

## **Annex 8-2 Telecommunications**

### **1. Scope and Coverage**

1.1 This Annex applies to:

- (a) measures relating to access to and use of public telecommunications services;
- (b) measures relating to obligations of suppliers of public telecommunications services; and
- (c) other measures relating to public telecommunications networks or services.

1.2 This Annex shall apply subject to rules, regulations and licence condition as applicable within the territory of each Party.

1.3 Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Annex does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

1.4 Nothing in this Annex shall be construed to:

- (a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services;
- (b) to require a Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally; or
- (c) require a Party to compel any enterprise 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.

### **2. Definitions**

For purposes of this Annex:

- (a) **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to the Party's public telecommunication network;
- (b) **co-location (physical)** means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;
- (c) **commercial mobile services** means public telecommunications services supplied through mobile wireless means;

- (d) **cost-oriented rates** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (e) **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, and routing equipment of different suppliers of public telecommunications services co-located in that submarine cable landing station;
- (f) **dialling parity** means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;
- (g) **end-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;
- (h) **enterprise** means an “enterprise” as defined in Article 10.2 (Definitions) and includes a branch of an enterprise;
- (i) **essential facilities** means facilities of a public telecommunications 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;
- (j) **interconnection** means linking with suppliers providing public telecommunications 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;
- (k) **leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or service supplier or other user of the service supplier’s choosing;
- (l) **major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:
  - (i) control over essential facilities; or
  - (ii) use of its position in the market;

- (m) **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;
- (n) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances;
- (o) **mobile number portability** means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;
- (p) **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 including value added services as provided for in the laws and regulations of each Party;
- (q) **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms and conditions to obtain interconnection without having to engage in negotiations with the major supplier;
- (r) **standard** has the meaning assigned to it in Annex 1 to the WTO Agreement on Technical Barriers to Trade;
- (s) **technical regulation** has the meaning assigned to it in Annex 1 to the WTO Agreement on Technical Barriers to Trade;
- (t) **telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;
- (u) **telecommunications regulatory body** means a national body responsible for the regulation of telecommunications;<sup>1</sup>
- (v) **user** means a service consumer or a service supplier; and
- (w) **value-added services** means services that add value to telecommunications services through enhanced functionality.

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<sup>1</sup> With respect to Malaysia, this regulatory body is the Malaysian Communications and Multimedia Commission. With respect to India the regulatory body includes the Department of Telecommunications, Telecommunications Regulatory Authority of India and Telecommunications Dispute Settlement Appellate Tribunal.

### **3. Access to and Use of Public Telecommunications Services<sup>2</sup>**

3.1 Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications 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 3.2 through 3.6.

3.2 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) connect owned or leased circuits with public telecommunications networks and services with circuits leased or owned by another person;
- (c) perform switching, signalling, processing, and conversion functions;
- (d) use operating protocols of their choice in the supply of any service; and
- (e) provide services to individual or multiple end-users over any leased or owned circuits to the extent that the scope and type of such services are consistent with each Party's domestic laws and regulations.

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

3.4 If the criteria set out in paragraph 3.3 are satisfied, conditions for access to and use of public telecommunications networks and services may include:

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

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<sup>2</sup> For greater certainty, neither this nor any other paragraphs prohibit a Party from requiring a service supplier to obtain a licence to supply specific services.

- (d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (e) notification, registration and licensing.

3.5 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 of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party. Any new or amended measure of a Party significantly affecting such use shall be notified and shall be subject to consultation in accordance with the provisions of this chapter.

3.6 Notwithstanding paragraph 3.5, 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.

3.7 Notwithstanding the preceding paragraphs, each Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in each Party's Schedule of Specific Commitments in Annex 8-1.

#### **4. Obligations Relating to Suppliers of Public Telecommunications Services**

- 4.1 (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates.
  - (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing these services.
- 4.2 (a) Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of services.
  - (b) Each Party may determine in accordance with its laws and regulations which public telecommunications services must be offered for resale in accordance with subparagraph (a), based on the need to promote competition or such other factors as the Party considers relevant.

4.3 Each Party shall endeavour to ensure that suppliers of public telecommunications services in its territory provide mobile number portability by the relevant authority to the extent technically feasible, on timely basis, and on reasonable terms and conditions.

4.4 Each Party shall ensure that the relevant authority is authorized to ensure or that the suppliers of a particular public telecommunications service in its territory provide, as the case may be, dialling parity to suppliers of the same public telecommunications service of the other Party, and require the suppliers of public telecommunications service to offer or afford as the case may be suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers, directory assistance, and operator services with no unreasonable dialling delays.

## **5. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services**

5.1 Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favourable than such major supplier accords to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

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

- (b) The anti-competitive practices referred to in subparagraph (a) include in particular:
  - (i) using information obtained from competitors with anti-competitive results; and
  - (ii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

5.3 Each Party shall endeavour to ensure that a major supplier in its territory:

- (a) offers for resale, at reasonable rates,<sup>3</sup> to suppliers of public telecommunications services of the other Party; and

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<sup>3</sup> For purposes of subparagraph (a), wholesale rates set pursuant to a Party's laws and regulations shall be considered reasonable.

- (b) does not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

5.4 Each Party may determine in accordance with its laws and regulations which public telecommunications services must be offered for resale by major suppliers in accordance with paragraph 5.3, based on the need to promote competition or such other factors as the Party considers relevant.

5.5 Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

5.6 (a) General Terms and Conditions for Interconnection:

Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- (i) at any technically specified feasible point in the major supplier's network or in the case of points not specified by the telecommunications regulatory body, as per mutual agreement between service suppliers;
- (ii) under non-discriminatory terms, conditions, and rates<sup>4</sup>;
- (iii) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (iv) in a timely<sup>5</sup> fashion, and on terms and conditions, and at 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 they do not require for the service to be provided; and
- (v) on 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.

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<sup>4</sup> The Parties understand that interconnection rates are commercially negotiated between suppliers of public telecommunications transport networks or services.

<sup>5</sup> The Parties understand that timeliness may vary from case to case, depending upon the complexity of each interconnection negotiation, which may be affected by a range of factors. However, interconnection may not be delayed without justifiable reason.

(b) Options for Interconnecting with Major Suppliers:

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of a major supplier in its territory:

(i) pursuant to:

(AA) a reference interconnection offer or other standard interconnection offer containing the terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(BB) the terms and conditions of an interconnection agreement in effect; and

(ii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers and Agreements:

(i) Each Party shall require a major supplier in its territory to make publicly available any reference interconnection offer or other standard interconnection offer that the major supplier offers generally to suppliers of public telecommunications services.

(ii) Each Party shall make publicly available or ensure that the applicable procedures for interconnection negotiations with a major supplier in its territory are made publicly available.

(iii) Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.

5.7 (a) Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services on terms and conditions, and at rates, that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services to service suppliers of the other Party at capacity-based, cost-oriented rates.

5.8 (a) Subject to subparagraphs (b) and (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.



- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory:
    - (i) provides an alternative solution; or
    - (ii) facilitates virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
  - (c) Each Party may limit which premises are subject to subparagraphs (a) and (b), provided the Party specifies any such limitation in its laws or regulations.
- 5.9. (a) Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.
- (b) Nothing in this Annex shall prevent a Party from determining, under its laws and regulations, which particular structures owned or controlled by major suppliers in its territory are required to be made available in accordance with subparagraph (a), provided that this determination is based on a conclusion that such structures cannot feasibly be economically or technically substituted in order to provide a competing service.

## **6. Submarine Cable Systems<sup>6</sup>**

6.1 Where a Party authorizes a supplier to operate a submarine cable system as a public telecommunications service, it shall ensure that such supplier accords the suppliers of public telecommunication services of the other Party reasonable and non-discriminatory treatment with respect to access to submarine cable systems (including landing facilities) in its territory.

6.2 Where a major supplier of public international telecommunication services controls cable landing facilities and services for which there are no economically or technically feasible alternatives, the Party shall ensure that the major supplier:

- (a) permits suppliers of public telecommunications services of the other Party to:
  - (i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul

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<sup>6</sup> For greater certainty, neither this nor any other paragraphs prohibit a Party from requiring a service supplier to obtain a licence to supply specific services.

links and submarine cable capacity of any supplier of telecommunications; and

- (ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the submarine cable landing station on terms and conditions, and at cost-oriented rates, that are reasonable and non-discriminatory; and
- (b) provides suppliers of telecommunications of the other Party submarine cable capacity, backhaul links, and cross-connect links in the submarine cable landing station on terms and conditions, and at rates, that are reasonable and non-discriminatory.

## **7. Supply of Value-Added Services**

7.1 Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services to:

- (a) supply those services to the public generally;
- (b) connect its networks with any particular customer for the supply of those services; or
- (c) conform with any particular standard or technical regulation for connecting to any other network, other than a public telecommunications network.

7.2 Notwithstanding paragraph 7.1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its laws or regulations, or to otherwise promote competition or safeguard the interests of consumers.

## **8. Independent Regulatory Bodies and Government Ownership**

8.1 Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier and makes regulatory decisions, including decisions relating to interconnection with public telecommunications networks and services, and assignment or allocation of spectrum for non-government public telecommunications services, independently subject only to that Party's laws and regulations.

8.2 Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the

decisions and procedures of its telecommunications regulatory body.

8.3 Neither Party may accord more favourable treatment to a supplier of public telecommunications services or to a supplier of value-added services in its territory than that accorded to a like supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned, wholly or in part, by the Party.

## **9. Universal Service**

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.

## **10. Licensing Process**

10.1 When a Party requires a supplier of public telecommunications 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 licence; and
- (c) the terms and conditions of all licences it has issued.

10.2 Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a licence.

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

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

11.2 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 for specific government uses.

11.3 A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 8.3 (Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

11.4 A Party shall not apply technical requirements relating to the use of specific frequency bands by a supplier of public telecommunications or value-added

services, unless the requirement is designed to prevent interference with authorized non-government or government users of the spectrum, protect human health or safety, or to facilitate law enforcement. If a Party imposes or maintains such requirements, it shall develop such requirements through a rulemaking that complies with paragraph 14 (Transparency of Measures Relating to Telecommunications).

## **12. Enforcement**

Each Party shall provide its relevant competent authority the authority to enforce the Party's measures relating to the obligations set out in paragraphs 3 through 6. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licences.

## **13. Resolution of Telecommunications Disputes**

13.1 Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to a telecommunications regulatory body to consider and, to the extent provided for in domestic law, to resolve disputes regarding compliance with domestic regulations relating to the obligations contained in this Annex.

13.2 Suppliers of public telecommunications services of the other Party that have requested interconnection with a service supplier in the Party's territory may seek review, by its telecommunications regulatory body to resolve disputes, regarding the terms, conditions, and rates for interconnection with such service supplier.

13.3 Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party aggrieved by a regulatory decision has the opportunity to appeal such regulatory decision to an independent judicial or administrative authority. Such an appeal shall not constitute grounds for non-compliance by that supplier with the regulatory decision unless an appropriate authority stays such decision.

## **14. Transparency of Measures Relating to Telecommunications**

Further to Article 13.2 (Publication), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs are promptly published or otherwise made available to all interested persons;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to provide meaningful comment on, any rulemaking that its telecommunications regulatory body proposes;
- (c) all comments filed with the telecommunications regulatory body are made publicly available as soon as practical after filing subject at all times to requirements of confidentiality;

- (d) all comments raising significant and relevant issues filed with the telecommunications regulatory body are responded to in the telecommunication regulatory body's rulemaking; and
- (e) its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service; and
  - (ii) notification, permit, registration, or licensing requirements, if any.

## **15. Relationship to Other Chapters**

15.1 In the event of any inconsistency between this Annex and other Chapters under this Agreement, this Annex shall prevail to the extent of the inconsistency.

15.2 On the request by either Party, the Parties shall enter into consultations to:

- (a) resolve any technical or interpretative difficulties; and
- (b) to address the implications for this Annex arising from technological or industry developments.