

ANNEX 8-B

TELECOMMUNICATIONS

1. Scope

- (a) This Annex shall apply to measures adopted or maintained by a Party affecting trade in public telecommunications transport networks and services.
- (b) Except to ensure that service suppliers operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks or services, this Annex shall not apply to any measure relating to broadcast or cable distribution of radio or television programming.
- (c) Nothing in this Annex shall be construed to:
 - (i) require a Party, or require a Party to compel any service supplier, to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or services not offered to the public generally; or
 - (ii) require a Party to compel any service supplier exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications transport network.

2. Access and Use¹

- (a) Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network and service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including those set out in subparagraphs (b) through (f).
- (b) Each Party shall ensure that service suppliers of the other Party are permitted to:
 - (i) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications transport network and which is necessary to supply a supplier's services;
 - (ii) connect owned or leased circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier;² and

¹ Viet Nam may 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.

- (iii) use operating protocols of their 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.
- (c) Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.
- (d) Notwithstanding subparagraph (c), a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.
- (e) 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 to:
 - (i) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
 - (ii) protect the technical integrity of public telecommunications transport networks or services; or
 - (iii) ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in that Party's Schedule of Specific Commitments.
- (f) Provided that the conditions satisfy the criteria set out in subparagraph (e), such conditions for access to and use of public telecommunications transport networks and services may include:
 - (i) restrictions on resale or shared use of such services;
 - (ii) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (iii) requirements, where necessary, for the interoperability of such networks and services;

² For Viet Nam, networks authorized to establish for the purposes of carrying out, on a non-commercial basis, voice and data telecommunications between members of a closed user group can only directly interconnect with each other where approved in writing by the telecommunications authority.

- (iv) 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;
- (v) 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
- (vi) notification, registration and licensing.

3. Competitive Safeguards

- (a) Each Party shall prevent suppliers of public telecommunications transport networks or services who, alone or together, are major suppliers in its territory, from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in this paragraph shall include:
 - (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available to other suppliers of telecommunications transport networks or services, in a timely fashion, technical information about essential facilities or commercially relevant information, which is necessary for such suppliers to provide public telecommunications transport networks or services.

4. Licensing Process

- (a) When a Party requires a supplier of public telecommunications transport networks or services to have a license, the Party shall make publicly available:
 - (i) all the licensing criteria and procedures it applies;
 - (ii) the period it normally requires to reach a decision concerning an application for a license; and
 - (iii) the terms and conditions of all licenses in effect.
- (b) Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

5. Interconnection³

- (a) Each Party shall ensure that major suppliers in its territory provide interconnection to suppliers of public telecommunications transport networks or services of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be:
- (i) provided in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent;
 - (ii) sufficiently unbundled, such that the supplier of public telecommunications transport networks or services seeking interconnection need not pay for network components or facilities that it does not require for the service to be provided;
 - (iii) of a quality no less favorable than that provided for the major supplier's own like services, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates; and
 - (iv) provided 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.
- (b) Each Party shall ensure that the terms, conditions and rates (including technical standards and specifications) for interconnection between major suppliers in its territory and suppliers of public telecommunications transport networks or services of the other Party are able to be established (at least):
- (i) through commercial negotiation; or
 - (ii) by reference to a set of standard terms, conditions and rates that the major supplier offers generally to other suppliers of public telecommunications transport networks or services, and that are approved or set out by a telecommunications regulatory body.
- (c) Each Party shall ensure that the procedures for interconnection with major suppliers in its territory are published or otherwise made publicly available.

³ With respect to sub-subparagraphs (i) through (iii) of subparagraph (a), Korea may permit major suppliers to offer rates, terms, and conditions to non-facilities-based suppliers of public telecommunications transport services that are less favorable than those offered to facilities-based suppliers of public telecommunications transport networks or services. For greater certainty, Korea shall ensure that a non-facilities-based supplier of public telecommunications transport services may have recourse, as provided in paragraph 13, to the telecommunications regulatory body regarding disputes over such rates, terms, and conditions. Sub-subparagraph (iv) of subparagraph (a) does not apply to Korea with respect to non-facilities-based suppliers of public telecommunications transport services.

- (d) Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications transport networks or services obtained as a result of interconnection arrangements and only use such information for the purposes of providing these services.

6. Colocation⁴

- (a) Each Party shall ensure that major suppliers in its territory:
- (i) provide to suppliers of public telecommunications transport networks or services of the other Party that are facilities-based suppliers in the territory of that Party, physical colocation of equipment necessary for interconnection; and
 - (ii) in situations where physical colocation referred to in sub subparagraph (i) is not practical for technical reasons or because of space limitations, cooperate with suppliers of public telecommunications transport networks or services of the other Party that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution.⁵
- (b) Each Party shall ensure that major suppliers in its territory provide the physical colocation or practical and commercially viable alternative solution referred to in subparagraph (a) in a timely fashion and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.
- (c) Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to

⁴ For Viet Nam, colocation may not be applied to essential telecommunications infrastructures such as submarine cable landing station, and international gateway. Essential telecommunications infrastructures would be stipulated by competent regulatory body. This obligation applies three years after the date it is duly reflected in Viet Nam's domestic laws and regulations. This paragraph does not apply to Korea with respect to non-facilities-based suppliers of public telecommunications transport services.

⁵ Such solutions may include:

- (a) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
- (b) conditioning additional equipment space or virtual colocation;
- (c) optimizing the use of existing space; and
- (d) finding adjacent space.

provide the physical colocation or the practical and commercially viable alternative solutions referred to in subparagraph (a).

7. Leased Circuits Services⁶

Each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications transport services) available to suppliers of public telecommunications transport networks or services of the other Party in a timely fashion and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

8. Resale⁷

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport networks or services.

9. Number Portability⁸

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory provide number portability for mobile phone services to the extent technically and economically feasible, and on reasonable terms and conditions.

10. Telecommunications Regulatory Body

- (a) Each Party shall establish or maintain, as part of its domestic legal framework, a telecommunications regulatory body.
- (b) Each Party shall ensure that every telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.
- (c) Each Party shall ensure that the functions and responsibilities of the telecommunications regulatory body or bodies, which shall include enforcement of the commitments set out in paragraph 5, and all of its decision making powers shall be set out in its domestic laws and regulations.

⁶ For Viet Nam, this obligation applies three years after the date it is duly reflected in Viet Nam's domestic laws and regulations. Korea may permit major suppliers to offer rates, terms, and conditions to non-facilities-based suppliers of public telecommunications transport services that are less favorable than those offered to facilities-based suppliers of public telecommunications transport networks or services. For greater certainty, Korea shall ensure that a non-facilities-based supplier of public telecommunications transport services may have recourse, as provided in paragraph 13, to the telecommunications regulatory body regarding disputes over such rates, terms, and conditions.

⁷ For Viet Nam, resale can be provided when a service supplier has a license to provide such service.

⁸ This obligation applies three years after the date it is duly reflected in Viet Nam's domestic laws and regulations.

- (d) Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body or bodies are impartial with respect to all interested persons.
- (e) Each Party shall ensure that any supplier of public telecommunications transport networks or services of the other Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of that Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. Where such procedures are not independent of the telecommunications regulatory body, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

11. Universal Service

Each Party shall administer any universal service obligation that it 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.

12. Allocation and Use of Scarce Resources

- (a) 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.
- (b) Each Party shall make publicly available the current state of allocated frequency bands but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.
- (c) A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 8.4. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications transport services, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

13. Resolution of Telecommunications Disputes

- (a) Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes in accordance with its domestic laws and regulations.

- (b) Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain an independent judicial review of such determination or decision in accordance with its domestic laws and regulations. Neither Party shall permit such review to constitute grounds for non-compliance with such determination or decision of the body unless the relevant judicial authority withholds, suspends or repeals such determination or decision.

14. Transparency

Further to Article 14.1 (Publication), 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 preparing, amending, and adopting standards related measures;
- (d) conditions applying to attachment of terminal or other equipment to public telecommunications transport networks; and
- (e) notification, permit, registration, or licensing requirements, if any.

15. Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

16. Definitions

For the purposes of this Annex:

colocation (physical) means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications transport services;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

end-user means a final consumer of or subscriber to a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;

essential facilities means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

facilities-based suppliers means suppliers of public telecommunications transport networks or services that:

- (a) are suppliers that own transmission facilities in accordance with the *Telecommunications Business Act* in Korea; and
- (b) are facilities-based operators duly licensed in Viet Nam;

interconnection means 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 provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;

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 the supply of public telecommunications transport networks or services, or parts thereof, as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

number portability means the ability of end-users of public telecommunications transport services to retain the same telephone numbers when switching between suppliers of the same type (mobile service) of public telecommunications transport services;

public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

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 and data transmission typically involving the realtime transmission of customer-supplied information between two or more defined points without any end-to end change in the form or content of the customer's information;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means any body or bodies in the territory of a Party which is or are responsible, under the Party's domestic legal framework, for the regulation of telecommunications; and

user means end-users or suppliers of public telecommunications transport networks or services.