

ANNEX XIV

REFERRED TO IN ARTICLE 3.21

TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

Article 1

Scope and Definitions

1. This Annex sets out the principles of the regulatory framework for the telecommunications services, other than broadcasting and cable distribution of radio or television programming, where specific commitments are undertaken in Annex XII (Schedules of Specific Commitments).

2. For the purposes of this Annex, telecommunication services shall not cover the services provided through network infrastructure by natural or juridical persons within their premises, which are used exclusively for individual or organisational needs without any commercial intention to provide any telecommunications services to third parties or to public.

3. For the purposes of this Annex:

- (a) “end-user” means a final consumer of, or subscriber to, a telecommunications service, including a service supplier other than a supplier of telecommunications services;
- (b) “essential facilities” means facilities of a 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;
- (c) “interconnection” means linking with suppliers providing telecommunications networks or services in order to allow the users of a supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken;
- (d) “major supplier” means a supplier that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of its control over essential facilities or the use of its position in the market;

- (e) “non-discriminatory” means treatment no less favourable than that accorded to any other user of like telecommunications networks or services in like circumstances;
- (f) “number portability” means the ability of end-users of telecommunications services to retain for fixed telephone numbers at the same location, for mobile numbers at any location, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of telecommunications services;
- (g) “telecommunications network” means the telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (h) “regulatory authority” means the body or bodies charged with the regulation of telecommunications mentioned in this annex;
- (i) “telecommunications services” means all services consisting of the transmission and reception of electro-magnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport;
- (j) “universal service” means the set of services that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price.¹

Article 2

Regulatory Authority

1. Regulatory authorities for telecommunications services shall be legally distinct from, and functionally independent of, any supplier of telecommunications services.
2. Regulatory authorities shall be empowered to regulate the telecommunications services sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of, and the procedures used by, the regulatory authorities shall be impartial with respect to all market participants.

¹ The scope and implementation of universal services shall be decided by each Party.

Article 3

Authorisation to Provide Telecommunications Services

1. The provision of services shall, to the extent practicable, be authorised following a simplified authorisation procedure.
2. Where a license 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 reasonable period of time normally required to reach a decision concerning an application for a license; and
 - (b) the terms and conditions of individual licenses.
3. The competent authority 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 4

Competitive Safeguards on Major Suppliers

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-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 provide services.

Article 5

Interconnection

1. Each Party shall ensure that suppliers of telecommunications networks or services in its territory provide, directly or indirectly within the same territory, to suppliers of 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.

2. Regulatory authorities 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.

3. 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, conditions (including technical standards and specifications) and rates, and of a quality no less favourable 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 supplier need not pay for network components or facilities that it does not require for the service 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.

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

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers.²

6. Each Party shall ensure that suppliers of telecommunications services have recourse to a regulatory authority or another relevant body of the Party to resolve disputes regarding appropriate terms, conditions and rates for interconnection and, in the event of a dispute arising between suppliers of telecommunications services in connection with rights and obligations that arise from this Article, a regulatory authority concerned shall, on request of either Party to the dispute issue a binding decision to resolve the dispute in the shortest possible time and in any case within a reasonable period of time after the supplier requests interconnection.

Article 6

Number Portability

Each Party shall ensure that suppliers of telecommunications services in its territory provide number portability to the extent technically and economically feasible, and on reasonable terms and conditions.

² Each Party will implement this obligation in accordance with its domestic laws and regulations.

Article 7

Allocation and Use of Scarce Resources

1. 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.
2. 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.

Article 8

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective 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.

Article 9

Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a telecommunications network or service.

Article 10

Appeal and Judicial Review

1. Any service supplier whose legally protected interests are negatively affected by a determination or decision of a regulatory authority
 - (a) shall have a right to appeal against that determination or decision to an appeal body.³ The determination or decision by a non-judicial appeal body shall be subject to review by an impartial and independent judicial authority;

³ For disputes between service suppliers, the appeal body or any competent authority shall be independent of the parties involved in the dispute.

- (b) may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial body stays such determination or decision.
2. The appeal body shall provide written reasons for its determination or decision.
 3. Determinations or decisions taken by appeal bodies shall be effectively enforced.
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