications networks or services; and
- (b) measures relating to obligations of suppliers of public telecommunications networks or services.

3. This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming¹.

4. Nothing in this Annex shall be construed to:

- (a) require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally;
- (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

Number Portability

5. Each Party shall ensure that suppliers of public telecommunications services in its territory, other than suppliers of voice over internet protocol services, provide number portability to the extent technically feasible, and on reasonable terms and conditions.

Treatment by Major Suppliers

6. Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications networks or services of the other Party

¹ For greater certainty, cable or broadcast service suppliers can have continued access to and use of public telecommunications networks or services.

treatment no less favorable than that such major supplier accords in like circumstances to its subsidiaries and affiliates, or non-affiliated service suppliers, regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

7. Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices 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 service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Interconnection

8. Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly within the same territory, to suppliers of public telecommunications services of the other Party the possibility to negotiate interconnection. Interconnection should in principle be agreed on the basis of commercial negotiations between the companies concerned.

9. Each Party shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

10. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms and conditions (including technical standards and specifications), and rates, and of a quality no less favorable than that provided for its own like services, for like services of non-affiliated service suppliers, or for like services of its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the services to be provided; and
- (c) 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.

11. The procedures applicable for interconnection with a major supplier shall be made publicly available.

12. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers.

Resale

13. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end-users. Where a Party has determined that a service must be offered for resale by a major supplier, the Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

Co-location

14. Each Party shall ensure that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications networks or services of the other Party physical co-location of their equipment necessary for interconnection on a timely basis, and on terms and conditions (including technical feasibility and space availability where applicable), and at rates, that are reasonable, non-discriminatory, and transparent.

15. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavor to ensure that a major supplier in its territory provides an alternative solution, on a timely basis, and

on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

16. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 14 and 15, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.

Unbundling of Network Elements

17. Each Party shall endeavor to ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

Access to Telecommunications Facilities

18. Each Party shall endeavor to ensure that a major supplier in its territory provides access to poles, ducts, conduits, rights of way, or any other structures deemed necessary by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications networks or services of the other Party in the Party's territory, on a timely basis, and on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

19. Each Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights of way or any other structures to which it requires major suppliers in its territory to provide access under paragraph 18.

Regulatory Body

20. A regulatory body for telecommunications services shall be legally distinct from and functionally independent of any supplier of telecommunications services.

21. The regulatory body shall be sufficiently empowered to regulate the telecommunications services sector. The tasks to be undertaken by a regulatory body shall be made public in an easily accessible and clear form.

22. The decisions of, and the procedures used by, the regulatory body shall be impartial with respect to all market participants.

Licensing Process

23. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall make publicly available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license; and
- (c) the terms and conditions of all licenses in effect.

24. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a license.

Allocation and Use of Scarce Resources

25. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.

26. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Universal Service

27. Each Party has the right to define the kind of universal service obligations it wishes to maintain, in accordance with its laws and regulations.

28. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by each Party.

Transparency

29. Each Party shall endeavor to ensure that when its relevant authorities seek input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services of the other Party operating in its territory an opportunity to comment.

30. Each Party shall ensure that measures on conditions affecting access to and use of public telecommunications networks or services is publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks and services;
- (c) information on bodies responsible for the preparation and adoption of standards affecting such access and use;
- (d) conditions for attaching terminal or other equipment; and
- (e) requirements for notification or licensing, if any.

Resolution of Telecommunications Disputes

31. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes arising under this Annex in accordance with its laws and regulations.

32. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain a review of such determination or decision in accordance with its laws and regulations.

33. Neither Party shall permit the making of an application for review to constitute grounds for non-compliance with the determination or decision of its telecommunications regulatory body, unless its relevant body determines otherwise.