

ANNEX 9-B

TELECOMMUNICATIONS SERVICES

ARTICLE 9B.1

Definitions

For the purposes of this Annex:

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

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;

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 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;

international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data, or messaging services in the territory of the other Party;

leased circuits means telecommunications facilities between two or more designated points which are set aside for the dedicated use of, or availability to, particular users;

licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a public 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 telecommunications networks or services as a result of:

- (i) control over essential facilities; or
- (ii) use of its position in that market;

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

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

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

personal information means any information, including data about an identified or identifiable individual;

public telecommunications network means the telecommunications infrastructure used to provide public telecommunications services between defined network termination points, as provided for in the laws and regulations of each Party;

public telecommunications service means any telecommunications service that is offered to the public. Generally these services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications dispute resolution body means any body responsible for resolution of disputes concerning telecommunications; and

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

ARTICLE 9B.2
Scope and Coverage

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications services, including:
 - (a) measures affecting access to and use of public telecommunications networks or services;
 - (b) measures relating to obligations regarding suppliers of public telecommunications networks or services; and
 - (c) other measures relating to public telecommunications networks or services.
2. Nothing in this Annex shall prevent a Party from imposing licensing and qualification requirements and other rules and regulation governing the supply of a public telecommunications service.
3. This Annex shall not apply to measures affecting the cable or broadcast distribution of audio visual information content, except to ensure that service suppliers of such broadcast content can access and use public telecommunications networks and services.
4. Nothing in this Annex shall be construed to:
 - (a) require a Party to authorise a service supplier of another Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services, other than the former Party's commitments under Chapter 9 (Trade in Services); or
 - (b) require a Party to compel any service supplier, to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally.

ARTICLE 9B.3
Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications networks and services including leased circuits, offered in its territory or across its borders in a timely fashion and on transparent, reasonable and non-discriminatory terms and conditions. This obligation shall be applied, inter alia, through paragraphs 2 through 6.
2. Subject to paragraphs 5 and 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 which:
 - (i) interfaces with a public telecommunications network; and
 - (ii) is necessary to supply their services;
 - (b) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;
 - (c) use operating protocols of the service supplier's choice; and
 - (d) provide services to users over any leased or owned circuits.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information within 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 the Party.
4. Notwithstanding paragraph 3, a Party may take such measures that are necessary to ensure the security and confidentiality of messages and protect the personal information of end-users of public telecommunications networks or services, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.
5. Each Party shall ensure that no condition is imposed in law, including the enforcement or exercise of law, regarding access to and use of public telecommunications networks and services, other than as necessary to:
- (a) safeguard the public interest, including the promotion of competition; or
 - (b) protect the technical integrity of public telecommunications networks and services.
6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:
- (a) restrictions on resale or shared use of public telephone services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for connection with those networks and services;
 - (c) requirements, where necessary, for the inter-operability of such networks and services;
 - (d) 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;

- (e) restrictions on connection of leased or owned circuits with such public telecommunications networks or services or with circuits leased or owned by other service suppliers; or
- (f) a requirement for notification, registration, and licensing.

ARTICLE 9B.4 Interconnection to be Ensured

1. To the extent provided for in its laws and regulations, each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide interconnection with the suppliers of public telecommunications networks or services of the other Party.
2. To the extent provided for in its laws and regulations, each Party shall ensure that a supplier of public telecommunications networks or services in its territory does not use or provide commercially sensitive or confidential information of, or relating to, suppliers and end-users of public telecommunications networks or services, acquired as a result of interconnection arrangements, other than for the purpose of providing these services.

ARTICLE 9B.5 Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
 - (b) of a quality no less favourable than that provided by the major supplier for its own like services, or for like services of non-affiliated suppliers of public telecommunications networks or services, or 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 supplier need not pay for network components or facilities that it does not require for the service to be provided; and

- (d) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities and mutually agreed terms and conditions.
2. Each Party shall 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.
3. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with the facilities and equipment of major suppliers in its territory pursuant to at least one of the following options:
- (a) availability of the reference interconnection offer for the stakeholders containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;
 - (b) the terms and conditions of an interconnection agreement that is in effect;
or
 - (c) a new interconnection agreement through commercial negotiation.
4. Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.
5. Each Party shall ensure that major public telecommunication suppliers in its territory make available for the other suppliers either their interconnection agreements or a reference interconnection offer.

ARTICLE 9B.6
Mobile Number Portability

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

ARTICLE 9B.7
Resale

1. No Party shall prohibit the resale of any public telecommunications service.

2. For greater certainty, Paragraph 1 does not limit the right of a Party to otherwise regulate resale, including the right to licence the provision of resale.

3 Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end-users. If a Party has determined that a service must be offered for resale by a major supplier, that Party shall ensure that suppliers of public telecommunications networks or services in its territory do not impose unreasonable or discriminatory conditions or limitations on the resale of those services to suppliers of public telecommunications networks or services of the other Party.

ARTICLE 9B.8 Treatment by Major Suppliers

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

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

ARTICLE 9B.9 Competitive Safeguards

1. Each Party shall, through its relevant authorities, adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory 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 suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 9B.10
Provisioning of Leased Circuit Services

Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party with leased circuit services that are public telecommunications services on terms and conditions, and at rates, that are not unduly unfavourable or disadvantageous.

ARTICLE 9B.11
Co-location and Access to Facilities

1. To the extent provided for in its laws and regulations, each Party shall ensure that a major supplier in its territory allows suppliers of public telecommunications networks or services of another Party to locate their equipment necessary for interconnection or access to unbundled network elements, at the major supplier's premises. Each Party shall endeavour to ensure that co-location is provided on a timely basis and on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, non-discriminatory, and transparent.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavour to ensure that a major supplier in its territory provides an alternative solution, on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.
3. A Party may determine in accordance with its laws and regulations which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.

ARTICLE 9B.12
Universal Service

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

ARTICLE 9B.13
Public Availability of Licensing Criteria

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall make publicly available:
 - (a) all the licensing criteria and procedures that it applies;
 - (b) the period of time normally required to reach a decision concerning an application for a licence; and
 - (c) the terms and conditions of individual licences.
2. Each Party shall ensure that, on request, an applicant receives the reasons for the:
 - (a) denial of a licence;
 - (b) imposition of supplier-specific conditions on a licence;
 - (c) revocation of a licence; or
 - (d) refusal to renew a licence.

ARTICLE 9B.14
Independent Regulatory and Dispute Resolution Body

1. Each Party shall ensure that its telecommunications regulatory body and telecommunications dispute resolution bodies are separate from, and not accountable to, any supplier of public telecommunications networks or services.
2. Each Party shall ensure that the regulatory decisions and procedures used by its telecommunications regulatory body and telecommunications dispute resolution bodies are impartial with respect to all market participants.
3. Telecommunications regulatory bodies and telecommunications dispute resolution bodies may not accord more favourable treatment to a supplier of public telecommunications networks or services in a Party's territory than that it accords 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.

ARTICLE 9B.15
Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including assignment of frequencies, access to numbers and rights-of-way, in an objective, timely, transparent and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. Each Party retains the right to establish and apply spectrum and frequency management policies which may affect the number of suppliers of public telecommunications networks or services, provided that it does so in a manner consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs and spectrum availability.
4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.

ARTICLE 9B.16
Transparency

1. Each Party shall endeavour to ensure that telecommunications service suppliers are provided an opportunity to comment on a regulatory decision of general application that its telecommunications regulatory authority proposes.
2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications 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 for attaching terminal or other equipment; and
 - (e) requirements for notification, permit, registration, or licensing requirements, if any.

ARTICLE 9B.17
International Mobile Roaming

1. The Parties shall endeavour 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.
2. A Party shall ensure that information regarding retail mobile roaming rates is easily accessible to consumers.
3. The Parties recognise that with a view to ensuring that rates or conditions for wholesale international roaming services are reasonable, the Parties may cooperate with each other to facilitate the implementation of measures affecting the rates or conditions applicable to wholesale international roaming services, including by entering into arrangements.
4. A Party that ensures access for suppliers of the other Party shall be deemed to be in compliance with its obligations under Article 9.4 (Most-Favoured-Nation Treatment) with respect to international mobile roaming services.
5. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

ARTICLE 9B.18
Submarine Cable Systems

Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, on non-discriminatory terms consistent with its laws and regulations.

ARTICLE 9B.19
Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and endeavour to promote such standards through the work of relevant international organisations.

ARTICLE 9B.20
Relationship to Other Chapters

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

ARTICLE 9B.21
Cooperation

1. The Parties recognise the transformational impact of communications networks, infrastructure, and technologies (including those that are new and emerging), and the importance of these technologies to the Parties' respective economies and societies.
2. Accordingly, each Party shall take measures to:
 - (a) encourage a diverse and competitive market for telecommunications services and networks in its territory; and
 - (b) protect the security and integrity of its telecommunications infrastructure.
3. The Parties shall endeavour to:
 - (a) exchange information on the opportunities and challenges associated with communication networks, infrastructure, and technologies;
 - (b) work together in regional and multilateral fora to promote a shared approach to these opportunities and challenges; and
 - (c) exchange information and experience in spectrum management.

ARTICLE 9B.22
Resolution and Appeal of Telecommunications Disputes

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to its telecommunications regulatory body or telecommunications dispute resolution bodies to resolve disputes in accordance with its laws and regulations.
2. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may obtain review of, or have the opportunity to appeal, such determination or decision in accordance with its laws and regulations.
3. No Party shall permit the making of an application for review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant body otherwise determines.

ARTICLE 9B.23
Enforcement

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Articles 9B.4 through 9B.7. 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.