

**Annex B to Chapter 6
Telecommunications Services**

**Article B.1
Scope**

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications transport networks and 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 authorise a service supplier of another 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 B.2
Definitions**

For the purposes of this Annex, the term:

- (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 transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or



- services;
- (c) “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;
 - (d) “leased circuits” means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;
 - (e) “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 public telecommunications transport networks or services as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
 - (f) “non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
 - (g) “personal data” means any information about an identified or identifiable natural person;
 - (h) “public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;



- (i) “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 defined points without any end-to-end change in the form or content of the customer’s information;
- (j) “telecommunications” means the transmission and reception of signals by any electromagnetic means;
- (k) “telecommunications regulatory body” means any body or bodies in the territory of a Party which is or are responsible, under the laws and regulations of the Party, for the regulation of telecommunications; and
- (l) “users” means end users or suppliers of public telecommunications transport networks or services.

Article B.3
Access and Use

1. Each Party shall ensure that any service supplier of another 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, for the supply of a service included in its Schedule of Specific Commitments in Annex 6. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of another 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 paragraphs 5 and 6, that such suppliers are permitted:



- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) to 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) to 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 another 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 the territory of any Party.

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

- (a) to ensure the security and confidentiality of messages; or
- (b) to protect the personal data of end 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:

- (a) to 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) to 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) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;
- (b) requirements, where necessary, for the interoperability of public telecommunications transport services and to encourage the achievement of the goals set out in Article B.17;
- (c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or
- (e) notification, permit, registration and licensing.

Article B.4 Number Portability

Each Party shall endeavour to ensure that suppliers of public telecommunications transport networks or services in its territory provide number portability for mobile services



in accordance with its laws and regulations, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

Article B.5 Competitive Safeguard

1. Each Party shall adopt 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-subsidisation;
- (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 B.6 Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications transport networks and services of another Party treatment no less favourable than that such major supplier accords in like circumstances to its subsidiaries and affiliates, or any non-affiliated service suppliers regarding:

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



**Article B.7
Resale**

Each Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of the public telecommunications transport services by suppliers of public telecommunications transport networks or services of another Party.

**Article B.8
Interconnection**

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its territory provide interconnection with the suppliers of public telecommunications transport networks or services of another 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 territory provides interconnection for the facilities and equipment of suppliers of public telecommunications transport networks and services of another Party at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) 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 another Party need not pay for network components or facilities that it does 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 suppliers of public telecommunications transport networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of another Party may interconnect their facilities and equipment with those of major suppliers which have control over essential facilities in its territory pursuant to at least one of the following options:

- (a) a reference interconnection offer, approved by the Party's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier which has control over essential facilities offers generally to suppliers of public telecommunications transport services;
- (b) the terms and conditions of an existing interconnection agreement; or
- (c) a new interconnection agreement through commercial negotiation.

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

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

6. Each Party shall ensure that a major supplier which has control over essential facilities does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its interconnection business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.



Article B.9
Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that a major supplier which has control over essential facilities in its territory provides suppliers of public telecommunications transport networks and services of another Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

Article B.10
Co-location

Each Party shall ensure, in accordance with its laws and regulations, that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications transport networks or services of another Party to locate their equipment within the major supplier's buildings on terms and conditions, including technical feasibility and space availability where applicable, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

Article B.11
Independent Telecommunications Regulatory Body

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

Note: For greater certainty, "supplier of telecommunications services" is not limited to a supplier of public telecommunications transport networks or 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 B.12
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 B.13 Licensing

1. Where a licence, concession, permit, registration or other type of authorisation is required for the supply of public telecommunications transport networks or services, each Party shall make publicly available:

- (a) all the licensing or other authorisation criteria and procedures, and the period of time normally required to reach a decision concerning an application for a licence, concession, permit, registration or other type of authorisation; and
- (b) the terms and conditions of individual licences, concessions, permits, registrations or other type of authorisations it has issued.

2. The competent authority of a Party shall notify an 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 a licence, concession, permit, registration or other type of authorisation, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

Article B.14 Allocation and Use of Scarce Resources

1. Each Party shall carry out its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, and numbers 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 50.17. 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 Chapter 6. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article B.15 Transparency

Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, permit, registration or licensing requirements, if any.

Article B.16 Settlement of Disputes

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of another Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes arising under this Annex 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. No 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

