

ANNEX XII

REFERRED TO IN ARTICLE 3.21

TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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 by Parties relating to broadcasting or to cable distribution of radio or television programming.²

2. For the purposes of this Annex:

- (a) “telecommunications services” means the transmission and reception of signals by any electromagnetic means. The sector of telecommunications services does not cover the economic activity consisting of content provision which requires telecommunications services for its transport;
- (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) a “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) the use of its position in the market.

¹ For the purposes of this Annex, “trade in telecommunications services” shall be understood in accordance with the definition contained in subparagraph 1(a) of Article 3.3 (Definitions) of the Agreement.

² For the purposes of this Annex, “broadcasting” shall be defined as provided for in the domestic laws and regulations of each Party.

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 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 period of 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 (Regulatory Authority), to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time. That body or 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. The assistance may include special conciliation proceedings.

Article 4

Universal Service

1. Each Party has the right to define the kind of universal service obligations 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) the terms and conditions for such a licence;
- (b) the period of time normally required to reach a decision concerning an application for a licence; and
- (c) the criteria for the allocation of scarce resources, including criteria for allocation of frequency when excessive demand exists.

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 conditions 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 has been considered complete under that Party's domestic laws and regulations.

3. 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 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.

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

Article 7

Scarce Resources

Each Party shall carry out its 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.
