

## **Non-paper on Telecommunication Services**

*Parties to consider that provisions on major suppliers will apply to “public telecommunications services” and that provisions that do not impose an obligation on suppliers (In particular the provisions on the regulatory body, licenses and transparency) apply to “telecommunications services”.*

**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 defined points without any end-to-end change in the form or content of the customer’s information;

**telecommunication services** means the transmission and reception of signals over telecommunication networks by any electromagnetic means. Those services exclude services providing, or exercising editorial control over, content transmitted using telecommunication networks and services;

[alt. **telecommunications services** means all services consisting of the transmission and reception of signals by any electro-magnetic means and do not cover the economic activity consisting of the provision of content by means of telecommunications]

### **Article 12: Resale**

#### *Obligations applying to all suppliers*

1. No Party may prohibit the resale of any public telecommunication services.
2. Where a Party requires a public telecommunications supplier to offer its public telecommunications service for resale, the Party shall ensure that such public telecommunications suppliers do not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.

#### *Obligations applying to major suppliers*

3. Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its territory:
  - (a) offer for resale, at reasonable rates, to suppliers of public telecommunications

- services of another Party, public telecommunications services that such major supplier provides at retail to end users; and
- (b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.
4. Each Party may determine in accordance with its law and regulations which public telecommunications services must be offered for resale by major suppliers pursuant to paragraph 3, based on the need to promote competition or to benefit the long-term interests of end-users.
5. Where a Party does not require that a major supplier offer a specific public telecommunications service for resale, it shall nonetheless allow service suppliers to request that such service be offered for resale consistent with paragraph 3, without prejudice to the Party's decision on such a request.

- Parties to consult on modified text

- Parties to consult on replacing the concept of “resale” with the concept of “wholesale of services available at retail” throughout the article. Would the regulatory body have the authority to require it?

- Parties to assess the relationship between paragraph 3 (b) and 2.

- Proponents of paragraph 5 to consider its deletion in view of availability of recourse in line with article 8.

### **Article 13: Access to Essential Facilities / Unbundling of Network Elements**

- Parties to consult on an obligation to provide its regulatory body with the authority to require i) access to essential facilities and/or ii) unbundled access to network elements.

- Parties to consult on the public policy objectives that should be pursued in exercising that authority.

### **Article 14: Treatment of Major Suppliers**

Each Party shall ensure, or provide its telecommunications regulatory body with the authority to require, that any major supplier in its territory accords suppliers of public telecommunications services of another Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries and its affiliates regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and

- (b) the availability of technical interfaces necessary for interconnection.

*- Parties to consult on modified text*

### **Article 17: Undersea Cables and Landing Facilities and Services**

*Parties to consider the provision on undersea cables and landing stations and on*  
*- the option of turning this provision into an obligation that empowers the regulator and*  
*- limiting the scope of the provision to undersea cables and landing stations that are essential facilities*

### **Article 9: Access to and Use of Public Telecommunications [Networks and] Services**

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 reasonable and non-discriminatory terms and conditions.
2. Each Party shall ensure that service suppliers of another Party are permitted:
  - (a) to purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network
  - (b) to provide services to individual or multiple end-users over leased or owned circuits;
  - (c) to connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;
  - (d) to perform switching, signalling, processing, and conversion functions; and
  - (e) to use operating protocols of the service supplier's 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].
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, 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 such measures as are necessary to ensure

the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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:
- (a) to 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) to protect the technical integrity of public telecommunications networks or services; [or]
  - [(c) to ensure that service suppliers of any other Party do not supply services unless permitted pursuant to commitments in the Party's Schedule.]

*- Parties to consult on modified text*

*- Evaluate whether to keep or remove the “networks” in the various instances of “public telecommunications [networks and] services*