

## **ANNEX XIII**

REFERRED TO IN ARTICLE 3.21

TELECOMMUNICATIONS SERVICES

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#### Article 1

##### *Scope*

This Annex sets out definitions and principles on the regulatory framework for telecommunications services. For greater certainty, the scope of this Annex shall be understood in accordance with Article 3.1 (Scope and Coverage) of the Agreement. It shall not apply to measures by a Party relating to broadcasting or to cable distribution of radio or television programming.

#### Article 2

##### *Definitions*

For the purposes of this Annex:

- (a) “users” means service consumers and service suppliers;
- (b) “telecommunications services” means the transport of electromagnetic signals, sound, data image and any combinations thereof. The sector of telecommunications services does not cover the economic activity consisting of content provision which requires telecommunications services for its transport, such as Over-the-Top (OTT), broadcasting, video-on-demand (VOD) and pay-per-view;
- (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 supply a service.
- (d) “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.

### Article 3

#### ***Competitive Safeguards***

1. Each Party shall 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 service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

### Article 4

#### ***Interconnection***

1. This Article applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services supplied by another supplier, where specific commitments are undertaken.
2. Each Party shall ensure that a major supplier provides interconnection 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, 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 need not pay for network components or facilities that it does not require for the services to be supplied; 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.
3. Each Party shall ensure that the procedures applicable for interconnection negotiations to a major supplier are publicly available.

4. Each Party shall ensure that major suppliers either make their interconnection agreements available to service suppliers of another Party or publish reference interconnection offers.

5. Where suppliers are unable to resolve disputes regarding the negotiation of an interconnection agreement with a major supplier within a reasonable time, each Party shall ensure that the suppliers have recourse to assistance from an independent domestic body, which may be a regulatory authority as referred to in Article 7 (Regulatory Authority), to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable timeframe.

#### Article 5

##### ***Universal Service***

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations shall not be regarded as anti-competitive *per se*, provided 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 6

##### ***Licensing Procedure***

1. Where a licence is required for the supply of a telecommunications service, the competent authority of a Party shall make the following publicly available:

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

2. The competent authority of a Party shall notify the applicant of the outcome of its application promptly after a decision has been taken. In case a decision is taken to deny an application for a licence, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

#### Article 7

##### ***Regulatory Authority***

1. Each Party's regulatory authority for telecommunications services shall be separate from, and not accountable to, any supplier of basic telecommunications services.

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

3. Each Party shall ensure that suppliers of another Party affected by the decision of the regulatory authority of the Party on a matter covered by this Annex have recourse to appeal to an independent administrative body or a court, in accordance with that Party's laws and regulations.

## Article 8

### *Scarce Resources*

Each Party shall carry out its procedures for the allocation and use of scarce resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner. Each Party shall make publicly available the current state of allocated frequency bands.

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