

ANNEX IX

REFERRED TO IN ARTICLE 31

TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

Article 1

Definitions

For the purpose of this Annex:

- (a) “telecommunications services” means the transport of electro-magnetic signals – sound, data image and any combinations thereof, excluding broadcasting¹. Commitments in this sector do not cover the economic activity consisting of content provision which require 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) a “regulatory authority” means the body or bodies with any of the regulatory tasks assigned in relation to the issues mentioned in this Annex;
- (c) “essential telecommunications facilities” mean 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 provide a service.

Article 2

Regulatory authority

1. Regulatory authorities for telecommunications services shall be separated from, and not accountable to, any supplier of basic telecommunications services.
2. The decision of and the procedures used by regulatory authorities shall be impartial with respect to all market participants.

¹ Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

3. A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision.

Article 3

Licensing procedure

1. Where a licence is required, the terms and conditions for such a licence shall be made publicly available. The period of time normally required to reach a decision concerning an application for a licence shall also be made publicly available.
2. Where a licence is required, the reason for the denial of a licence shall be made known to the applicant upon request.

Article 4

Scarce resources

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. The current state of allocated frequency bands shall be made publicly available.

Article 5

Major suppliers

1. A major supplier is a supplier having the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for a telecommunication service as a result of:
 - (a) control over essential facilities; or
 - (b) the use of its position in the market.
2. 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.
3. The anti-competitive practices referred to above 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 services 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. 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 provided by another supplier.

2. 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 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. The procedure applicable for interconnection to a major supplier shall be made publicly available.

4. To ensure non-discrimination, major suppliers shall make their interconnection agreements available to service suppliers of another Party, and/or shall publish reference interconnection offers in advance, unless they are already available to the public.

5. A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time; or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in Article 2 of this Annex, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Article 7

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
 2. The provisions governing universal service shall be transparent, objective and non-discriminatory. They shall also be neutral with respect to competition and be no more burdensome than necessary.
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