

ANNEX 8B

TELECOMMUNICATIONS SERVICES

Article 8B.1

Definitions

For the purposes of this Annex:

- (a) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (b) **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;
- (c) **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;
- (d) **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;
- (e) **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;
- (f) **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;

- (g) **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;
- (h) **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;
- (i) **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;
- (j) **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;
- (k) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;
- (l) **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;
- (m) **personal information** means any information, including data about an identified or identifiable individual;
- (n) **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;
- (o) **public telecommunications service** means any telecommunications service that is offered to the public generally;
- (p) **reference interconnection offer** means a publicly available interconnection offer extended by a major supplier and filed with, approved by, or determined by, a telecommunications regulatory authority that sufficiently details the terms, rates, and conditions for interconnection so that a supplier of public telecommunications

networks or services that is willing to accept it may obtain interconnection with the major supplier on that basis;

- (q) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (r) **telecommunications dispute resolution body** means any body responsible for resolution of disputes concerning telecommunications;
- (s) **telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications; and
- (t) **suppliers of public telecommunications** means a licensed operator of a Party.

Article 8B.2 **Scope and Coverage**

1. This Annex shall apply to:
 - (a) measures affecting access to and use of public telecommunications networks or services; and
 - (b) other measures relating to public telecommunications networks or services.
2. This Annex shall apply subject to the rules, regulations and licence conditions, as applicable within the territory of each Party.
3. This Annex shall not apply to measures affecting the cable or broadcast distribution of radio and television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.
4. Nothing in this Annex shall be construed to require a Party, or 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.¹

¹ Nothing in this Annex will require India, or require India to oblige any service supplier in its territory, to establish, construct, acquire, lease, operate or supply telecommunications networks or services other than as provided for in its Schedule in Annex 8E (Schedule of Specific Commitments).

Article 8B.3

Access to and Use of Public Telecommunications Networks and Services²

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, 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 interfaces with a public telecommunications network and which is necessary to supply their services;
 - (b) interconnect private 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 in the supply of any service, other than as necessary to ensure the availability of telecommunications networks and services to the public generally; and
 - (d) 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 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 as 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.

² For India, this Article shall only apply to services listed in its Schedule in Annex 8E (Schedule of Specific Commitments).

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 to:
 - (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally;
 - (b) protect the technical integrity of public telecommunications networks or services; or
 - (c) ensure that such access to and use of public telecommunications networks and services do not constitute a security and safety hazard and are not in contravention of any legislation, 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 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 8B.4 Interconnection to be Ensured

1. 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 to the extent provided for in its laws and regulations.

2. 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 8B.5 **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) 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, 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
 - (c) 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) a publicly available reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;

- (b) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services; or
 - (c) a new interconnection agreement through commercial negotiation.
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 negotiations with major suppliers 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.
 7. A supplier of public telecommunications networks or services of a Party requesting interconnection with a major supplier in the territory 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 telecommunications dispute resolution body, 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 8B.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 8B.7 Resale

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. Where 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 by suppliers of public telecommunications networks or services of the other Party.

Article 8B.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 8B.9 Competitive Safeguards

1. Each Party shall through its relevant authorities adopt or maintain appropriate measures for the purpose of preventing suppliers who 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 8B.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 8B.11 Co-location and Access to Facilities

1. 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 8B.12 Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner.

Article 8B.13 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 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) revocation of a licence; or
 - (c) refusal to renew a licence.

Article 8B.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 8B.15 Allocation 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 assigned 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 8B.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;
 - (e) requirements for notification, permit, registration, or licensing requirements, if any; and
 - (f) information on bodies responsible for preparing, amending, and adopting standards-related measures.

Article 8B.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 8.5 (Most-Favoured-Nation Treatment – Trade in Services) 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 8B.18 Submarine Cable Systems

Each Party shall endeavour to 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 8B.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 8B.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 8B.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 8B.22 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 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 8B.23 Enforcement

Each Party shall provide its competent authority, the authority to enforce the Party's measures relating to the obligations set out in Articles 8B.4 through 8B.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.