

ANNEX 8A
TELECOMMUNICATIONS SERVICES

I. Scope and Definitions

1. This Annex applies to measures affecting telecommunications services where specific commitments are undertaken.

2. For the purposes of this Annex:

- (a) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (b) **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;
- (c) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (d) **essential facilities** means facilities of a public telecommunications transport network or service designated by each Party 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;
- (e) **major supplier** means a supplier that 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) use of its position in the market;
- (f) **facilities-based suppliers** means:
 - (i) for Chinese Taipei, Type 1 Telecommunications Carriers provided for in its Telecommunications Act;
 - (ii) for Singapore, Facilities-Based Operators;

and

- (g) **services-based suppliers** means:
 - (i) for Chinese Taipei, Type 2 Telecommunications Carriers provided for in its Telecommunications Act;
 - (ii) for Singapore, Services-Based Operators.

II. Competitive Safeguards

Prevention of Anti-competitive Practices in Telecommunications

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

Safeguards

2. The anti-competitive practices referred to in paragraph 1 above shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation or pricing services in a manner that gives rise to unfair competition;
- (b) discriminating unfairly in providing telecommunications services;
- (c) using information obtained from competitors with anti-competitive results; and
- (d) 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 provide services.

Asymmetric Regulation

3. Each Party may, in accordance with its laws and regulations, determine the appropriate level of regulation required to promote fair competition.

III. Public Availability of Licensing Criteria

- 1. Where a licence is required, each Party shall make publicly available the following:
 - (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. Each Party shall make known to the applicant the reasons for the denial of a licence upon request.

IV. Interconnection

Interconnection to be ensured

1. Each Party shall ensure interconnection between a facilities-based supplier or a services-based supplier and any other facilities-based supplier or a services-based supplier to the extent provided for in its laws and regulations.

Interconnection with Major Suppliers

2. Each Party shall ensure that a major supplier is required to provide interconnection at any technically feasible point in the network. Such interconnection is 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, for like services of non-affiliated service suppliers or for like services 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 unbundled so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and
- (c) upon reasonable 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.

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

- (a) to locate their equipment which is essential for interconnection within the major supplier's buildings^(Note 1); or
- (b) to install their cables and lines which are essential for interconnection within the facilities specified by the laws, regulations, or administrative adjudication of each Party;

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

Note 1: Buildings used for communications that house a point of interconnection.

Interconnection Pursuant to an Approved Reference Interconnection Offer or a Model Agreement ^(Note 2)

4. Each Party shall ensure that major suppliers are required to provide, to the relevant regulatory authorities, a reference interconnection offer for approval, or an interconnection agreement already in effect. At a minimum, the reference interconnection offer or the model agreement shall be required to contain the following:

- (a) a list and description of the interconnection-related services offered, the terms and conditions for such services, the operational and technical requirements, and the procedures or processes that will be used to order and provide such services;
- (b) a list of cost-oriented prices that a major supplier offers for all its interconnection-related services. Where feasible, the major supplier shall be required to use an established cost-oriented methodology based on incremental forward-looking economic cost;
- (c) standard periods between the dates of request and commencement which are stipulated in a clear manner and are reasonable; and
- (d) a statement regarding the duration of the proposed interconnection agreement, if it is fixed.

Note 2: For greater clarity, model agreements shall not contain any information which infringes business secrecy, patent or other intellectual property rights.

5. Paragraphs 2, 3 and 4 of Clause IV of this Annex are applied only to a major supplier which has control over essential facilities.

Public Availability of the Procedures for Interconnection Negotiations

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

Transparency of Interconnection Arrangements

7. Each Party shall make publicly available the rates, terms, conditions of the interconnection agreement between major suppliers and other suppliers by publishing either the reference interconnection offer or model agreement as well as relevant information.

V. Interconnection Dispute Settlement

A service supplier requesting interconnection with a major supplier 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, which may be a regulatory body as referred to in Clause VII 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.

VI. Universal Service

Each Party shall have the right to define the kind of universal service obligation 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 and are not more burdensome than necessary for the kind of universal service defined by the Party.

VII. Independent Regulators

The regulatory body shall be separate from, and not accountable to, any supplier of telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

VIII. Allocation and Use of Scarce Resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. Each Party shall make publicly available the current state of allocated frequency bands. Each Party shall not be required to make publicly available detailed identification of frequencies allocated for specific government uses.