



# Trade in Services Agreement (TiSA) Annex on Telecommunications Services

**WikiLeaks release: June 3, 2015**

**Keywords:** TiSA, Trade in Services Agreement, WTO, GATS, G20, BCBS, IAIS, IOSCO, FATF, OECD, United States, European Union, Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, Uruguay, draft, bracketed text, negotiating positions, telecommunications, competition

**Restraint:** LIMITED

**Title:** Trade in Services Agreement (TiSA) Annex on Telecommunications Services

**Date:** February 20, 2015

**Group:** Trade in Services Agreement

**Author:** Trade in Services Agreement country negotiators

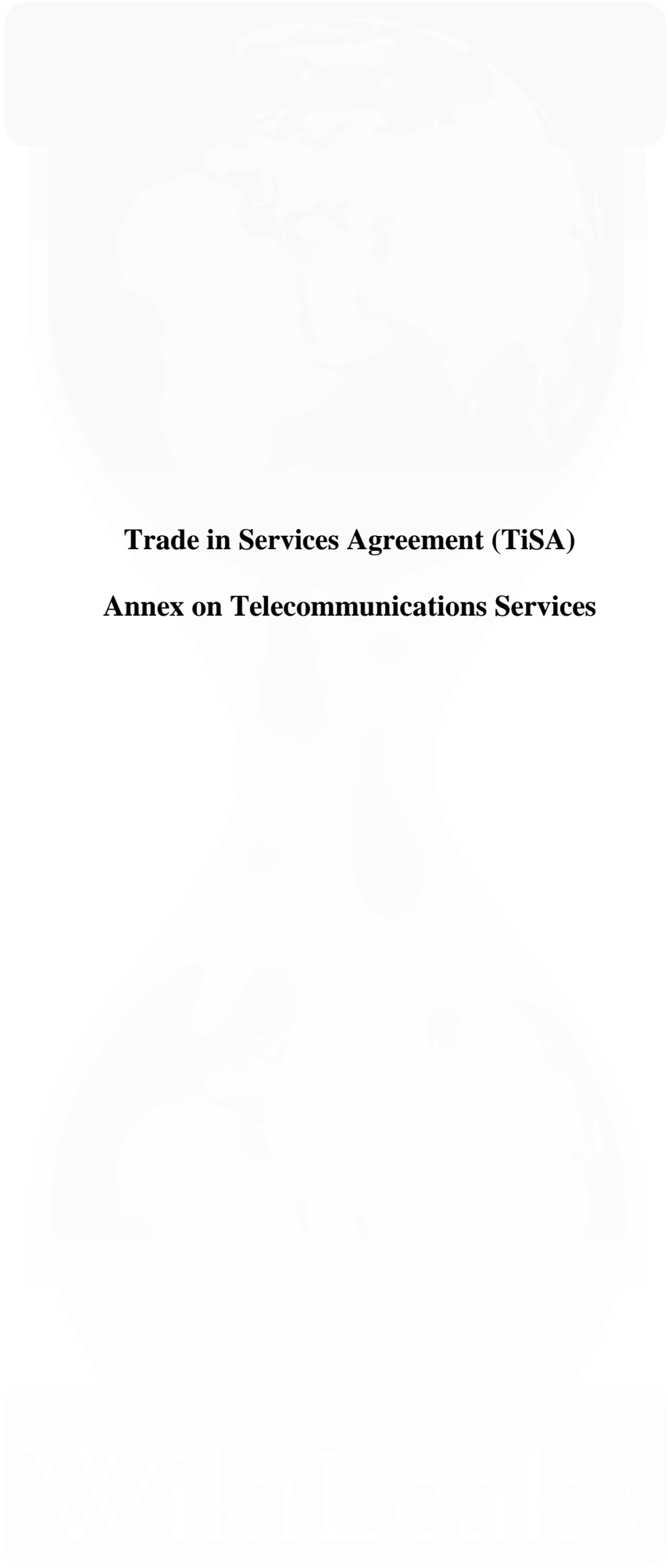
**Link:** <https://wikileaks.org/tisa/telecommunication/>

**Pages:** 39

## Description

This is a secret draft of the Trade in Services Agreement (TiSA) Annex on Telecommunications Services, including negotiating positions. TiSA is currently under negotiation between the United States, the European Union and 23 other countries. The Agreement creates an international legal regime which aims to deregulate and privatize the supply of services - which account for the majority of the economy across TiSA countries. The draft Annex concentrates on standardizing a communications regulatory regime across all TiSA countries, preventing states from discriminating against foreign or foreign-owned telecommunications providers where to do so would create obstacles to trade or result in a loss of competition, and ensuring access for foreign companies to undersea fiber-optic cables and landing facilities.

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**Trade in Services Agreement (TiSA)**  
**Annex on Telecommunications Services**

## Article 1: [EU propose: Scope] and Coverage

X. [EU/IS/NO/TR propose: This Annex applies to measures by a Party affecting trade in telecommunication services.] [TR propose: subject to any terms, limitations, conditions and qualifications set out in its schedule.]

[CA propose alt: This Annex applies to measures adopted or maintained by a Party relating to telecommunications networks or services.]

1. [JP/KR/MX/PA/PE/US propose: This Annex applies to:
  - (a) measures relating to access to and use of public telecommunications [networks or] services;
  - (b) measures relating to obligations [US propose: regarding] [PA/PE propose: of] suppliers [CR propose:<sup>1</sup>] of public telecommunications [networks or] services; and
  - (c) other measures relating to public telecommunications [networks or] services;]
  - (d) [IL/KR propose: measures relating to value-added services.]

[CR propose: subject to any terms, limitations, conditions and qualifications set out in its schedule.]

[AU/PA/PE/US propose: 2. This [Annex] shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:

- (a) Article 3 [Access to and Use of Public Telecommunications Services] shall apply with respect to cable or broadcast service suppliers' access to and use of public telecommunications services; and
  - (b) [AU/PA/US propose: Article 10 [Transparency] shall apply to any technical measures to the extent that such measures also affect public telecommunications services.]]
3. [AU/CA/PA/PE/US propose: Nothing in this Annex shall be construed:

[PE/US oppose: CA propose: (a) to require a Party to authorize a service supplier of another Party to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services, except as specifically covered in this Section;]

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<sup>1</sup> CR propose: [With respect to Costa Rica, supplier of public telecommunications networks shall be understood as an "operator", which means a natural or juridical person, public or private, that operates public telecommunication networks with the proper authorization, and that may or not provide telecommunications services available to the public.]

[AU/CA/PA/PE/US propose: (b) to 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;]

- (c) to prevent a Party from prohibiting persons operating private networks from using their [US propose: private] networks to [US propose: supply] [US oppose: provide] public telecommunications networks or services to third persons.]

[AU/PE/US propose: (x) to 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.]

**Article 2: [EU: Openness of Telecommunication Services Markets]****1. [CO/JP/EU/CH propose; CA/IL/KR oppose: *Foreign Ownership*]**

**[CO/JP propose:** Each Party shall endeavour to] **[CH propose:** Parties should] **[CO/JP/CH propose:** allow] **[CO/JP propose:** full] **[CO/JP/CH propose:** foreign participation in] **[JP propose:** its] **[CO/CH propose:** their] **[CO propose:** electronic services,] **[CO/JP/NO/CH propose:** electronic commerce and telecommunications services sectors, through establishment or other means] **[CO/CH/NO propose:** without limitations of foreign capital participation].

**[EU/NO propose:** No Party shall impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment as a condition to supply telecommunication services through the establishment of a commercial presence.]

**[JP/KR propose:** Subject to a Party's schedule of specific commitments, **[JP propose:** each] **[KR propose:** a] Party shall not adopt or maintain **[KR propose:** market access or national treatment] limitations on **[JP propose:** full] foreign participation in its electronic commerce and telecommunications services sectors, through establishment or other means.]

**[EU propose; IL/KR oppose: 2. *Cross-border trade in telecommunication services*]**

No Party shall impose limitations, in the meaning of Article I-3 (Market Access) and I-4 (National Treatment), on the ability of services providers to supply telecommunication services on a cross-border basis.]

**Article 3: [CO/EU: Telecommunication Regulatory Body] [AU/CA/CL/NZ/US propose: Independent Regulators] [CO/CH propose: Regulatory] [JP/PE propose: Independent Regulatory Body] [CO propose: and Enforcement] [CO/CH propose: Authorities]**

1. **[CH propose alt: 1.** Parties should ensure that relevant regulatory authorities are legally distinct and functionally independent from any telecommunications service suppliers, and have sufficient legal authority and adequate resources to perform their functions effectively.]

**[alt 2. CA/CL/TW/CO/CR/EU/HK/IS/IL/JP/KR/LI/NZ/NO/PA/PE/TR propose; AU/US considering: [CO/CR oppose: With a view to ensuring the independence and impartiality of telecommunications regulatory bodies,] each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of [CA/CL/EU/JP/NO oppose: public] telecommunications services. [CR considering: To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest<sup>2</sup> [KR propose: equity] or maintain an operating or management role in any such supplier].]**

2. **[CA/CO/NO propose: Each Party shall ensure that its telecommunications regulatory body does not accord] [AU/CL/TW/EU/IS/IL/KR/LI/NZ/PE/US propose; PA considering: No Party may accord] more favourable treatment to a supplier of [telecommunications services in its territory than that accorded to a like service supplier of another Party [EU/KR propose; CA/PA/PE/US oppose: *inter alia*] on the basis that the supplier receiving more favourable treatment is owned by the [AU/CL/EU/JP/KR/LI/NO/PE/TR oppose: national] government of the Party.]**

[Note: EU suggests moving alt 2 to Article 2 [Openness of Telecommunication Services Markets]]

3. **[AU/CA/CL/TW/CO/CR/EU/IS/LI/JP/KR/MX/NZ/NO/PA/PE/TR/US propose; CH oppose: Each Party shall provide its telecommunications regulatory body [or [IS considering: other] competent authority] [CA/EU/NO/TR propose; CL/JP/CO/CR/IL/NZ/PA oppose: with the adequate financial and human resources to carry out its task and with] the authority to [EU propose; CL/PE oppose; CA/PA/US considering: regulate the sector and] enforce the Party's measures relating to the obligations set out in (Articles 10 (Access to and Use of Public Telecommunications), 11 (Obligations Relating to Suppliers of Public Telecommunications Services), and 12 (Obligations Relating to Major Suppliers) [EU/PE propose: set out in this Annex]. Such authority shall include the ability to impose] [CL/CO/MX/CR/PA propose: *no qualifier*] [AU/CA/CL/KR/PE/TR/US propose: effective] [AU/CA/EU/NO/TR propose: and] [CA/CL/JP/NZ/NO/PA propose; PE oppose: appropriate] [AU/TW/CO/EU/TR propose: proportionate] sanctions, [CR considering: which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licenses] [JP propose: orders for report or inspection]].**

4. **[AU/CA/CL/CR/TW/CO/EU/HK/IL/IS/LI/JP/KR/NO/PA/PE/CH/TR/US propose: Each Party shall ensure that regulatory decisions and procedures of its telecommunications**

<sup>2</sup> **[AU/CA/CO/TW/EU/IS/JP/KR/LI/NO/NZ/PE/US propose: This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.] [EU/IS/NO: In such a case, the Party shall ensure effective structural separation of the regulatory function with the activity associated with ownership or control].**

regulatory body [**CA/CH/CR/IL considering:** or other competent authority,] [**KR/US propose:** including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for non-government public telecommunications services], are impartial with respect to all market participants.]

5. [**IS/JP/KR/NO/PA/CH/US propose:** Each Party shall [**CH propose:** should] ensure that its regulatory decisions, [**JP oppose:** and the results of appellate proceedings regarding such decisions,] are [**CH oppose:** made publicly available].

**Article 4: Technological Neutrality [US propose: Flexibility in the Choice of Technology]**

1. **[CO/CR/US propose:** No Party may prevent a supplier of **[CR/US propose: public]** telecommunications services **[CO propose: and electronic services]** from choosing the technologies it desires to use to supply its services subject to requirements necessary to satisfy legitimate public policy interests, **[CR oppose: provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.]]**

2. **[CO/US propose:** If a Party adopts a measure that mandates the use of a specific technology or standard, or otherwise limits a supplier's ability to choose the technology it uses, to supply a service, it shall do so on the basis of:

- (a) legislation; or
- (b) a rulemaking

in which the Party determines that market forces have not achieved, or could not reasonably be expected to achieve, its legitimate public policy objective **[TR propose: such as, the prevention of harmful interferences, ensuring the technical quality of service, protection of public health against electromagnetic fields, ensuring the maximization of radio frequency sharing, safeguarding efficient use of spectrum or ensuring the fulfillment of requirements under the ITU radio regulations.]]**

1. **[KR propose alternative to CO/US text:** No Party shall prevent suppliers of public telecommunications networks or services or value-added 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 or standards that a supplier of public telecommunications networks or services or value-added services may use to supply its services, provided that the measure is designed to satisfy a legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

3. For greater certainty, a Party retains the right to define its own legitimate public policy objectives; and whenever such a measure is based on relevant international standards, it shall be rebuttably presumed not to create unnecessary obstacles to trade.]



**[CO propose: Article 5: Interoperability]**

**[CO propose:** Each Party shall endeavor to promote the interoperability of ICT services, electronic services, including electronic government services, and technologies where appropriate.]



**[EU oppose: Article 6: Regulatory Flexibility [US propose: Approaches to Regulation]**

**[US propose: *Regulatory Flexibility*]**

1. **[CA/NO/PA/US propose:** The Parties recognize the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications services. **[US propose:** Accordingly, the Parties recognize that regulatory needs and approaches will differ among markets, and that each Party may determine how best to implement its obligations under this Annex.]

- (a) In this respect, the Parties recognize that a Party may:
  - (i) 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; **[CA/PA propose: or]**
  - (ii) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be competitive, or those with low barriers to entry. **[AU propose: or;]**
  - (iii) **[AU propose:** use any other appropriate means that benefit the long term interests of users.]
- (b) **[AU/PA/US propose:** Where a Party has engaged in direct regulation, that Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:
 

**[US propose alt:** (b) Where a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying such a regulation to a telecommunications service, if its telecommunications regulatory body, or other competent body determines that:]

  - (i) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;
  - (ii) enforcement of the regulation is not necessary for the protection of consumers; and
  - (iii) forbearance is consistent with the public interest, **[US propose:** which may include] [including] promoting and enhancing competition between suppliers of public telecommunications services.]

**[US propose; KR/CH oppose:**

2. Each Party shall ensure that any supplier of telecommunications services may petition its telecommunications regulatory body to forbear from apply any specific regulation with

respect to that supplier or any telecommunications services offered by that supplier.

3. Each Party shall require its telecommunications regulatory body to adopt a decision granting or denying the petition in whole or in part.

*Review of Regulations*

4. Each Party shall require their telecommunications regulatory body to:

- (a) regularly review all regulations adopted by that Party's telecommunications regulatory body that apply to the operations or activities of any provider of telecommunication service subject to its jurisdiction, to the extent provided for in its law;
- (b) determine after such review whether any such regulation is no longer necessary as the result of meaningful economic competition between providers of such service; and
- (c) repeal or modify any such regulation, where appropriate, pursuant to subsection (b).]

**Article 7: [CA/PA propose: Licensing and Other] Authorizations [JP/CH propose: and Licenses] [PA propose: Procedures]**

[Note: Parties to consider alternative term to license, such as authorisation.]

1. **[AU/CA/CL/TW/CO/CR/EU/HK/IS/IL/JP/KR/LI/MX/NO/PA/PE/CH/TR/US propose:** When a Party requires a supplier of **[EU oppose: public]** telecommunications services to have a license, the Party shall ensure the public availability of:
  - (i) [all the licensing criteria and procedures it applies;]
  - (ii) **[HK considering:** the period of time it normally requires to reach a decision concerning an application for a license; and]
  - (iii) **[EU oppose; CH considering:** the terms and conditions of all licenses in effect.]
  
2. **[AU/CA/CL/TW/CR/CO/EU/HK/IS/IL/JP/KR/LI/MX/NO/PA/PE/CH/TR/US propose:** Each Party shall ensure that, on request, an applicant receives the reasons for the
  - (i) denial of a license;

**[PA/CH oppose:**

  - (ii) **[JP considering:** imposition of supplier-specific conditions on a license;]
  - (iii) revocation of a license; or
  - (iv) **[EU oppose; CR considering:** refusal to renew a license.]]]
  
3. **[CA/TR propose:** Each Party shall ensure that, once the application for a license is considered complete, a decision whether to grant the license is made within a reasonable period of time.]
  
4. **[AU/CA/IL/KR/MX/NZ/PA/PE/CR oppose: [JP/TW propose:** Each Party shall endeavour to] **[EU/NO/CH/TR propose:** Parties should] **[EU/JP/NO/CH/TR propose:** authorize the provision of [competitive] telecommunications services, wherever possible, on simple notification by a service] **[JP/CH/TR propose:** supplier.]]
  
5. **[AU/CR/IL/KR/PA/PE/TR oppose: [EU/JP/NO/CH propose:** and shall not require] **[TW propose:** shall endeavour not to require] **[JP propose:** legal establishment] **[CH propose:** commercial presence] **[JP/CH propose:** as a condition] **[JP propose:** of supplying a service] **[CH propose:** for the supply of such services.]]
  
6. **[AU/CR/PA/PE oppose: [EU/JP/NO/TR propose:** No Party shall impose or maintain any limitations on the number of licenses except] **[CH propose:** Licenses shall be restricted in number only] **[EU/JP/CH/TR propose:** for the purpose of [EU/NO oppose: addressing a limited set of

specified regulatory issues, such as] the assignment of frequencies] [EU/NO/CH/TR propose: and other scarce resources.]]]



## Article 8: Transparency

1. **[US propose:** Further to [placeholder for Transparency article in core text],] **[PA/US propose:** each Party shall ensure that:

- (c) its measures relating to public telecommunications services are made publicly available, including:
  - (i) **[US propose:** tariffs and other] terms and conditions of service;
  - (ii) specifications of technical interfaces;
  - (iii) conditions for attaching terminal or other equipment to the public telecommunications network; and
  - (iv) notification, permit, registration, or licensing requirements, if any.]
  - (v) **[US propose:** general procedures relating to resolution of telecommunications disputes provided for in Article 9 (Resolution of Dispute); and
  - (vi) any measures of the telecommunications regulatory body where the government delegates to other bodies the responsibility for preparing, amending, and adopting standards-related measures affecting access and use.]

2. **[JP propose:** Each Party shall] **[CH propose:** Parties should] **[JP/CH propose:** ensure that all laws, regulations, procedures, and administrative rulings of general application] **[JP propose:]** **[JP/CH propose:** affecting Telecommunications Services and trade in Telecommunications Services are published or otherwise made] **[JP propose:** available to the public] **[CH propose:** publicly available, and, to the extent practicable, are made subject to public notice and consultation procedures].

3. **[JP propose:** Each Party shall, in accordance with its laws and regulations, endeavour to provide, except in cases of emergency or of purely minor nature, a reasonable opportunity for comments by the public before the adoption, amendment or repeal of regulation of general application that affect Telecommunications Services and trade in Telecommunications Services.]

**[US propose: X.** Each Party shall ensure that where a telecommunications regulatory body seeks input<sup>3</sup> for a proposal for a regulation:

- (a) it shall make the proposal public or otherwise available to any interested persons;
- (b) it shall include an explanation of the purpose of and reasons for the proposal;

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<sup>3</sup> **[US propose:** For greater certainty, seeking input does not include internal governmental deliberations.]

- (c) it shall provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;
- (d) it shall, to the extent practicable, make publicly available all relevant comments filed with it; and
- (e) it shall respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.<sup>4]</sup>

**[CA propose:** *Public Availability of Information*

1. Each Party shall make publicly available:

- (a) the current state of allocated frequency bands, except for detailed identification of frequencies allocated or assigned for specific government uses;
- (b) the relevant procedures of its telecommunications regulatory body, including with respect to resolution of disputes and interconnection negotiations with a major supplier in its territory;
- (c) any interconnection agreements in effect between a major supplier and other suppliers of public telecommunications services in its territory, reference interconnection offers, or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of telecommunications services;
- (d) its measures relating to public telecommunications services, including:
  - (i) regulations of its telecommunications regulatory authority, and the basis for such regulations;
  - (ii) regulatory decisions and the results of appellate proceedings regarding such decisions;
  - (iii) tariffs and other terms and conditions of service;
  - (ii) specifications of technical interfaces;
  - (iii) conditions for attaching terminal or other equipment to the public telecommunications network;
  - (iv) notification, permit, registration, or licensing requirements, if any;
- (f) information on bodies responsible for the preparation and adoption of standards-related measures.]

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<sup>4</sup> [US propose: For greater certainty, a Party may consolidate its responses to the comments received from interested persons.]

2. **[CA propose:** Where a Party requires an authorisation for the supply of a telecommunications service, the Party shall make publicly available:
- (a) all the applicable authorisation criteria and procedures it applies;
  - (b) the time frame it normally requires to reach a decision concerning an application for an authorisation; and
  - (c) the terms and conditions of all authorisations in effect.]

Placeholder for additional transparency proposals related to Public Availability of Information.

*Regulatory Transparency*

Placeholder for additional transparency proposals related to Regulatory Transparency.



**Article 9: [Resolution of [CA/PA propose: Domestic Telecommunications] Disputes***Recourse to Regulatory Authority*

1. **[AU/CA/CL/EU/JP/PA/PE/US propose:** Each Party shall ensure that:
  - (a) **[JP/PE/US propose:** persons may have] **[CA/EU/PA propose; US oppose:** a supplier of a public telecommunications network or service of the other Party has timely] recourse to [its] [a] **[AU/CA/CL/EU/JP/PA/PE/US propose:** telecommunications regulatory body] **[AU/CL/EU/JP/PA/PE/US propose:** or other competent authority of the Party] to resolve disputes **[KR propose; JP oppose:** between suppliers of public telecommunications networks or services] **[EU propose:** in connections with rights and obligations that arise from this Annex] **[CA/JP/PA/PE/US propose:** regarding the Party's measures relating to matters set out in Articles 3 (Access to and Use of Public Telecommunications Services); 4 (Obligations Relating to Suppliers of Public Telecommunications Services); 5 (Obligations Relating to Major Supplier of Public Telecommunications Services)] **[JP/ US propose:** and 14 (International Submarine Cable Systems)] **[US oppose; CA/PA propose:** and that, under the domestic law of the Party, are within the regulatory body's jurisdiction;]
  - (x) **[AU/US propose; JP oppose:** if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;]
  - (b) **[AU/CA/PA/PE/US propose:** suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory **[AU/PA/PE/US propose:** may seek review by] **[CA/PA propose:** have recourse to], **[JP oppose:** within a reasonable and publicly available period of time after the supplier requests interconnection], **[AU/CA/PA/PE/US/TR propose:** a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier].]

*Reconsideration*

2. **[CO/PA/PE/US propose:** Each Party shall ensure that **[CO/PA propose:** any enterprise] **[PE/US propose:** any person] whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body] may petition the body to reconsider that determination or decision.] **[CO/PE/US propose:** No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays the determination or decision.] **[KR propose:<sup>5</sup>**

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<sup>5</sup> **[KR propose:** Paragraph 2 does not apply to a determination or decision of the telecommunication regulatory body with respect to disputes between service suppliers or between service suppliers and users.]

**[PA propose:** Unless otherwise permitted by the applicable domestic legislation, paragraph 2 does not apply to:

- (a) a determination or decision related to the establishment and application of spectrum and frequency management policies; or
- (b) a determination or decision related to the establishment and application of rulings of general application.]

### *Judicial Review*

3. **[AU/CO/US propose:** Each Party shall ensure that any **[AU/CO propose:** enterprise] **[KR/US propose:** person] whose legally protected **[PA propose:** Any supplier of public telecommunications networks or services that is aggrieved or whose] **[AU/CO/PA/US propose:** interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body] **[AU/CO/PA/US propose:** may obtain] **[AU/CO/PA/US propose:** review of the determination or decision by an impartial and independent judicial authority of the Party.] **[AU/CO/US propose:** No Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body **[US propose alt:** issues an order that the determination of decision not be enforced while the proceeding is pending.] stays the determination or decision.]

### **[EU/CA propose alt: Appeal and Review]**

2. Each Party shall ensure that a services supplier whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the domestic law of the Party. Written reasons for the determination or decision of the judicial, quasi-judicial or administrative authority shall be given. Each Party shall ensure that such determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.

3. An application for judicial review shall not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays such determination or decision.

**Article 10: Access to and Use of Public Telecommunications [CH propose: Transport Networks and] Services<sup>6</sup>**

X. **[CO/PA/CH propose; PE oppose:** For all public telecommunications **[CH propose: transport network and] services**, each Party shall apply paragraph 5 of the Telecommunications Annex of the General Agreement on Trade in Services (GATS), *mutatis mutandis*. To that end the Telecommunications Annex of the GATS is incorporated into and made a part of this [Annex].]

X. **[CO/PA/CH propose; PE oppose:** For purposes of the incorporation of the Telecommunications Annex of the GATS under subparagraph (a), the term:

- (a) “Member” in the GATS means “Party”;
- (b) **[CH oppose:** “Public Telecommunications Transport Network and Service” and “Public Telecommunications Transport Service” in the GATS means “Public Telecommunications Service”];
- (c) “Schedule” or “Scheduled services” means the schedule to this Agreement.]

**[AU/CL/JP/KR/PE/US propose; NO considering; alt:**

1. Each Party shall ensure that any service supplier of another Party is accorded access to and use of any public telecommunications service, 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 to:

- (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
- (b) **[JP considering:** provide services to individual or multiple end-users over leased or owned circuits;]
- (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, processing, and conversion functions; and
- (e) use operating protocols of the service supplier’s choice.

3. Each Party shall ensure that service suppliers of another Party may use public telecommunications 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

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<sup>6</sup> **[AU/CR/PE/US propose:** For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications service within its territory.]

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, and protect the privacy of personal data of end users of public telecommunications networks or services, provided 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.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that 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 interconnection with such networks or services;
- (b) requirements, where necessary, for the inter-operability of such networks and services;
- (c) 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; and
- (d) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.]

**[CA/KR/US propose: Article 11: Obligations Relating to Suppliers of Public Telecommunications Services**

*Interconnection*

1. **[AU/CA/CL/CO/HK/KR/NZ/PA/PE/US propose:** Each Party shall ensure that suppliers of public telecommunications services in its territory:
  - (a) provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of another Party **[PE propose:** at reasonable rates] **[MX propose:** at competitive rates] **[JP propose:** on commercial terms]; and
  - (b) take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing these services.]
  
2. **[AU/CA/CO/HK/KR/NZ/US propose:** Each Party shall provide its telecommunications regulatory body the authority to require interconnection **[PA oppose:** at reasonable rates] **[MX propose:** at competitive rates.]]

**[EU/NO propose alt:**

Each Party shall ensure that:

- (a) Any telecommunication service provider has a right and when requested by another operator an obligation to negotiate interconnection with each other for the purpose of providing publicly available telecommunication networks and services.
- (b) Telecommunication service providers that acquire information from another supplier in the process of negotiating interconnection agreements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted and stored.]

*Resale*

3. **[CO/JP/PA/PE propose; CR/EU/KR/LI/MX/NO oppose:** Each Party shall ensure that a] supplier **[CO/JP/PE propose:** of public telecommunications [transport] networks and services] in its territory does not impose unreasonable or **[CO/JP/PA/PE propose:** discriminatory] conditions or limitations on the resale of its public telecommunications services.]

**Article 12: Obligations Relating to Major Suppliers [PA propose:<sup>7</sup>]**

**[CA/EU/IS/LI/NO propose; CH oppose:** *Access to essential facilities*

Each Party shall ensure that a major supplier in its territory grants access to its essential facilities, which may include, inter alia, network elements, **[EU/NO propose: and]** associated facilities [and ancillary services,] to suppliers of telecommunication services on reasonable and non-discriminatory terms and conditions.] **[EU/NO propose: except when, following a market review, the regulatory authority determines that this is not necessary to achieve effective competition.]**

**[CA:** Each Party may determine in accordance with its laws and regulation those essential facilities required to be made available in its territory.]

*Treatment of Major Suppliers*

1. **[AU/CA/CL/CO/IL/IS/JP/KR/LI/NO/NZ/PA/PE/US propose:** Each Party shall ensure 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 **[CL/CO/JP/MX/NZ/PE/US propose:** in like circumstances] to **[AU/CA/IL/JP/KR/MX/NZ/PE/US oppose; CO considering:** itself,] its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (c) the availability of technical interfaces necessary for interconnection.]

*Competitive Safeguards*

2. **[AU/CA/CH/CL/CO/CR/EU/HK/IS/JP/KR/LI/MX/NO/NZ/PA/PE/TR/TW/US propose; IL considering:** Each Party shall maintain appropriate measures for the purpose of preventing suppliers of **[CO/MX/PE/US propose: public]** telecommunications **[CA/CO/MX propose: networks and]** services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.]

3. **[AU/CA/CH/CL/CO/CR/EU/IS/JP/HK/KR/LI/NO/NZ/PA/PE/TR/TW/US propose; IL/MX considering:** The anticompetitive practices referred to in paragraph 2 **[CH propose: shall]** 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 **[CO/PE/US propose: public]** telecommunications **[CA/CO propose: networks and]** services **[CH**



**propose:** of another Party], technical information about essential facilities and commercially relevant information that are necessary for them to provide services [CR **propose:** <sup>8</sup> ] [HK **propose;** CL **considering:** resulting in anticompetitive effect to the relevant markets].

### *Resale*

[US **propose alt:** 4. Each Party shall ensure that major suppliers in its territory:

- (a) offer for resale, at reasonable rates , to [IL **propose:** licensed] 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.]

X1. 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 4, based on the need to promote competition or to benefit the long-term interests of end-users.

X2. 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 4, without prejudice to the Party's decision on such a request.

### *Interconnection*

X. [CH **propose:** Each Party shall ensure that [all] suppliers of public telecommunications transport networks or: services in its territory have the obligation, in accordance with paragraphs 2.1 to 2.5 of the GATS Reference Paper on Basic Telecommunications (Interconnection), to:

[provide, directly, or indirectly within the same territory, interconnection: on commercial terms and in a non-discriminatory manner with other suppliers of public telecommunications / transport: networks or / services of another Party /

CH is considering whether its proposal could be merged into Article 11 or whether it would stay as Article X.

5. [CA/HK/PA **propose;** AU/CO/EU/JP/KR/PE/US **oppose:** Subject to a Party's conditions, limitations and qualifications inscribed in its Schedule of Specific Commitments] [AU/CA/CL/CO/CR/JP/KR/MX/PA/PE/US **propose:** Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications [CA **propose:** networks or] services of another Party:

<sup>8</sup> [CR **propose:** This information shall be provided according to the applicable national legislation.]

- (a) at any technically [**CR propose:** and economically] feasible point in the [**US propose:** major supplier's] network;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (c) 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;
- (d) in a timely fashion, 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 suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (e) on 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.]

#### *Interconnection Offers and Agreements*

6. [**AU/CA/CL/CO/CR/EU/JP/KR/NO/NZ/PE/US propose:** Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

- (a) a reference interconnection offer or [**CR considering:** another standard interconnection offer] containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (b) the terms and conditions of an interconnection agreement in effect.

In addition, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.]

#### *Public Availability of Interconnection Offers and Agreements*

[**US:** proposes deleting the above sub-title "*Public Availability of Interconnection Offers and Agreements*".]

[**CH:** The issues of "interconnection offers" and "interconnection agreements" should be covered here (in para. 7).]



7. [CO/CR/PA propose: If a major supplier in the territory of a Party has a reference interconnection offer] [CO propose: or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of telecommunications services] [CO/CR/PA propose: the Party shall require the offer to be made publicly available.] [TW propose; CR considering: Based on the negotiations between major suppliers, reference interconnection offer shall be made publicly available by a telecommunications regulatory body, except in the case of commercial confidentiality, patents, and other intellectual property.]

[CL/NZ/PE/US propose alt: 7. Each Party shall provide a means for suppliers of another Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring:

- (a) the public availability of interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory; or
- (b) the public availability of rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or
- (c) the public availability of a reference interconnection offer.]

*Public Availability of the Procedures for Interconnection Negotiations*

[US: proposes deleting the above sub-title “*Public Availability of the Procedures for Interconnection Negotiations*”.]

8. [AU/CL/CO/EU/JP/NO/NZ/PA/PE/US propose: Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.]

9. [CO/PA/PE/NO propose: Each Party shall require] [NO propose: or have the possibility to require] [CO/PA/NO propose: a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.<sup>9</sup>]

*Public Availability of Interconnection Agreements Concluded with Major Suppliers*

[US: proposes deleting the above sub-title “*Public Availability of Interconnection Agreements Concluded with Major Suppliers*”]

10. [CO/PA propose: Each Party shall make publicly available interconnection agreements in effect] [TR propose: without prejudice to the confidentiality of commercial secrets between a major supplier] [TR propose: which does not have a reference interconnection offer] in its territory and other suppliers of public telecommunications services in its territory.]

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<sup>9</sup> [US propose: The United States may comply with paragraph 9 by requiring filing with a state regulatory authority.]

**[US/JP propose: *Provisioning and Pricing of Leased Circuits Services*]**

11. Each Party shall ensure that a major supplier in its territory provides service suppliers of another Party **[JP propose: with]** leased circuits services that are public telecommunications services **[JP considering: in a reasonable period of time]** on terms and conditions, and at rates, that are reasonable and non-discriminatory, **[JP considering: and based on a generally available offer].**

12. In carrying out paragraph 11, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of another Party at capacity-based, and cost-oriented prices.

*Unbundling of Network Elements*

13. **[CO/JP propose; IL/KR/CH/TR oppose; MX considering:** Each Party, through its regulators, shall ensure that major suppliers in its territory provide public telecommunications service suppliers with access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable **[MX propose: competitive]**, non-discriminatory and transparent. Each Party shall ensure, through its regulators, to seek and consider the views of interested persons before deciding which network elements shall be unbundled.]

**[EU oppose: Article 13: Undersea Cables and Landing Facilities and Services**

1. **[CO/US propose:** Where a supplier of telecommunications services in the territory of a Party operates a submarine cable system to provide public telecommunications services, that Party shall ensure that the supplier accords suppliers of public telecommunications services of another Party reasonable and non-discriminatory treatment with respect to access<sup>10</sup> to that submarine cable system, including landing facilities.]

2. **[CO/US propose:** Where a major supplier of international public telecommunications services in the territory of a Party controls cable landing facilities and services for which there are no economically or technically feasible alternatives, the Party shall ensure that the major supplier: **[KR propose:**<sup>11</sup>

(a) permits suppliers of public telecommunications services of another Party to:

(i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and

(ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links of any supplier of telecommunications in the submarine cable landing station on terms and conditions, and at cost-oriented rates, that are reasonable, transparent, and non-discriminatory; and

(b) provides suppliers of telecommunications of another Party international leased circuits, backhaul links, and cross-connect links in the submarine cable landing station on terms and conditions, and at rates, that are reasonable, transparent, and non-discriminatory.<sup>12</sup>]

3. **[US propose:** PLACEHOLDER for undersea cable access provisions related to protecting the rights to lay, maintain and repair submarine cables.]

<sup>10</sup> **[US propose:** With respect to a supplier of the other Party that does not own facilities in the territory of the Party in which the cable landing system is located, that Party may comply with paragraph a by ensuring access to the submarine cable system through facilities that the supplier of another Party leases from a licensed supplier of public telecommunications services in the territory of the Party.]

<sup>11</sup> **[KR propose:** Paragraph 2 applies to Korea only with respect to suppliers of public telecommunications services that Korea has licensed as facilities-based suppliers of public telecommunications services.]

<sup>12</sup> **[US propose:** Notwithstanding paragraph (b), a Party may permit a major supplier in its territory to limit access to or use of its submarine cable landing station if capacity at the station is unavailable.]

**Article 14: Universal Service**

[AU/CA/CL/TW/CO/CR/EU/HK/IL/IS/JP/KR/LI/NZ/NO/PA/PE/CH/TR/US propose; MX **considering:** Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain. 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.]

## Article 15: Allocation and Use of Scarce Resources

1. [AU/CA/CL/CO/CR/EU/HK/IS/IL/JP/KR/LI/MX/NO/PA/PE/CH/TR/TW/US **propose**; NZ **considering**: 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.]

### *Spectrum*

2. [AU/CA/CL/CO/CR/EU/HK/IS/JP/KR/MX/NZ/NO/PA/PE/CH/TR/TW/US **propose**: Each Party shall make publicly available the current state of frequency bands allocated [CO/HK/KR/PE/CH/TR **oppose**: and assigned to specific [JP **oppose**: suppliers] [JP **propose**: enterprises]] but retains the right not to provide detailed identification of frequencies allocated [CH **considering**: or assigned] for specific government uses.]

3. [CH **propose**: Parties are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.]

[AU/CA/CL/TW/CO/EU/HK/IL/JP/KR/NZ/NO/PA/PE/TR/US **propose**; CR **considering**: When making a spectrum allocation for commercial [US **considering**: telecommunication] services, each Party shall endeavour to rely on an open and transparent process that considers the overall 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. To this end, each Party shall have the authority to use mechanisms such as auctions, where appropriate to assign spectrum for commercial use.]

4. [AU/CA/CL/CO/CR/EU/HK/IL/JP/KR/NZ/PA/PE/TR **propose**: A Party's measures allocating and assigning spectrum and managing frequencies [CL/CO/KR **propose**: are not measures that are *per se* inconsistent with Article I-X (Market Access)] [AU/CA/CR/EU/HK/IL/JP/NZ/PA/TR **propose**: shall not be considered inconsistent with Article I-3 (Market Access)] [PA **propose**: provided that those measures are applied in a manner that is consistent with the other provisions of this Agreement]. [AU/CA/CL/CR/KR/EU/JP/NZ/PA/PE/TR **propose**: Accordingly.] [AU/CA/CL/CO/EU/TW/IL/JP/KR/NZ/PA/PE/TR/US **propose**: Each Party retains the right to establish and apply its spectrum and frequency management policies that may [TW/IL/JP/PA **propose**: limit] [AU/CA/CL/CO/CR/EU/KR/NZ/PE/TR/US **propose**: have the effect of limiting] the number of suppliers of a public telecommunications service [AU/CA/CL/CO/EU/JP/KR/PE/TR/US **propose**; CR **oppose**: provided it does so in a manner consistent with other provisions of this Agreement] [AU/CA/CL/CO/CR/EU/JP/KR/NZ/PA/PE/TR/US **propose**: This includes the ability] [AU/EU/KR **oppose**: Each Party also retains the right] [AU/CA/CL/CO/CR/EU/JP/PA/US/KR/NZ/PE/TR **propose**: to allocate frequency bands taking into account present and future needs] [AU/CA/CL/CO/CR/EU/JP/KR/NZ/PA/TR/US **propose**: and spectrum availability].

Alt: 4. [AU/CA/CL/CO/EU/LI/NO/PA/PE/TR **propose**; TW/IL/KR/MX/US **considering**: A Party's measures allocating and assigning spectrum and managing frequencies shall not be

considered inconsistent with Article I-3 (Market Access). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting the number of suppliers of a public telecommunications service provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account present and future needs, and spectrum availability.

6. **[AU/CA/CR/PE oppose; JP/TR propose:** Each Party shall] **[CH propose:** Parties should] **[JP/CH/TR propose:** maximize the availability and use of spectrum by] **[JP/TR propose:** endeavouring] **[CH propose:** working] **[JP/CH/TR propose:** to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable **[TR propose:** decisions and] recommendations of the International Telecommunication Union Radiocommunication Sector (ITU-R)].

#### *Numbers*

7. **[CO/IL/JP/PE/US propose; CR/EU/TR oppose:** Each Party shall ensure **[IL propose:** licensed] suppliers of public telecommunications services of another Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

- (a) **[CL/CO/CR/JP/KR/PE/TW/TR oppose:** To the extent that a Party extends eligibility for access to telephone numbers to services suppliers other than telecommunications services suppliers, such eligibility will be extended to suppliers of like services of another Party on a non-discriminatory basis.]
- (b) **[CL/CO/CR/IL/JP/KR/PE/TW/TR oppose:** No Party shall prevent suppliers eligible to obtain numbers from making such numbers available to other services suppliers.]]

8. **[CR/TR oppose; CA/CO/EU/IL/JP/US propose:** Each Party shall ensure that **[IL propose:** licensed] suppliers of public telecommunications services **[EU/TW oppose:** and any other suppliers] **[EU oppose:** eligible for access to telephone numbers] in its territory provide number portability **[CO/JP propose; CA/EU oppose:** and any other services designated by that Party] **[HK propose; EU oppose:** where applicable] **[CO/HK propose; CA/EU oppose:** to the extent technically **[CO/HK propose; CA/EU oppose:** and economically] feasible,] and on reasonable terms and conditions.]]

**[CL/CR/TW/KR/TR propose alt; IL considering:** 8. Each Party shall ensure that **[CR/IL propose:** licensed] suppliers of public telecommunications services **[KR/TR propose:** in its territory] provide number portability **[CR propose:** for mobile services] **[KR propose:** to the extent technically feasible, and] on reasonable terms and conditions.]



## Article 16: International Mobile Roaming

1. **[AU/CL/CO/EU/HK/IL/IS/LI/JP/PE/NO/NZ/TR propose; CH considering:** The Parties shall endeavour to cooperate on **[EU propose:** enhancing transparency and competition with a view to] 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. **[AU/CL/EU/HK/IL/IS/LI/JP/NO/NZ/TR propose; [CH considering:** Parties may choose to take steps to enhance transparency] and competition **[CH considering:** with respect to international mobile roaming rates and technological alternatives to roaming services], such as:] **[CO/PE propose:** Each Party shall adopt or maintain measures to:]

(a) **[AU/CL/CO/EU/HK/IL/IS/LI/JP/NO/NZ/PE/TR propose:** ensuring that information regarding retail rates is easily accessible to consumers; and]

(b) **[AU/CL/CO/EU/HK/IL/IS/LI/NO/NZ/PE/TR propose; JP considering:** minimising impediments to the use of technological alternatives to roaming, whereby consumers visiting the territory of a Party from the territories of other Parties can access telecommunications services using the device of their choice.]

3. **[AU/EU/NO/TR propose; CH considering:** Each Party shall **[EU/NO/TR propose; CH considering:** ensure that suppliers] **[AU/TR propose; CH considering:** provide] **[EU/NO propose:** ensure the provision of] information on rates for retail international mobile roaming services for voice, data, and text messages offered to **[EU/TR propose; CH oppose:** its] consumers **[CH/EU/TR oppose:** of other Parties visiting its territory, when requested by a Party.]]

3. **[CO/PE propose alternate:** In compliance with the provisions of subparagraph 2 (a), each Party shall ensure that:

(a) suppliers of public telecommunications services in its territory; or

(b) its telecommunications regulatory body;

make public available retail rates for mobile international roaming services, for voice, data and text messages.]

**[TR reserves its position on paragraphs 4-6]**

4. **[AU/CO/NO/NZ propose:** The Parties recognise that a Party may choose to adopt or maintain measures affecting rates or conditions, for wholesale international roaming services with a view to ensuring such rates or conditions are reasonable. Where a Party considers it appropriate, it may cooperate on and implement mechanisms with other Parties to facilitate the implementation of such measures, including by entering into arrangements with such Parties.]

4. **[PE propose alternate:** The Parties shall evaluate the possibility of establishing mechanisms to regulate international wholesale roaming services offered between the Parties for voice, data and messaging.]

5. **[AU propose: If a Party**
- (a) chooses to regulate rates or conditions for wholesale international mobile roaming services; and
  - (b) has entered into an arrangement with another Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the two Parties;

it shall ensure that a supplier of public telecommunications services of that other Party has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party.<sup>13]</sup>

6. **[AU propose: A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services consistent with paragraph 5 shall be deemed to be in compliance with its obligations under XX.XX (e.g. non-discrimination obligations) with respect to international mobile roaming services.]**

7. **[AU propose: For greater certainty:**
- (a) nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.
  - (b) no Party may, solely on the basis of any obligations owed to it by the regulating Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.]

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<sup>13</sup> **[AU propose: For greater certainty, access under paragraph 5 to the rates or conditions regulated by one Party shall be available to a supplier of another Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in sub-paragraph (b). The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable.]**



**Article 17: International Standards and Organisations**

**[CA/CO/JP/MX/NO/PA propose:** The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunications networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.]

**Article 18: [JP/CH propose: International Cooperation]**

- (a) **[JP/NO propose:** Each Party shall endeavour to cooperate with the other Parties to increase the level of digital literacy globally and reduce the “digital divide.”]
- (b) **[CO/CH/JP propose:** Parties will **[CO propose:** to the extent possible] exchange information in the area of **[CO/JP/MX oppose:** electronic commerce and] telecommunications Services. That may include information on, inter alia:
  - (i) technological developments and research in the area of **[CO/JP/MX oppose:** electronic commerce and] telecommunications services;
  - (ii) commercial and technical aspects of the supply of **[CO/JP/MX oppose:** electronic commerce and] telecommunications Services through all modes of supply;
  - (iii) available possibilities for the exchange of **[CO/JP/MX oppose:** electronic commerce and] telecom-related technology; and
  - (iv) applicable laws and regulations, legislative processes and recent legislative developments; applicable technical standards.]
- (c) **[CO/NO/CH/JP propose:** Parties will exchange views on developments related to **[CO/JP/MX oppose:** electronic commerce] and telecommunications Services at the international level.]

**[CH/JP propose: Promotion**

Parties affirm their intention to:

- (i) **[JP propose:** promote these provisions in order to contribute to the expansion and spread of **[JP oppose:** electronic commerce and] telecommunications Services];
- (ii) **[JP oppose:** work together and cooperate in international fora to increase the level of digital literacy and to reduce the global digital divide];
- (iii) **[JP propose:** cooperate with third countries with a view to enhancing national regulatory capacity and to contribute to the spread of **[JP oppose:** electronic commerce and] telecommunications Services, which are powerful tools for promoting economic development.]

**Article 19: [CH propose: Review**

Parties intend to review these provisions from time to time, with a view to discussing their implementation and use and to further refining and expanding them, as appropriate.]

## Article 20: Definitions

[JP would like to know the reason “public telecommunications networks and services” is used instead of “public telecommunications transport networks and services” used in GATS Annex.]

For purposes of this Annex:

[EU/NO propose: **associated facilities** means those services and infrastructures associated with a telecommunications network and/or service which are necessary for the provision of services via that network and/or service, such as buildings (including entries and wiring), ducts and cabinets, masts and antennae.]

[AU/CO propose: **authentication** means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication.]

[CO/US propose: **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to any public telecommunications network.]

[CO: It is Colombia’s understanding that backhaul is not related to a specific technology like submarine cable. It is the portion of the network that links the core network, or backbone, and subnetworks at the "edge" of the hierarchical network.]

[CO propose: **consumer** means the recipient or user of an electronic services.]

[AU/CA/CO/PA/US propose: **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services.]

[CO/US propose: **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station.]

[CO propose: **electronic commerce** means any cross-borders business or commercial transaction concluded by electronic means; including, among others, contracts for distribution services, construction works, consulting services, engineering services and business services.]

[CO propose: **electronic government services** means any electronic service provided by the government of a Party which is integral to the delivery of services covered by this Agreement.]

[CO: Colombia proposes this new definition related to “electronic service” and “Interoperability”.]

[CO propose: **electronic service** means any service supplied cross-border by electronic means. Electronic services include, among others, digital contents and applications.]

[CO: New definition aimed at properly distinguish between the service traded on Mode 1 by electronic means and the online transaction (e-commerce) behind that service.]

[**EU: electronic signature** means data in electronic form which are attached to or logically associated with other electronic data and fulfils the following requirements:

- (i) it is used by a person to agree on the electronic data to which it relates;
- (ii) it is linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable.]

[**CO propose: electronic transmission** or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.]

[**CO:** New definition related to different commitments, particularly “Duties on Electronic Transmission”.]

[**AU/CO/PA/TR/US propose: end-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services.]

[**AU/CO propose; KR oppose: enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization and includes a branch of an enterprise.]

[**AU/CA/CO/EU/PA/US propose: 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 supply a service.]

[**EU/NO propose: granting access to essential facilities** means the making available of facilities and/or services to another supplier under defined conditions, for the purpose of providing telecommunications services. It may include the use of active or passive network elements, associated facilities, virtual network services, co-location or other forms of associated facilities sharing, the use of terminating segments of leased lines and the use of specified network facilities or elements, including the local loop, on an unbundled basis.]

[**AU/CA/CO/PA/TR/US propose: interconnection** means linking with suppliers providing public telecommunications [CA/TR propose: networks or] [AU/CA/CO/PA/TR/US propose: 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.]

[**AU propose: international mobile roaming service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public [EU propose:

terrestrial] telecommunications 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.]

**[CO/PA/TR propose: intra-corporate communications]** means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.]

**[CA/CO/PA/TR/US propose: leased circuits]** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user] **[US propose: and supplied by a supplier of fixed telecommunications services;]** **[CO propose: to a particular consumer or other users of the customer's choosing.]**

**[AU/TR/US propose: license]** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including **[CR propose: but not limited to]** concessions, permits, [or] registrations **[TR propose: or notifications].]**

**[CO/JP]** would like to clarify the reason **US** would like to set out the definition "license."]

**[CR: would the definition proposed by AU/TR/US include the authorisations required to operate networks?]**

**[AU/PA/TR/US propose: major supplier]** means a supplier of public telecommunications **[CA/TR propose: 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 services as a result of:

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

**[JP]** would like to know the reason **PA/US** use "public telecommunications service" instead of "basic telecommunications service" used in GATS Annex.]

**[CO/PA propose; network [CO propose: element]** means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment.]

**[CO: It is Colombia's understanding that a network implies a set of elements linked, not a single element or equipment.]**

**[AU/CA/US propose: non-discriminatory]** means treatment no less favourable than that

accorded to any other user of like public telecommunications [CA propose: networks or] services in like circumstances, including with respect to timeliness.]

[JP would like to clarify the reason “timeliness” is added to the definition in GATS Annex.]

[AU/CO/EU/TR/US propose: **number portability** means the ability of end-users of public telecommunications services to retain, [EU oppose: at the same location, the same telephone numbers] [EU propose: the same respective fixed and mobile telephone number, for geographical/fixed numbers at the same location,] without impairment of quality, reliability, or convenience when switching between [EU/US propose: the same category of] suppliers of public telecommunications services.]

[AU/CO/NZ propose: **personal information** means any information, including data, about an identified or identifiable natural person.]

[Proponents will consult on this definition of personal information.]

[AU/CA/CO/PA/TR/US propose: **public telecommunications network** means telecommunications infrastructure used to provide public telecommunications services] [CA/PA/TR propose: which permits telecommunications between and among] [US propose: between] [CA/PA/US propose: defined network termination points.]

[CA/CO/JP/PA/TR/US propose: **public telecommunications service** [CR propose: or telecommunications services available to the public] 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] [JP propose: including internet] [JP/PA/US propose: typically involving [CA propose: 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] [CO/PA propose: but does not include information services.]

[TW shares the same view as PA with respect to the exclusion information services.]

[JP/TW would like to clarify that “Internet” is included in the public telecommunications services in the definition.] [CO: Would like further clarification on the scope of the terms “data transmission” and “including internet”.]

[AU/CO/US propose: **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, or approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned.]

[CO/JP/TR would like to clarify the reason US would like to set out the definition of “reference interconnection offer.”]

[AU/CA/PA/TR/US propose: **telecommunications** means the transmission and reception of signals by any electromagnetic [PA: and photonic] means [US propose: including by photonic means].]

[EU propose: **telecommunications network** means telecommunications infrastructure, including networks used for transmission of broadcasting signals, used to provide telecommunications services.]

[AU/CA/CO/PA/US propose: **telecommunications regulatory body** means a) [CO/PA propose: national] body or bodies [CA propose: of a Party] responsible for the regulation of telecommunications [PA propose: according to domestic legislation].

[JP would like to clarify the meaning of “national” in PA’s bracket.]

[EU propose: **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.<sup>14</sup>]

[AU propose: **unsolicited commercial electronic message** means an electronic message which is sent for commercial and marketing purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an Internet access service supplier and, to the extent provided for under the domestic laws and regulations of each Party, other telecommunications service.”] and

[AU/CO/PA/US propose: **user** means a service consumer or a service supplier.]

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<sup>14</sup> [EU propose: For greater certainty: services providing or exercising editorial control over content transmitted include inter alia radio and television services as defined by CPC 9613.]