

ANNEX X

REFERRED TO IN PARAGRAPH 4 OF ARTICLE 3.16

TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

Article 1

Definitions

For the purposes of this Annex:

- (a) “telecommunications services” means the transmission and reception of signals by any electromagnetic means, excluding broadcasting;
- (b) “regulatory authority” means the body or bodies entrusted with any of the regulatory tasks assigned in relation to the issues covered by this Annex; and
- (c) “essential telecommunications facilities” means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or a limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service.

Article 2

Regulatory Authority

1. Each Party shall ensure that its regulatory authority is separate from, and not accountable to, any supplier of basic telecommunications services.
2. Each Party shall ensure that the decision of and the procedures used by its regulatory authority are impartial with respect to all market participants.
3. Each Party shall ensure that a supplier affected by a decision of its regulatory authority has recourse to appeal to an independent administrative body and/or a court.

Article 3

Licensing Procedure

1. Where a license is required to supply telecommunications services, each Party shall make publicly available:
 - (a) all the licensing criteria and the terms and conditions for such a license; and
 - (b) the period of time normally required to reach a decision concerning an application for a license.
2. Where a license is required to supply a service, and if an applicant fulfils the conditions under paragraph 1(a), the Party shall grant the applicant the license within a reasonable period of time.

3. When a Party denies the application for a license, it shall, upon request, provide the applicant with the reasons for such denial.

Article 4

Scarce Resources

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

Article 5

Competitive Safeguards

1. A major supplier is a supplier that has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for a basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) the use of its position in the market.

2. Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

3. The anti-competitive practices referred to in paragraph 2 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 6

Interconnection

1. Rights and obligations regarding interconnection shall be governed by the GATS.

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 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.

3. Each Party shall make the procedure applicable for interconnection to a major supplier publicly available.
4. Each Party shall ensure that a major supplier makes either its interconnection agreements and/or a reference interconnection offer 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 its relevant regulatory authority to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time. The relevant regulatory authority shall fix the 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, in particular Articles 2 and 6. The assistance may include special conciliation proceedings.

Article 7

Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations will 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.
