

ANNEX 8B

TELECOMMUNICATIONS

Article 1 Scope

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications services, including:
 - (a) measures relating to access to and use of public telecommunications networks or services; and
 - (b) measures relating to obligations regarding suppliers of public telecommunications networks or services.

2. This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.

3. Nothing in this Annex shall be construed to:
 - (a) require a Party to authorise a service supplier of another Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services, other than the former Party's commitments under Chapter 8 (Trade in Services); or
 - (b) require a Party, or require a Party to oblige a service supplier under its jurisdiction, to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally.

Article 2 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 subscriber to or a final consumer of public telecommunications networks or services, including a service supplier other than a supplier of public telecommunications networks or 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 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;

- (f) **leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;
- (g) **licence** means any authorisation 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;
- (h) **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 the market;
- (i) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;
- (j) **number portability** means the ability of an end user of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (k) **physical co-location** 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 services;

- (l) **public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;
- (m) **public telecommunications service** means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include telegraph, telephone, telex and data transmission typically involving the real-time 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;
- (n) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (o) **telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications; and
- (p) **user** means an end user, or a supplier of public telecommunications networks or services.

Article 3 **Approaches to Regulation**

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and

approaches differ market by market, and that each Party may determine how to implement its obligations under this Annex.

2. In this respect, the Parties recognise that a Party may:
 - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;
 - (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities; or
 - (c) use any other appropriate means that benefit the long-term interests of end users.
3. For greater certainty, a Party that refrains from engaging in regulation in accordance with this Article remains subject to the obligations under this Annex.

Article 4 Access and Use¹

1. Each Party shall ensure that any service supplier of another Party is accorded access to and use of public telecommunications networks and services, including leased circuits, offered in its territory or across its borders on a timely basis, and on terms and conditions that are reasonable, non-discriminatory and transparent, including through Paragraphs 2 to 6.

¹ For greater certainty, this Article does not prohibit any Party from requiring a service supplier to obtain a licence to supply a public telecommunications network or service in its territory.

2. Subject to Paragraphs 5 and 6, each Party shall ensure that service suppliers of another 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) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;² and
- (c) use operating protocols of their choice.

3. Each Party shall ensure that service suppliers of another Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding Paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to 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 Viet Nam, networks authorised to establish for the purpose 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 regulatory body. Viet Nam shall ensure that, upon request, an applicant receives the reasons for the denial of an authorisation. Viet Nam shall review this requirement to obtain written approval within two years of the date of entry into force of the Second Protocol.

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; or
- (b) 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) a requirement to use specified technical interfaces, including interface protocols, for connection with public telecommunications networks and services;
- (b) a requirement, where necessary, for the interoperability of public telecommunications networks and services and to encourage the achievement of the goals set out in Article 17 (Relation to International Organisations);
- (c) type approval of terminal or other equipment which interfaces with public telecommunications networks and technical requirements relating to the attachment of such equipment to public telecommunications networks;
- (d) a restriction on connection of leased or owned circuits with public telecommunications networks or services or with circuits leased or owned by other service suppliers; or

- (e) a requirement for notification and licensing.

Article 5 Number Portability³

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

Article 6 Competitive Safeguards

1. Each Party shall adopt or 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.

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.

³ This Article shall not apply to Cambodia, Indonesia, Lao PDR and Myanmar.

Article 7 Treatment by Major Supplier

Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications networks or services of another 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 services; and
- (b) the availability of technical interfaces necessary for interconnection.

Article 8 Resale

1. No Party shall prohibit the resale of any public telecommunications service.

2. For greater certainty, Paragraph 1 does not limit the right of a Party to otherwise regulate resale, including the right to license the provision of resale.

3. 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 any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

Article 9 Interconnection⁴

Obligations relating to suppliers of public telecommunications networks or services

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory provides interconnection with the suppliers of public telecommunications networks or services of another Party.

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, users acquired as a result of interconnection arrangements other than for the purpose of providing these services.

Obligations relating to major suppliers

3. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks and services of another Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;⁵
- (b) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

⁴ For greater certainty, the term "interconnection", as used in this Annex, does not include access to unbundled network elements.

⁵ For greater certainty, interconnection rates may be commercially negotiated between suppliers of public telecommunications networks or services.

- (c) on a timely basis, and on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications networks or services of another Party need not pay for network components or facilities that it does 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 suppliers of public telecommunications networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

4. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another 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 approved by the Party's telecommunications regulatory body or any other interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services;
- (b) the terms and conditions of an interconnection agreement that is in effect; or
- (c) a new interconnection agreement through commercial negotiation.

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

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

Article 10

Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of another Party with leased circuit services that are public telecommunications services, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent.

Article 11

Co-location

1. Each Party shall ensure that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications networks or services of another Party physical co-location of their equipment necessary for interconnection 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 12

Independent Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.

2. Each Party shall ensure that the regulatory decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article 13

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, and are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 14

Licensing

1. Where a licence is required for the supply of public telecommunications networks or services, the Party shall ensure the public availability of:
 - (a) all the licensing criteria and procedures that it applies;⁶

⁶ For greater certainty, this Subparagraph includes any fee for applying for or obtaining a licence.

- (b) the period of time that it normally requires to reach a decision concerning an application for a licence; and
 - (c) the general terms and conditions of a licence.
2. The Party shall notify an applicant of the outcome of its application without undue delay after a decision has been taken.
3. The Party shall ensure that, upon request, an applicant or a licensee is provided with the reasons for the:
- (a) denial of a licence;
 - (b) imposition of supplier-specific conditions on a licence;
 - (c) refusal to renew a licence; or
 - (d) revocation of a licence.

Article 15

Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.

Spectrum

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 allocated for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 5 (Market Access) of Chapter 8 (Trade in Services). 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 networks or services, provided that the Party does so in a manner consistent with other provisions of Chapter 8 (Trade in Services). Such right includes the ability 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. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services, if appropriate. In this regard, each Party may use mechanisms such as auctions, administrative incentive pricing or unlicensed use, if appropriate, to assign spectrum for commercial use.

Numbers

5. Each Party shall ensure that a supplier of public telecommunications networks or services of another Party established in the territory of the former Party is afforded access to telephone numbers in a non-discriminatory manner.

Article 16 Transparency

1. Each Party shall endeavour to ensure that when its telecommunications regulatory body seeks input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services

of another Party operating in its territory an opportunity to comment.

2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks or 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; and
- (e) requirements for notification or licensing, if any.

Article 17 **Relation to International Organisations**

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications 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.

Article 18 **International Submarine Cable Systems**

1. Where a Party has authorised a supplier of public telecommunications networks or services in its territory to operate an international submarine cable system as a public

telecommunications network or service, that Party shall ensure that such supplier accords the suppliers of public telecommunications networks or services of another Party reasonable and non-discriminatory treatment for access to the international submarine cable system.^{7, 8, 9}

2. The Parties shall endeavour to share information and co-operate on initiatives and partnerships relating to the protection, resilience, enhancement and effectiveness of international submarine cable systems, in accordance with each Party's laws and regulations.

Article 19

Unbundling of Network Elements

1. Each Party shall endeavour 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

⁷ For greater certainty, a Party may determine the point at which access to the international submarine cable system is to be provided.

⁸ For greater certainty, this Article does not prohibit a Party from requiring a supplier of public telecommunications networks or services to comply with relevant measures including licensing requirements, provided that such measures are not used as a means of avoiding the Party's obligations under this Article.

⁹ For Viet Nam:

- (a) this Article shall only apply to the international submarine cable landing stations in its territory;
- (b) this Article shall only apply to a major supplier that owns, controls or operates the international submarine cable system including landing stations in its territory;
- (c) co-location for international submarine cable landing stations owned, controlled or operated by the major supplier in its territory shall exclude physical co-location; and
- (d) this Article does not prohibit Viet Nam from requiring a supplier of public telecommunications networks or services to comply with relevant measures, including licensing requirements, provided that such measures are not used as a means of preventing access to the international submarine cable system.

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.¹⁰

2. When determining the unbundled network elements required to be made available in its territory, a Party may take into account factors such as the competitive effect of lack of access and whether the facilities or network elements can be substituted in an economically or technically feasible manner in order to provide a competing service.

Article 20

Access to Poles, Ducts, and Conduits

1. Each Party shall endeavour to ensure that a major supplier in its territory provides access to poles, ducts, conduits or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits or any other structures to which it requires major suppliers in its territory to provide access in accordance with Paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

¹⁰ For greater certainty, consistent with Article 3 (Approaches to Regulation), a Party may determine the manner in which it implements its obligations under this Article.

Article 21
Flexibility in the Choice of Technology

1. No Party shall prevent suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services.

2. Notwithstanding Paragraph 1, a Party may apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy objective and is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade.

Article 22
International Mobile Roaming

1. The Parties shall endeavour to co-operate 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 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) minimising impediments to roaming, whereby consumers when visiting the territory of a Party from the territory of another Party can access telecommunications services using the device of their choice.

3. The Parties recognise that a Party, where it has the authority to do so, may choose to promote competition with

respect to international mobile roaming rates including through commercial arrangements, or to adopt or maintain measures affecting rates for wholesale or retail international roaming services with a view to ensuring that the rates are reasonable. If a Party considers it appropriate, it may co-operate on and implement mechanisms with other Parties to facilitate the implementation of those measures, including by entering into arrangements with those Parties.

4. If a Party (the “first Party”) chooses to regulate rates or conditions for wholesale or retail international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Party (the “second Party”) has access to the regulated rates or conditions for wholesale or retail international mobile roaming services for its customers roaming in the territory of the first Party if the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale or retail international mobile roaming services for suppliers of the two Parties.¹¹ The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

¹¹ For greater certainty:

- (a) no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale or retail international mobile roaming services that is provided under this Article; and
- (b) access to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if the regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement. The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable. For the purposes of this footnote, “rates or conditions that are reasonably comparable” means rates or conditions agreed to be such by the relevant suppliers or, in the case of a disagreement, determined to be such by the telecommunications regulatory body of the first Party.

5. A Party that ensures access to regulated rates or conditions for wholesale or retail international mobile roaming services in accordance with Paragraph 4 shall be deemed to be in compliance with Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services), Article 4 (Access and Use), and Article 7 (Treatment by Major Suppliers), with respect to international mobile roaming services.

6. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 23

Resolution of Telecommunications Disputes

1. Each Party shall ensure that a supplier of public telecommunications networks or services of another Party may have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes arising under this Annex in accordance with its laws and regulations.

2. Each Party shall ensure that 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.

3. No Party shall permit the making of an application for review to constitute grounds for non-compliance with the determination or decision of its telecommunications regulatory body, unless its relevant body determines otherwise.

4. Each Party shall ensure that relevant information or relevant laws and regulations relating to the

telecommunications dispute resolution process, as set out in Paragraphs 1 and 2, is made publicly available.¹²

¹² For Viet Nam, the relevant information or relevant laws and regulations relating to the telecommunications dispute resolution process are set out in the Law on Telecommunications and related regulations. Viet Nam shall endeavour to ensure that information or laws and regulations relating to the resolution of other telecommunications disputes is made publicly available, where possible.