

Annex 5  
Referred to in Chapter 6  
Telecommunications Services

Section 1  
Scope

1. This Annex shall apply to measures affecting trade in telecommunications services.
2. This Annex shall apply subject to rules, regulations and licence conditions, as applicable within the Area of each Party, provided that they are not inconsistent with this Agreement.
3. This Annex shall not apply to measures affecting broadcasting services as defined in the laws and regulations of each Party.

Note: For the purposes of this paragraph, broadcasting services shall include radio and television services and radio and television transmission services under the Services Sectoral Classification List (GATT Document MTN.GNS/W/120, dated July 10, 1991).

4. Nothing in this Annex shall be construed:
  - (a) to 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, other than as provided for in its Schedule of Specific Commitments in Annex 6; or
  - (b) to require a Party (or to require a Party to oblige service suppliers in its Area) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Section 2  
Definitions

For the purposes of this Annex:

- (a) the term "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 provide a service;
- (b) the term "intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to the laws and regulations of a Party, affiliates. For these purposes, the terms "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;
- (c) the term "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;
- (d) the term "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) use of its position in the market;

- (e) the term "non-discriminatory" means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services under like circumstances;
- (f) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points, as provided for in the laws and regulations of each Party;

Note: For greater certainty, this definition is without prejudice to the GATS.

- (g) the term "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 or content of the customer's information, as provided for in the laws and regulations of each Party;

Note: For greater certainty, this definition is without prejudice to the GATS.

- (h) the term "reference interconnection offer" means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body specifying rates, terms and conditions;
- (i) the term "telecommunications dispute resolution body" means any body responsible for resolution of disputes concerning telecommunications;
- (j) the term "telecommunications regulatory body" means any body responsible for the regulation of telecommunications; and
- (k) the term "users" means service consumers and service suppliers.

Section 3  
Access to and Use of Public Telecommunications  
Transport 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 transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule of Specific Commitments in Annex 6. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport networks or services offered through suppliers of public telecommunications transport networks or services of the former Party, within or across the border of the former Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted:

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport network and which is necessary to supply a supplier's services;
- (b) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier;
- (c) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and
- (d) to provide services to users over any leased or owned circuit(s) to the extent that the scope and type of such services are consistent with the laws and regulations of the Party.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages or to protect the personal data of users, subject to the requirement 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 on access to and use of public telecommunications transport networks and services other than as necessary:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;
- (b) to protect the technical integrity of public telecommunications transport networks or services;
- (c) to ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in the former Party's Schedule of Specific Commitments in Annex 6; or
- (d) to ensure that such access to and use of public telecommunications transport networks and services shall not constitute a security and safety hazard and is not in contravention of any statute, rule or regulation, including those related to public policy of the Party, which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport 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 the interconnection with such networks and services;
- (c) requirements, where necessary, for the interoperability of such services;
- (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (e) 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
- (f) notification, registration and licensing.

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 6.

#### Section 4 Interconnection to be Ensured

Each Party shall ensure interconnection between a supplier of public telecommunications transport networks and any other suppliers of public telecommunications transport networks or services to the extent provided for in its laws and regulations.

Section 5  
Mobile Number Portability

Each Party shall endeavour to encourage that suppliers of public telecommunications transport networks or services in its Area provide number portability for mobile services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Section 6  
Resale

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area do not impose unfair or discriminatory conditions or limitations on the provision of the resale services by suppliers of public telecommunications transport networks or services of the other Party.

Note: For India, this Section shall only apply to the IPLC (international private leased circuits) services.

Section 7  
Treatment by Major Suppliers

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

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

Note: This paragraph is applied only to major suppliers that have control over essential facilities.

2. Each Party shall monitor or assess such treatment referred to in paragraph 1 on the basis of whether such suppliers of public telecommunications transport networks or services, their subsidiaries, their affiliates, and non-affiliated service suppliers are in like circumstances.

#### Section 8 Competitive Safeguards

1. Each Party shall, through its relevant authorities, maintain appropriate measures for the purpose of preventing a major supplier from engaging in or continuing anti-competitive practices.

2. For the purposes of paragraph 1, anti-competitive practices shall include:

- (a) using information obtained from competitors with anti-competitive results; and
- (b) not making available to suppliers of public telecommunications transport networks or services, on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

#### Section 9 Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its Area provides interconnection with suppliers of public telecommunications transport networks or services of the other Party at any specified technically and commercially feasible point in the network. Such interconnection is 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 suppliers of public telecommunications transport networks or services or of its subsidiaries or other affiliates;



Note: With regard to "rates" in this subparagraph, it is understood that interconnection rates are commercially or economically negotiated between suppliers of public telecommunications transport networks or services subject to the laws and regulations of each Party consistent with subparagraph (b).

- (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, in a way that the service supplier need not pay for network components or facilities that it does not require for the services to be provided; and

Note: 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 shall not be delayed without justifiable reasons.

- (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 and mutually agreed terms and conditions.

2. Each Party shall endeavour to require the major suppliers in its Area to provide suppliers of public telecommunications transport networks or services of the other Party, interconnection with the major suppliers' unbundled network components or facilities for the provision of public telecommunications transport networks or services.

3. Implementation of the provisions of paragraph 2 may be determined by each Party, depending upon the state of market conditions in the relevant markets as assessed by the Party in its Area.

4. Nothing in the preceding paragraphs shall prevent either Party from taking such measures as are necessary to protect the security of the networks in its Area subject to the requirement 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. It shall be ensured that a major supplier is required to allow other suppliers of public telecommunications transport networks or services who interconnect with the major supplier:

- (a) to locate their equipment which is essential for interconnection at premises owned by the major supplier; or
- (b) to install their cables and lines which are essential for interconnection at premises, conduits, cable tunnels or telephone poles, owned by the major supplier,

where physically feasible and where no practical or viable alternatives exist, in order to interconnect smoothly with the essential facilities of the major supplier.

6. It shall be ensured that major suppliers are required to provide a reference interconnection offer for approval by the relevant regulatory authorities.

7. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its Area on the basis of:

- (a) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services; or
- (b) the terms and conditions of an interconnection agreement.

8. Paragraphs 1, 2 and 5 through 7 are applied only to major suppliers that have control over essential facilities.

9. The procedures applicable for interconnection to a major supplier will be made publicly available.

10. It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

11. A supplier of public telecommunications transport networks or services of a Party requesting interconnection with a major supplier in the Area of the other Party shall 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 in that other Party, which may be a telecommunications regulatory body or dispute resolution body as referred to in Section 15, 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.

#### Section 10 Provisioning of Leased Circuit Services

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

2. Paragraph 1 shall be applied only to major suppliers that have control over essential facilities.

Section 11  
Universal Service

Each Party shall administer any universal service obligation that it defines and 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.

Section 12  
Public Availability of Licensing Criteria

1. Where a licence is required for the supply of a telecommunications service, a Party shall make publicly available:
  - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
  - (b) the terms and conditions of individual licences.
2. The reasons for denial of a licence shall be made known to the applicant upon request.

Section 13  
Independent Regulatory and Dispute Resolution Body

1. Each Party shall ensure that its telecommunications regulatory body and dispute resolution body are separate from, and not accountable to, any supplier of public telecommunications transport networks or services.
2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body and dispute resolution body are impartial with respect to all market participants.

Section 14  
Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, 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. The Parties understand that measures regarding the allocation and assignment of spectrum and frequency management are not measures that are *per se* inconsistent with Article 59. Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs.

Section 15  
Dispute Settlement and Appeal

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes in accordance with the laws and regulations of the former Party.

2. Each Party shall ensure, to the extent provided for in its laws and regulations that any supplier of public telecommunications transport networks or services aggrieved by the determination or decision of the relevant telecommunications regulatory body or dispute resolution body may petition that body for reconsideration of that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body unless an appropriate authority suspends, withdraws or stays such determination or decision.

3. Each party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of the relevant telecommunications regulatory body has the opportunity to appeal such determination or decision to an independent judicial or administrative authority.

#### Section 16 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; and
- (e) notifications, registration or licensing requirements, if any.

Section 17  
Unsolicited Commercial E-mail

1. Each Party may take appropriate and necessary measures to regulate unsolicited commercial e-mail for advertising purposes in accordance with its laws and regulations.

2. Each Party shall endeavour to provide the other Party with information, including its related laws, regulations and best practices, in relation to the fight against unsolicited commercial e-mail for advertising purposes.