

ANNEX XVII

REFERRED TO IN ARTICLE 4.19

REGARDING TELECOMMUNICATIONS SERVICES

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REGARDING 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 relating to broadcasting or to cable distribution of radio or television programming.²
2. For the purpose of this Annex:
 - (a) “telecommunications” means the transport of electromagnetic signals such as sound, data image and any combinations thereof. The sector of telecommunications services does not cover the economic activity consisting of content provision which requires telecommunications services for its transport;
 - (b) “public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form of the customer’s information;
 - (c) “public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
 - (d) a “regulatory authority” means the body or bodies entrusted with any of the regulatory tasks assigned in relation to the issues mentioned in this Annex;
 - (e) “reference interconnection offer” means an interconnection offer extended by a major supplier that is sufficiently detailed to enable a supplier of a public telecommunications service to know the rates and conditions to obtain interconnection;
 - (f) “essential facilities” means facilities of a public telecommunications transport network or service that:

1 “Trade in telecommunications services” shall be understood in accordance with the definition contained in subparagraph (a) of Article 4.2 (Definitions), and includes measures in respect of the access to and use of public telecommunications networks and services.

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

- (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;
- (g) “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.

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.
2. Each Party shall ensure that any 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. Each Party shall ensure that suppliers of public telecommunications transport networks or services of another Party may conclude interconnection agreements with a major supplier pursuant to at least one of, *inter alia*, the following options:
 - (a) interconnection agreements in force;
 - (b) publicly available interconnection offers;
 - (c) through negotiation of a new interconnection agreement.
- 6. Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory take appropriate steps to protect, *inter alia*:
 - (a) the privacy of individuals in relation to the processing and dissemination of personal data;
 - (b) the confidentiality of individual records; and
 - (c) the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of telecommunications services.

Data and information obtained by a telecommunications service supplier shall only be used for the purpose of providing those services.

Article 4

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to have.
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 for the kind of universal service defined by the Party.

Article 5

Licensing Procedure

1. Where a licence or a concession 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 or a concession; and
 - (b) the period of time normally required to reach a decision concerning an application for a licence or a concession.
2. Where a licence or a concession 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 or a concession within a reasonable period of time after the submission of its application is considered complete under that Party's 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 or a concession, the competent authority of a Party shall make known to the applicant, upon request, the reason for the denial.

Article 6

Independent 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

1. Each Party shall ensure that its procedures for the allocation and use of scarce telecommunications 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, but detailed identification of frequencies allocated for specific government uses shall not be required.
2. When assigning a spectrum for non-government radio-electric telecommunications services, each Party shall endeavour to rely as a rule on market-based approaches, taking full account of public interests.

Article 8

Resolution of Telecommunications Disputes

Each Party shall ensure that:

- (a) suppliers may submit a recourse to its regulatory authority or other relevant body to resolve disputes regarding major suppliers;
- (b) a supplier that has requested interconnection with a major supplier, has recourse at any time or after a reasonable publicly specified period of time to its regulatory authority to resolve disputes regarding appropriate terms, conditions and rates for interconnection with that major supplier within a reasonable timeframe; and
- (c) suppliers affected by the decisions of its regulatory authority have recourse to appeal to an independent administrative body and/or a court in accordance with the Party's laws and regulations.

Article 9

Transparency

In the application of Article 4.10 (Transparency), each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and 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 applying to attachment of terminal or other equipment to the public telecommunications network; and
 - (e) notifications, permits, registration or licensing requirements, if any.
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