

AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA NEW ZEALAND FREE TRADE AREA

CHAPTER 8

TRADE IN SERVICES

ANNEX ON TELECOMMUNICATIONS

Article 1

Scope and Coverage

1. This Annex applies to measures by a Party affecting trade in public telecommunications transport networks and services.
2. Notwithstanding Paragraph 1, this Annex shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic legal framework.
3. Nothing in this Annex shall be construed to require a Party to allow the supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

Article 2

Definitions

For the purposes of this Annex:

- (a) **co-location (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;
- (b) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) **essential facilities** means facilities of a public telecommunications transport 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) **facilities-based suppliers** means suppliers of public telecommunications transport networks or services that:
- (i) are licensed carriers in Australia;
 - (ii) are classified as Access Seekers in accordance with the Telecommunications Act 2001 as amended from time to time in New Zealand;
 - (iii) are the Infrastructure Provider for the Telecommunication Industry (InTi) licensees in Brunei Darussalam;
 - (iv) are licensed as network facility provider and licensed network services provider under domestic law in Cambodia;
 - (v) are licensed as telecommunication network provider in Indonesia;
 - (vi) are authorised to establish an enterprise to provide telecommunications service under the Telecommunications Act of 2001 in Lao PDR;
 - (vii) are licensed as Network Facilities Provider and Network Services Provider in Malaysia;

- (viii) are telecommunications operators licensed as network facility provider and/or network service provider; and operators authorised by the Ministry of Communications, Posts and Telegraphs to provide facility based services in Myanmar;
 - (ix) are licensed public telecommunications entities as defined in the Public Telecommunications Policy Act of the Philippines;
 - (x) are facilities-based operators in Singapore;
 - (xi) are duly licensed under domestic law as facilities-based supplier in Thailand; and
 - (xii) are facilities-based operators duly licensed in Viet Nam;
- (e) **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;
- (f) **leased circuits**¹ means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;
- (g) **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

¹ In the case of Thailand, "leased circuits" means telecommunications facilities between two designated points that are set aside for the dedicated use of, or availability to, a particular user.

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

- (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (h) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
- (i) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (j) **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 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;
- (k) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (l) **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

- (m) **user** means service consumers and service suppliers.

Article 3

Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under GATS, a Party may delay the application of Article 4 (Competitive Safeguards), Article 6 (Interconnection), Article 7 (Co-location), Article 8 (Leased Circuits Services) and Article 9.2 (Resolution of Disputes) in accordance with the timetable set out in this Annex's Appendix on Transitional Arrangements.

Article 4

Competitive Safeguards

1. Subject to Article 3 (Transitional Arrangements), 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.
2. The anti-competitive practices referred to in this Article shall include:
 - (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 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.

Article 5 Licensing

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, where publication is not practicable, otherwise made publicly available, including:

- (a) circumstances in which a licence is required;
- (b) licence application procedures;
- (c) criteria used to assess licence applications;
- (d) standard terms and conditions applicable to licences;
- (e) the period of time normally required to reach a decision concerning a licence application;
- (f) the cost of and/or fees for applying for and/or obtaining a licence; and
- (g) the period of validity of a licence.

2. Each Party shall ensure that the reasons for the denial of a licence are made known to an applicant upon request.

Article 6 Interconnection²

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory provide

² For the sake of clarity, nothing in this Article shall be construed to require Thailand or Viet Nam to allow cross-border supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

interconnection to suppliers of public telecommunications transport networks or services of other Parties at any technically feasible point in the major supplier's network. Such interconnection shall be:

- (a) 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;
- (b) 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;
- (c) of a quality no less favourable 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
- (d) 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.

2. 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 other Parties are able to be established (at least):

- (a) through commercial negotiation; or
- (b) 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.

3. Each Party shall ensure that the procedures for interconnection with major suppliers in its territory are published or otherwise made publicly available.

Article 7 Co-location

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory:

- (a) provide to suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, physical co-location of equipment necessary for interconnection; and
- (b) in situations where physical co-location referred to in Subparagraph (a) is not practical for technical reasons or because of space limitations, co-operate with suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution.³

2. Each Party shall ensure that major suppliers in its territory provide the physical co-location or practical and commercially viable alternative solution referred to in Paragraph 1 in a timely fashion and on terms and conditions (including technical standards and specifications), and at

³ 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 co-location;
- (c) optimising the use of existing space; and
- (d) finding adjacent space.

rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

3. Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in Paragraph 1.

Article 8 Leased Circuits Services

Subject to Article 3 (Transitional Arrangements), 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 other Parties 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.

Article 9 Resolution of Disputes

1. Each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests interconnection with a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body to resolve disputes in relation to such interconnection, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and

- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

2. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests co-location with or leased circuits services from a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body or a competition regulatory body to address issues in relation to such co-location or leased circuits services, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and
- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

3. Each Party shall ensure that its telecommunications regulatory body or bodies provide, upon request by a supplier of public telecommunications transport networks or services of another Party, a written explanation of any decision by a telecommunications regulatory body that affects the supplier of public telecommunications transport networks or services of the other Party, unless such explanation is otherwise publicly available.

Article 10 Transparency

Each Party shall endeavour to make information that the Party is required to publish or make publicly available

pursuant to this Annex available on the internet.

Article 11

Telecommunications Regulatory Body

1. Each Party shall establish or maintain, as part of its domestic legal framework, a telecommunications regulatory body.
2. 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.
3. 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 Article 6 (Interconnection), and all of its decision-making powers, shall be set out in the Party's domestic laws or regulations.
4. 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.
5. Each Party shall ensure that any supplier of public telecommunications transport networks or services of another 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.

Article 12 Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy set out under each Party's domestic laws, shall not be regarded as anti-competitive *per se*, provided 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 13 Allocation and Use of Scarce Resources⁴

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Party shall publish or otherwise make publicly available the current state of allocated frequency bands.⁵
3. Parties are not required to publish identification of frequencies allocated for specific government uses, or to otherwise make them publicly available.

⁴ Decisions on the allocation and assignment of spectrum and frequency management are not measures that are *per se* inconsistent with Article 4 (Market Access) of Chapter 8 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Chapter. Each Party also retains the right to allocate frequency bands taking into account existing and future needs.

⁵ Parties are not required to publish information about the allocation of individual frequencies to specific licencees.

APPENDIX ON TRANSITIONAL ARRANGEMENTS

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Brunei	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.
Cambodia			Obligation to apply from no later than 3 years after the date of entry into force of this Agreement.	Obligation to apply from no later than 1 year from the date of entry into force of the law on Telecommunication. Cambodia shall endeavour to ensure that the Law on Telecommunication enters into force within 3 years of entry into force of this Agreement.	Obligation to apply from the date of application of Article 7 (for co-location) and 8 (for leased circuit services) respectively.
Laos	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.
Myanmar	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date the new Telecommunications Law comes into force.

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Singapore	Commits to apply this Article upon the entry into force of this Agreement.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.
Thailand ¹	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply from the date of entry into force of this Agreement.
Viet Nam			To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.

¹ The last concession contract will be expired in the year 2018.