

Annex VII
Referred to in Chapter 6
Telecommunications Services

Annex VII
Referred to in Chapter 6

Telecommunications Services

Article I
Scope and Definitions

1. This Annex shall apply to measures by a Party affecting trade in telecommunications services. It shall not apply to measures by a Party affecting broadcasting services as defined in its laws and regulations.

Note 1: "Trade in telecommunications services" shall be understood in accordance with the definition contained in paragraph (t) of Article 44.

Note 2: Articles II to VIII of this Annex shall only apply to basic telecommunications services.

Note 3: In respect of Japan, "broadcasting services" includes "radio and television services" and "radio and television transmission services" under the GATS Services Sectoral Classification List (MTN.GNS/W/120).

2. For the purposes of this Annex:

(a) "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 supply a service;
- (b) "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;
- (c) "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (d) "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;
- (e) "regulatory authority" means the body or bodies entrusted with any of the regulatory tasks assigned in relation to the issues mentioned in this Annex; and
- (f) "telecommunications" means the transmission and reception of signals by any electromagnetic means.

Article II
Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purposes of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 shall include, in particular:

- (a) engaging in anticompetitive cross-subsidisation, or pricing services in a manner that gives rise to unfair competition;
- (b) using information obtained from competitors with anticompetitive 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 III
Interconnection

1. This Article shall apply 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, where specific commitments are undertaken in each Party's Schedule under the GATS.

2. Each Party shall ensure that a 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.

Note: In respect of Japan, paragraphs 2, 3 and 6 shall apply only to a major supplier which has control over essential facilities.

3. Each Party shall ensure that a major supplier is required to allow other service suppliers who interconnect with that major supplier:

(a) to locate their equipment which is necessary for interconnection in the major supplier's buildings;
or

(b) to install their cables and lines which are necessary for interconnection in the major supplier's buildings, conduits or cable tunnels;

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

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or a reference interconnection offer.

6. Each Party shall ensure that the reference interconnection offer referred to in paragraph 5 is consistent with the principles of Article II of this Annex and contains written statements of the charges and conditions on which a major supplier interconnects with other service suppliers.

7. Each Party shall ensure that a service supplier requesting interconnection with a major supplier has 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 authority as referred to in Article VI 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 IV Universal Service

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

2. Measures by Parties governing universal service shall not be regarded as anticompetitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

Article V Licensing Procedure

1. Where a licence is required for the supply of a telecommunications service, the competent authority of a Party shall make the following 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 competent authority of a Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for a licence, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

Article VI 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.

3. Each Party shall ensure that service suppliers of the other Party affected by the decision of the regulatory authority of the Party have recourse to appeal to a court in accordance with the laws and regulations of the Party.

Article VII
Scarce Resources

Each Party shall ensure that its procedures for the allocation and use of scarce 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 is not required.

Article VIII
Number Portability

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

Article IX
Consumer and Data Protection

1. Recognising the need to create an environment of trust and confidence in the use of telecommunications services, each Party shall, in accordance with its laws and regulations:

- (a) ensure that suppliers of telecommunications services in its Area take appropriate measures to protect personal data, including individual records and accounts; and

- (b) take appropriate and necessary measures to fight against unsolicited electronic messages, including electronic mails, sent for advertising purposes to a large number of recipients and without their consent.

2. The Parties may work together bilaterally and in multilateral fora to promote initiatives that improve trust and confidence in the use of telecommunications services.

Article X Exchange of Information

The Parties may exchange information related to telecommunications services, including information on legislative processes, recent developments, regulatory frameworks and respective activities of the Parties in international fora.