

Annex 8-B

Telecommunications

Definitions

1. For purposes of this Annex:

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

essential facilities means facilities of a public telecommunications 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;

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, where specific commitments are undertaken;

international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications networks or services that enables end-users to use their home mobile handset or other device for voice, data, or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

license means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such a person to offer a telecommunications network or service, including concessions, permits, or registrations;

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:

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

network element means a facility or equipment used in supplying a public

telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

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

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

public telecommunications network means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such 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;

telecommunications means the transmission and reception of messages, sounds, visual images, or signals by any electromagnetic means;

telecommunications regulatory body means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications;

user means an end-user of or a supplier of public telecommunications networks or services; and

value-added services means services that add value to telecommunications services through enhanced functionality, and specifically:

- (a) for Korea, means those services as defined in the Telecommunications Business Act; and
- (b) for each of the GCC Member States, means those services as defined in its respective domestic law.

Scope

2. This Annex applies to measures affecting trade in telecommunications services, including:

- (a) measures relating to access to and use of public telecommunications services;
- (b) measures relating to obligations of suppliers of public telecommunications services;
- (c) other measures relating to public telecommunications networks or services; and
- (d) measures relating to the supply of value-added services.

3. Except to ensure that service suppliers operating broadcast stations and cable systems have continued access to and use of public telecommunications networks or services, this Annex shall not apply to any measure relating to broadcast or cable distribution of radio or television programming.

4. Nothing in this Annex shall be construed to:

- (a) require a Party, or require a Party to compel any service supplier, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or
- (b) 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 network.

Competitive Safeguard

5. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

6. The anticompetitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anticompetitive cross-subsidization;
- (b) using information obtained from competitors with anticompetitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Number Portability

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

Interconnection

General Terms and Conditions

8. Each Party shall ensure that a major supplier in its territory is required to provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (b) of a quality no less favorable 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;
- (c) 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 suppliers need not pay for network components or facilities that they do not require for the services to be provided; and
- (d) 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.

Public Availability of the Procedures for Interconnection Negotiations

9. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

Transparency of Interconnection Arrangements

10. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or a reference interconnection offer

Unbundling of Network Elements

11. Each Party shall endeavor to 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.

Conditions for the Supply of Value-Added Services

12. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the enterprise does not own to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for those services;
- (c) file a tariff for those services;
- (d) connect its networks with any particular customer for the supply of those services; or
- (e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

13. Notwithstanding paragraph 12, a Party may take the actions described in paragraph 12 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

International Mobile Roaming

14. The Parties shall endeavor to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

15. A Party may take steps to enhance transparency and competition with respect to international mobile roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimizing impediments to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

Universal Service

16. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.

17. 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.

Licensing Process

18. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall make publicly available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license; and
- (c) the terms and conditions of all licenses in effect.

19. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a license.

Telecommunications Regulatory Body

20. Each Party shall ensure that its telecommunications regulatory body is separate from and functionally independent of any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory body does not own equity¹ or maintain an operating or management role in any such supplier.

21. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants and shall be made and implemented on a timely basis.

Allocation and Use of Scarce Resources

22. 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.

23. 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.

24. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 8.3. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may limit the number of suppliers of public telecommunications networks or services. Each Party also retains the right to allocate frequency bands, taking into account present and future

¹ For greater certainty, this paragraph shall not prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of telecommunications services.

needs and spectrum availability.

Resolution of Telecommunications Disputes

25. Each Party shall ensure that:

Recourse

- (a) (i) suppliers of public telecommunications networks or services may have recourse to a telecommunications regulatory body or other relevant body of the Party in its territory to resolve disputes between suppliers of public telecommunications networks or services on a timely basis regarding measures relating to matters in this Annex;
- (ii) suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party, that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to a telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

Appeal and Judicial Review

- (b) any supplier of public telecommunications networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain a review of such determination or decision in accordance with its laws and regulations. Neither Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of its telecommunications regulatory body, unless its relevant judicial body determines otherwise.