

Annex 10.1

Telecommunications Services¹

This Annex sets out the regulatory principles applicable to telecommunications services, other than the cable or broadcast distribution of radio or television programming².

Nothing in this Annex shall be construed:

- (a) to require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications services, other than as provided for in this Agreement subject to each Party's Annexes I and II (Non-Conforming Measures); or
- (b) to require a Party (or to require a Party to oblige service suppliers in its territory) to establish, construct, acquire, lease, operate or supply telecommunications services not offered to the public generally.

1. Universal Service

Each Party shall have the right to define the kind of universal service obligations it wishes to maintain. Such obligations will 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.

2. Independence of Regulatory Authority

Each Party shall ensure that its telecommunications regulatory authority is separate from, and not accountable to, any supplier of telecommunications services. Each Party shall ensure that its telecommunications regulatory authority is authorized to impose effective sanctions to enforce domestic measures relating to the obligations set out in this Annex. The decisions and the procedures of the regulatory authority shall be impartial with respect to all market participants.

¹ "Telecommunications services" includes both public telecommunications transport networks and public telecommunications transport services. For Costa Rica, the terms "public telecommunications transport networks" or "public telecommunications transport services" are referred to as "public telecommunications networks" or "telecommunications services available to the public", respectively.

² For greater certainty, this Annex does not create market access rights or obligations.

3. Transparency

Each Party shall make publicly available all licensing or authorization criteria and procedures required for suppliers of public telecommunications networks or of telecommunications services available to the public, including the period of time normally required to reach a decision concerning an application for a license or authorization, and the terms and conditions of all licenses or authorizations issued. The reasons for the denial of a license or authorization will be made known to the applicant upon request.

Each Party shall also make publicly available the rulemakings of its telecommunications regulatory authority, the end-user tariffs filed with its telecommunications regulatory authority, and the conditions affecting access to and use of public telecommunications networks or telecommunications services available to the public.

4. Allocation and Use of Scarce Resources

Each Party shall ensure that procedures for the allocation and use of scarce resources, including frequencies, numbers, and rights of way, are administered in an objective, timely, transparent, and non-discriminatory manner by a competent domestic authority³.

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.

5. Interconnection

- (a) Each Party shall ensure that any major supplier in its territory provides interconnection for suppliers of public telecommunications networks or of telecommunications services available to the public of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided in accordance with the respective domestic laws:
 - i. 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 or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
 - ii. in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic

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feasibility, and sufficiently unbundled so that a supplier need not pay for network components or facilities that it does not require for the service to be provided; and

- iii. 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.
- (b) Each Party shall ensure that applicable procedures for interconnection to a major supplier, their interconnection agreements and their referenced interconnection offers are made publicly available.
- (c) Each Party shall ensure that a service supplier requesting interconnection with a major supplier has recourse to an independent domestic body⁴, which may be the regulatory authority referred to in paragraph 2, to resolve disputes regarding appropriate terms, conditions, and rates for interconnection, within a reasonable time.

6. Access to and Use of the Network

- (a) Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications networks or telecommunications services available to the public, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, and are permitted to:
 - i. purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
 - ii. provide services to individual or multiple end-users over leased or owned circuits;
 - iii. connect owned or leased circuits with public telecommunications networks or telecommunications services available to the public in its territory, or across its borders or with circuits leased or owned by another person;
 - iv. perform switching, signaling, processing, and conversion functions, and use operating protocols of their choice; and
 - v. use public telecommunications networks or telecommunications services available to the public for the

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movement of information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

- (b) Notwithstanding subparagraph (a), a Party may take such measures as are necessary to ensure the security and confidentiality of messages or to protect the privacy of non-public personal data of subscribers to telecommunications services available to the public, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.
- (c) Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or telecommunications services available to the public, other than that necessary to safeguard the public service responsibilities of suppliers of public telecommunications networks or telecommunications services available to the public, in particular their ability to make their networks or services available to the public generally, or protect the technical integrity of public telecommunications networks or telecommunications services available to the public.
- (d) Provided that they satisfy the criteria set out in subparagraph (c), conditions for access to and use of public telecommunications networks and telecommunications services available to the public may include:
 - i. requirements, where necessary, for the inter-operability of such services;
 - ii. type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; or
 - iii. notification, registration and licensing.

7. Competition

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, such as engaging in anti-competitive cross-subsidiation; using information obtained from competitors with anti-competitive results; and not making available, on a timely basis, to suppliers of public telecommunications networks or telecommunications services available to the public, technical information about essential facilities and commercially relevant information that is necessary for them to provide public

telecommunications networks or telecommunications services available to the public.

8. Submarine Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate such submarine cable system as a telecommunications service available to the public.

9. Flexibility in the Choice of Technologies

A Party may not prevent suppliers of public telecommunications networks or telecommunications services available to the public from having the flexibility to choose the technologies that they use to supply their services, subject to the ability of each Party to take measures to ensure that end-users of different networks are able to communicate with each other and requirements necessary to satisfy legitimate public policy interests.

10. Relationship to Other Chapters

In the event of inconsistency between this Annex and any Chapter, this Annex shall prevail to the extent of such inconsistency.

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