

ANNEX 8B

TELECOMMUNICATIONS SERVICES

Article 8B.1 Definitions

For the purposes of this Annex the term:

- (a) **“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;
- (b) **“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;
- (c) **“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, and to which the public network is not connected;
- (d) **“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;
- (e) **“major supplier”** means a supplier of public telecommunications networks or services which 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;
- (f) **“non-discriminatory”** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services;
- (g) **“public telecommunications 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;

- (h) **“public telecommunications service”** means any telecommunications service that is offered to the public generally;
- (i) **“reference interconnection offer”** means interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;
- (j) **“telecommunications dispute resolution body”** means the body responsible for resolution of disputes concerning telecommunications;
- (k) **“telecommunications regulatory”** body means body responsible for the regulation of telecommunications; and
- (l) **“users”** means service consumers and service suppliers.

Article 8B.2 Scope

1. This Annex shall apply to measures affecting trade in public telecommunications services as set out in Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand).
2. This Annex shall apply subject to rules, regulations and licence conditions, as applicable within the territory of each Party.
3. This Annex shall not apply to:
 - (a) measures affecting broadcasting services; or
 - (b) measures affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services.
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 networks or services, other than as provided for in Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand); or
 - (b) to require a Party, or to require a Party to oblige service suppliers in its territory, to establish, construct, acquire, lease,

operate or supply telecommunications networks or services not offered to the public generally.

Article 8B.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, on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand). 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 networks or services offered through suppliers of public telecommunications 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 to:
 - (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications network and which is necessary to supply a supplier's services;
 - (b) interconnect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and
 - (c) 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 networks and services to the public generally.
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 and across 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 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 networks and services, other than as necessary:
 - (a) to safeguard the public service responsibilities of suppliers of public telecommunications 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 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 Schedules in Annex 8H (Schedule of Specific Commitments - India) and Annex 8I (Schedule of Non-Conforming Measures - New Zealand); or
 - (d) to ensure that such access to and use of public telecommunications networks and services shall not constitute a security and safety hazard and is 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 networks and services may include:
 - (a) restrictions on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for the inter-connection with such networks and services;
 - (c) requirements, where necessary, for the inter-operability 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 inter-connection 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.

Article 8B.4
Interconnection to be Ensured

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

Article 8B.5
Mobile Number Portability

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

Article 8B.6
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. The anti-competitive practices referred to in paragraph 1 shall include:
 - (a) engaging in anti-competitive cross-subsidisation;¹
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to 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 8B.7
Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on their scope and implementation.

¹ This requirement shall not prejudice the utilisation of funds resulting from the universal service obligation, to address various public policy needs as determined by the Government.

2. Subject to paragraph 1, each Party shall administer any universal service obligation that it defines and maintains in a transparent, non-discriminatory manner and shall not be regarded as anti-competitive.

Article 8B.8
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, as far as practicable to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of individual licences.
2. The reasons for the denial of a licence shall be made known to the applicant upon request.

Article 8B.9
Independent Regulatory and Dispute Resolution Body

1. Each Party shall ensure that its telecommunications regulatory body² and dispute resolution body are separate from, and not accountable to, any supplier of public telecommunications networks or services. This shall not however prejudice the right of each Party to issue directions on matters of policy to the relevant regulatory Authority.
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.

Article 8B.10
Allocation and Use of Scarce Resources

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

² In case of India, regulatory body or authority means Telecom Regulatory Authority of India (TRAI) or its successor. In the case of New Zealand, regulatory body means the New Zealand Commerce Commission or its successor.

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 exercise its spectrum and frequency management policies which may affect the number of suppliers of public telecommunications network 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 and spectrum availability.

Article 8B.11 Dispute Resolution and Appeal

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 dispute resolution body to resolve disputes in accordance with the laws and regulations of the former Party.
2. Each Party shall ensure that any supplier of public telecommunications network or services aggrieved by a determination or decision of the relevant telecommunications regulatory body has the opportunity to appeal such determination or decision.

Article 8B.12 Transparency

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) notifications, registration or licensing requirements.

Article 8B.13
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 and 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;
 - (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;
 - (c) upon request, at points in addition to the network termination points offered to the majority of facilities based suppliers; and subject to mutually agreed 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 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 containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or
 - (b) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services.
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 suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.