

## Annex 8-B<sup>1</sup>

### Telecommunications

#### *Definitions*

1. For purposes of this Annex:

**end-user** means a final consumer of or subscriber to a public telecommunications network or service, including a service supplier other than a supplier of public telecommunications networks or services;

**essential facilities** means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

**interconnection** means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken;

**international mobile roaming service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications networks or services that enables end-users to use their home mobile handset or other device for voice, data, or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

**license** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such a person to offer a telecommunications network or service, including concessions, permits, or registrations;

**major supplier** means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public

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<sup>1</sup> For greater certainty, this Annex constitutes an integral part of this Chapter.

telecommunications networks or services as a result of:

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

**network element** means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

**non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

**number portability** means the ability of end-users of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

**public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

**public telecommunications service** means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

**telecommunications** means the transmission and reception of messages, sounds, visual images, or signals by any electromagnetic means;

**telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications;

**user** means an end-user of or a supplier of public telecommunications networks or services; and

**value-added services** means services that add value to telecommunications services through enhanced functionality, and specifically means those services as respectively defined in the relevant laws or regulations of each Party.

### *Scope*

2. This Annex applies to measures affecting trade in telecommunications services, including:

- (a) measures relating to access to and use of public telecommunications services;
  - (b) measures relating to obligations of suppliers of public telecommunications services;
  - (c) other measures relating to public telecommunications networks or services; and
  - (d) measures relating to the supply of value-added services.
3. Except to ensure that service suppliers operating broadcast stations and cable systems have continued access to and use of public telecommunications networks or services, this Annex shall not apply to any measure relating to broadcast or cable distribution of radio or television programming.
4. Nothing in this Annex shall be construed to:
- (a) require a Party, or require a Party to compel any service supplier, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or
  - (b) require a Party to compel any service supplier exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

#### *Access and Use*

5. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 6 through 10.
6. Each Party shall ensure that service suppliers of the other Party are permitted to:
- (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;
  - (b) provide services to individual or multiple end-users over owned or leased circuits;
  - (c) connect owned or leased circuits with public telecommunications networks or services in the territory, or

across the borders, of that Party, or with circuits leased or owned by another service supplier;

- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice in the supply of any service.

7. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

8. Notwithstanding paragraph 7, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

9. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications networks or services.

10. Provided that conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 9, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
- (b) requirements, where necessary, for the inter-operability of such networks and services; and
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to such networks.

### *Competitive Safeguard*

11. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks and services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

12. The anticompetitive practices referred to in paragraph 11 include in particular:

- (a) engaging in anticompetitive cross-subsidization;
- (b) using information obtained from competitors with anticompetitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

### *Number Portability*

13. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability for mobile services, to the extent technically feasible, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

### *Interconnection*

#### *General Terms and Conditions*

14. Each Party shall ensure that a major supplier in its territory is required to provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other 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;
- (b) of a quality no less favorable 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;
- (c) 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 suppliers need not pay

for network components or facilities that it does not require for the services to be provided; and

- (d) 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.

*Public Availability of the Procedures for Interconnection Negotiations*

15. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

*Transparency of Interconnection Arrangements*

16. Each Party shall ensure that major suppliers make their interconnection agreements available to service suppliers providing public telecommunications network or services of the other Party.

*Unbundling of Network Elements*

17. Each Party shall endeavor to ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

*Access to Poles, Ducts, and Conduits*

18. Each Party shall endeavor to ensure that a major supplier in its territory provides access to poles, ducts, conduits, or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of the other Party in the Party's territory, on a timely basis, and on terms and conditions and at rates that are reasonable, nondiscriminatory, and transparent, subject to technical feasibility.

19. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 18. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competitive service, or other specified public interest factors.

*Conditions for the Supply of Value-Added Services*

20. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the enterprise does not own to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for those services;
- (c) file a tariff for those services;
- (d) connect its networks with any particular customer for the supply of those services; or
- (e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

21. Notwithstanding paragraph 20, a Party may take the actions described in paragraph 20 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

#### *International Mobile Roaming*

22. The Parties shall endeavor to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.

23. A Party may take steps to enhance transparency and competition with respect to international mobile roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimizing impediments to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

#### *Universal Service*

24. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.

25. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more

burdensome than necessary for the kind of universal service that it has defined.

#### *Licensing Process*

26. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall make publicly available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license; and
- (c) the terms and conditions of all licenses in effect.

27. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a license.

#### *Telecommunications Regulatory Body*

28. Each Party shall ensure that its telecommunications regulatory body is separate from and functionally independent of any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory body does not own equity<sup>2</sup> or maintain an operating or management role in any such supplier.

29. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants.

#### *Allocation and Use of Scarce Resources*

30. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

31. Each Party shall make publicly available the current state of allocated frequency bands but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

32. A Party's measures allocating and assigning spectrum and managing

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<sup>2</sup> For greater certainty, this paragraph shall not prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of telecommunications services.



frequencies shall not be considered inconsistent with Article 8.3. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may limit the number of suppliers of public telecommunications networks and services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

#### *Resolution of Telecommunications Disputes*

33. Each Party shall ensure that:

##### *Recourse*

- (a) (i) suppliers of public telecommunications networks or services may have recourse to a telecommunications regulatory body or other relevant body of the Party in its territory to resolve disputes between suppliers of public telecommunications networks or services on a timely basis regarding measures relating to matters set out in paragraph 5 through 19;
- (ii) suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party, that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to a telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

##### *Judicial Review*

- (b) any service supplier whose legally-protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party according to the laws of the Party. Neither Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body otherwise determines.

##### *Transparency*

34. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks or services is publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks and services;
- (c) information on bodies responsible for the preparation and adoption of standards affecting such access and use;
- (d) conditions for attaching terminal or other equipment; and
- (e) requirements for notification or licensing, if any.

*Flexibility in the Choice of Technology*

35. Each Party shall not prevent suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services.

36. Notwithstanding paragraph 35, a Party may apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.