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ANNEX 8-D

TELECOMMUNICATIONS SERVICES

ARTICLE 8-D.1

Scope

1. This Annex shall apply to measures by a Party affecting trade in telecommunications services.
2. For greater certainty, those measures by a Party affecting trade in telecommunications services are subject to the rights and obligations contained in Chapter X (Trade in Services), including the Party's Schedule of Specific Commitments or Schedule of Non-Conforming Measures.
3. This Annex shall apply subject to rules, regulations and licence conditions, as applicable within the territory of each Party, provided that they are not inconsistent with this Agreement.
4. This Annex shall not apply to:
 - (a) a measure affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services;
 - (b) a measure relating to broadcast or cable distribution of radio or television programming, except a measure to ensure that a cable or broadcast service supplier has continued access to and use of public telecommunications networks and services; or

- (c) a measure relating to the supply of new services.¹

5. In the event of any inconsistency between this Annex and another Chapter of this Agreement, this Annex shall prevail to the extent of the inconsistency.

ARTICLE 8-D.2

Definitions

For the purposes of this Annex, the following definitions apply:

- (a) "essential facilities" means facilities of a public telecommunications network or a public telecommunications 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 the linking with suppliers providing public telecommunications networks or telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by a supplier;
- (c) "internet access service" means a public telecommunications service that provides access to the internet and thereby connectivity to virtually all end points of the

¹ For the purposes of this Annex, "new services" for a Party shall not include a telecommunications service that meets any of the following conditions:

- (a) is covered under the Provisional Central Product Classification, published by the United Nations in 1991;
- (b) is specified under that Party's [Annex X.X Schedule of Specific Commitments];
- (c) is a service which is authorised by it at the date of entry into force of this Agreement.

internet, irrespective of the network technology and terminal equipment used;

- (d) "leased circuits" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;
- (e) "major supplier" means a supplier of telecommunications networks or telecommunications services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for public telecommunications networks or telecommunications services as a result of control over essential facilities or the use of its position in that market;
- (f) "mobile number portability" means the ability of subscribers of public telecommunications services who so request to retain, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (g) "public telecommunications network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (h) "public telecommunications service"² means any telecommunications service offered to the public generally;
- (i) "reference interconnection offer" means an 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) "subscriber" means any natural or juridical person which is party to a contract with a supplier of public telecommunications services for the supply of such services;
- (k) "telecommunications" means the transmission and reception of signals by any

² Such service should be provided by an authorised/licensed operator of a Party.

electromagnetic means;

- (l) "telecommunications network" means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (m) "telecommunications dispute resolution authority" means a body responsible for resolution of disputes concerning telecommunications³;
- (n) "telecommunications regulatory authority" means the body responsible for the regulation of telecommunications;
- (p) "users" means service consumers and service suppliers.

ARTICLE 8-D.3

Regulatory and Dispute Resolution Authority

1. Each Party shall ensure that its telecommunications regulatory authority and telecommunications dispute resolution authority are separate from, and not accountable to, any supplier of public telecommunications networks and services.
2. Each Party shall ensure that regulatory decisions of, and the procedures used by, its telecommunications regulatory authority and telecommunications dispute resolution authority related to provisions contained in this Annex are impartial with respect to all market participants.
3. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body. It shall have the power to ensure that suppliers of telecommunications networks or

³ For greater certainty, this body may be a Party's telecommunications regulatory authority.

telecommunications services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable it to carry out the tasks assigned to it by law to enforce the obligations set out in this Annex.

4. Each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications networks or services.

5. Each Party shall endeavour to ensure that suppliers of public telecommunications networks or services are provided with adequate advance notice of, and opportunity to comment on, a regulatory decision of general application that its telecommunications regulatory authority proposes.

ARTICLE 8-D.4

License or Authorisation to provide telecommunications networks or services

1. Where a licence is required for the supply of a public telecommunications network or service, a Party shall make publicly available:

- (a) all the licensing criteria and procedures that it applies;
- (b) the terms and conditions of individual licences and the period of time normally required to obtain a decision concerning an application for a licence. Each Party shall endeavour to ensure that the decision is taken within the stated period of time.

2. Each Party shall ensure that any licensing criteria or applicable procedure, as well as any obligation or condition imposed on or associated with a licence, is objective, transparent, non-discriminatory, and related to and not more burdensome than necessary for the kind of network or service provided.

3. The reasons for the denial of a licence or an authorisation shall be made known in writing to the applicant upon request;

ARTICLE 8-D.5

Interconnection to be Ensured

Each Party shall ensure that a supplier of public telecommunications networks or services in its territory:

- (a) enters into negotiations for interconnection with a supplier of public telecommunications networks or services of the other Party who is within the same territory, if requested to do so by that supplier; or
- (b) provides interconnection with a supplier of public telecommunications networks or services of the other Party, to the extent provided for in its laws and regulations.

ARTICLE 8-D.6

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-discriminatory⁴ terms and conditions for the supply of a service which is committed by reason of its [Annex X.X Schedule of Non-conforming Measures] or [Annex X.X Schedule of Specific Commitments]. This obligation shall be applied, inter alia, to paragraphs 2 to 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service offered within or across the border of the former Party, including private leased circuits, and to this end shall ensure,

⁴ For the purposes of this Article, the term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services under like circumstances."

subject to paragraphs 5 and 6, that such suppliers are permitted:

- (a) to 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 service to conduct their operations;
- (b) to interconnect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and
- (c) to use the operating protocols of the service supplier's choice in their operations, 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 either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, 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; or
- (b) to protect the technical integrity of public telecommunications networks or 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 the interconnection 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 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.

ARTICLE 8-D.7

Dispute Settlement 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 Authority or dispute resolution Authority to resolve disputes.
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 Authority has the opportunity to appeal such determination or decision to an independent judicial or administrative authority.
3. The decision by the telecommunications regulatory authority shall be made

available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right of appeal referred to in para 2.

ARTICLE 8-D.8

Competitive safeguards on major suppliers

1. Each Party shall through its relevant authorities, adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or telecommunications services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. For the purposes of paragraph 1, anti-competitive practices shall include:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (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 8-D.9

Interconnection with major suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities of suppliers of public telecommunications networks or services of the other Party:
 - (a) at any technically and commercially feasible point in the major supplier's network;

- (b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications,) and of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated suppliers, or for its subsidiaries or other affiliates;
- (c) on a timely basis and on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent and reasonable (having regard to economic feasibility); and
- (d) upon request, at points in addition to the network termination points offered to the majority of users, subject to mutually agreed charges that reflect the cost of construction of necessary additional facilities.

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 a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of the following options:

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

4. In addition to the options provided in paragraph 3, each Party shall ensure that

suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

5. Each Party shall ensure that the applicable procedures for interconnection with a major supplier in its territory are made publicly available.

6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

ARTICLE 8-D.10

Access to Essential Facilities

1. Subject to paragraph 2, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications networks or services of the other Party access to essential facilities for the purpose of providing public telecommunications networks or services, on a timely basis, on terms and conditions, and at rates, which are reasonable, non-discriminatory and transparent.

2. Each Party shall provide its telecommunications regulatory authority with the power to determine the essential facilities to which a major supplier must provide access.

3. Each Party shall endeavour to ensure that its telecommunications regulatory authority bases any determination under paragraph 2 on matters including achieving effective competition and the long-term interests of end-users.

ARTICLE 8-D.11

Submarine Cable Systems

Each Party may provide reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is

authorised to operate a submarine cable facility as a public telecommunications service.

ARTICLE 8-D.12

Allocation and Use of Scarce resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including radio frequencies, numbers and rights of way in an open, objective, timely, transparent and non-discriminatory manner.
2. When allocating radio spectrum for public telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.
3. 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.
4. 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.

ARTICLE 8-D.13

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. Each Party shall administer any universal service obligation that it defines and maintains in a transparent, non-discriminatory and competitively neutral manner, and

shall endeavour to ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to those principles shall not be regarded, in themselves, as anti-competitive.

ARTICLE 8-D.14

Mobile number portability

Each Party shall ensure that suppliers of public telecommunications networks or services provide mobile number portability for mobile services on a timely basis and on reasonable terms and conditions.

ARTICLE 8-D.15

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 applying to attachment of terminal or other equipment; and
- (e) notifications, registration or licensing requirements, if any.

ARTICLE 8-D.16

Open internet access

Each Party shall ensure that, subject to its laws and regulations, suppliers of internet access services enable users of those services to:

- (a) access and distribute information and content, use and provide applications and services of their choice, subject to non-discriminatory, reasonable, transparent and proportionate network management; and
- (b) use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.

ARTICLE 8-D.17

Confidentiality of information

Each Party shall ensure, in accordance with its laws and regulations, the confidentiality of the telecommunications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures are not applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services.