

ANNEX XII

REFERRED TO IN ARTICLE 3.19

TELECOMMUNICATIONS SERVICES



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Article 1

Scope and Definitions

1. This Annex applies to measures by Parties affecting trade in telecommunications services.¹ It shall not apply to measures relating to broadcasting or to cable distribution of radio or television programming.²
2. For the purpose of this Annex:
 - (a) “telecommunications services” means the transport of electromagnetic signals – sound, data image and any combinations thereof. Commitments in this sector do not cover the economic activity consisting of content provision which requires telecommunications services for its transport. The provision of that content, transported via a telecommunications service, is subject to the specific commitments undertaken by the Parties in other relevant sectors;
 - (b) “regulatory authority” means the body or bodies entrusted with any of the regulatory tasks assigned in relation to the issues mentioned in this Annex;
 - (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

¹ “Trade in telecommunications services” shall be understood in accordance with the definition contained in subparagraph (a)(i) of Article 3.3 of this Agreement.

² “Broadcasting” shall be defined as provided for in the relevant legislation of each Party.

- (ii) the use of its position in the market.

Article 2

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 3

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 made publicly available.

4. Each Party shall ensure that major suppliers make their interconnection agreements available to service suppliers of another Party, and/or publish reference interconnection offers in advance, unless they are already publicly available.

5. Where suppliers are unable to resolve disputes regarding the negotiation of an interconnection agreement with a major supplier within a stipulated 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 6 of this Annex, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable timeframe. That body or regulatory authority shall either:

- (a) at the request of either party issue a binding decision within a reasonable period of time to resolve the dispute; or
- (b) fix the terms and conditions for the interconnection in accordance with the normal principles governing the market and the sector in question and in accordance with the principles set out in this Annex. The assistance may include special conciliation proceedings.

Article 4

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.

2. Measures by Parties governing universal service shall be transparent, objective and non-discriminatory. They shall also be neutral with respect to competition and not be more burdensome than necessary.

Article 5

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

2. Except for licences relating to the use of frequency spectrum, where a licence is required for the supply of a telecommunications service, and if the applicable criteria are fulfilled, the competent authority of a Party shall grant the applicant a licence within

a reasonable period of time after the submission of its application is considered complete under the Party's laws and regulations.

3. The competent authority of a Party shall make known to the applicant, upon request, the reason for the denial of a licence.

Article 6

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.

Article 7

Scarce Resources

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

