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ภาคผนวก

ภาคผนวก ก

General Agreement on Trade in Services

GENERAL AGREEMENT ON TRADE IN SERVICES

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GENERAL AGREEMENT ON TRADE IN SERVICES

Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

- (a) from the territory of one Member into the territory of any other Member;
 - (b) in the territory of one Member to the service consumer of any other Member;
 - (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
 - (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
3. For the purposes of this Agreement:
- (a) "measures by Members" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.
2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.
3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.
4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.
5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Article III bis

Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV

Increasing Participation of Developing Countries

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:
 - (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
 - (b) the improvement of their access to distribution channels and information networks; and
 - (c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

- (a) commercial and technical aspects of the supply of services;
- (b) registration, recognition and obtaining of professional qualifications; and
- (c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article V

Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

- (a) has substantial sectoral coverage¹, and
- (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:
 - (i) elimination of existing discriminatory measures, and/or
 - (ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

¹ This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis

Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration² of the labour markets between or among the parties to such an agreement, provided that such an agreement:

- (a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;
- (b) is notified to the Council for Trade in Services.

Article VI

² Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2.
 - (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.
 - (b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.
4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:
 - (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (b) not more burdensome than necessary to ensure the quality of the service;
 - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
5.
 - (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
 - (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
 - (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.
 - (b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations³ applied by that Member.

³ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Article VII

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

- (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
- (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
- (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII

Monopolies and Exclusive Service Suppliers

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.
2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.
4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.
5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article IX

Business Practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.
2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

Article X

Emergency Safeguard Measures

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.
2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

Article XII

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1:
 - (a) shall not discriminate among Members;
 - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;
 - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.
- (b) The Ministerial Conference shall establish procedures⁴ for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.
- (c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:
- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
 - (ii) the external economic and trading environment of the consulting Member;
 - (iii) alternative corrective measures which may be available.
- (d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).
- (e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.
6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

Article XIII

Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions

⁴ It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order;⁵
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of services or service suppliers of other Members;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XIV bis

Security Exceptions

1. Nothing in this Agreement shall be construed:

⁵ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁶ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

- (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.⁷ The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.
2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable

⁷ A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.⁸

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁹
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.¹⁰

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

⁸ If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

⁹ Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

¹⁰ Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

Article XVIII

Additional Commitments

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

PART IV

PROGRESSIVE LIBERALIZATION

Article XIX

Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.
4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Article XX

Schedules of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article XXI

Modification of Schedules

1. (a) A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.
- (b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.
2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.
- (b) Compensatory adjustments shall be made on a most-favoured-nation basis.
3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.
- (b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.
 - (b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.
5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

PART V

INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.
2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.
3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.¹¹ The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII

Dispute Settlement and Enforcement

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

¹¹ With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

Article XXIV

Council for Trade in Services

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3. The Chairman of the Council shall be elected by the Members.

Article XXV

Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

Article XXVI

Relationship with Other International Organizations

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

Article XXVII

Denial of Benefits

A Member may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

Article XXVIII

Definitions

For the purpose of this Agreement:

- (a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by Members affecting trade in services" include measures in respect of
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;
- (d) "commercial presence" means any type of business or professional establishment, including through
 - (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service;
- (e) "sector" of a service means,

- (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) "service of another Member" means a service which is supplied,
- (i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;
- (g) "service supplier" means any person that supplies a service;¹²
- (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;
- (i) "service consumer" means any person that receives or uses a service;
- (j) "person" means either a natural person or a juridical person;
- (k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
- (i) is a national of that other Member; or
 - (ii) has the right of permanent residence in that other Member, in the case of a Member which:
 1. does not have nationals; or
 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

¹² Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) "juridical person of another Member" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Member; or
 - 2. juridical persons of that other Member identified under subparagraph (i);
- (n) a juridical person is:
 - (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;
 - (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article XXIX

Annexes

The Annexes to this Agreement are an integral part of this Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.
2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.
4. The Council for Trade in Services in a review shall:
 - (a) examine whether the conditions which created the need for the exemption still prevail; and
 - (b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

Lists of Article II Exemptions

[The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

ANNEX ON TELECOMMUNICATIONS

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

- (a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.¹³

¹³ This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

- (i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or
- (ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. *Definitions*

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Member. "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.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).¹⁴

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

- (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- (iii) 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.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

(d) Notwithstanding the preceding paragraph, a Member 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 which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (ii) to protect the technical integrity of public telecommunications transport networks or services; or
- (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

- (i) restrictions on resale or shared use of such services;

¹⁴ The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

- (ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- (iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);
- (iv) 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;
- (v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

- (a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,
- (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

ภาคผนวก ข

Reference Paper of Negotiating Group on Basic Telecommunications

Reference Paper

24 April 1996

Negotiating group on basic telecommunications

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport 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 provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

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

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) 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;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation 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 Member.

4. Public availability of licensing criteria

Where a license is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licensee and
- (b) the terms and conditions of individual licenses.

The reasons for the denial of a license will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

ภาคผนวก ค

GATS-Thailand Schedule of Specific Commitments

**GENERAL AGREEMENT
ON TRADE IN SERVICES**

GATS/SC/85
15 April 1994
(94-1083)

THAILAND

Schedule of Specific Commitments

(This is authentic in English only)

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>II. SECTOR-SPECIFIC COMMITMENTS</p> <p>2.COMMUNICATION SERVICES</p> <p>C. Telecommunication Services</p> <p>j) Data base access services (part of CPC 7523)</p>	<p>1)1.1 Service providers must use public telecommunication network under national telecommunication authorities;</p> <p>1.2 Radio application service is subject to frequency availability.</p> <p>2) None</p> <p>3) a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed 40 per cent of the total number of shareholders of the company</p> <p>b) Such company shall be permitted under the built-transferred-operated concept</p>	<p>1) None</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 40 per cent</p>	

THAILAND (continued)

<p>n) On-line information and/or data processing services (part of CPC 843)</p>	<p>c) Must use public telecommunication network under national telecommunication authorities</p> <p>4) As indicated in the horizontal section</p> <p>1) 1.1 Services providers must use telecommunication network under national telecommunication authorities;</p> <p>1.2 Radio application service is subject to frequency availability</p> <p>2) None</p> <p>3) a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed 40 per cent of the total number of shareholders of the company</p> <p>b) Such company shall be permitted under the built-transferred-operated concept</p> <p>c) Must use public telecommunication network under national telecommunication authorities</p>	<p>4) None</p> <p>1) None</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 40 per cent</p>
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THAILAND (continued)

<p>o) Other</p> <p>Telecommunications equipment sales services (part of CPC 75420)</p>	<p>4) As indicated in the horizontal section</p> <p>1) Unbound</p> <p>2) None</p> <p>3) None other than that indicated in the horizontal section</p> <p>4) a) As indicated in the horizontal section</p> <p>b) Unbound for civil engineer</p>	<p>4) None</p> <p>1) Unbound</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 49 per cent</p> <p>4) None</p>
<p>Telecommunications consulting services (CPC 75440)</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) None other than that indicated in the horizontal section</p> <p>4) a) As indicated in the horizontal section</p> <p>b) Unbound for civil engineer</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 49 per cent</p> <p>4) None</p>
<p>Videotex (part of CPC 75299)</p>	<p>1) 1.1 Service providers must use public telecommunication network under national telecommunication authorities;</p>	<p>1) None</p>

THAILAND (continued)

	<p>1.2 Radio application service is subject to frequency availability</p> <p>2) None</p> <p>3) a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed 40 per cent of the total number of shareholders of the company</p> <p>b) Such company shall be permitted under the built-transferred-operated concept by national telecommunication authorities¹</p> <p>c) Must use public telecommunication network under national telecommunication authorities</p> <p>d) Selection of service providers shall be based on open tender</p> <p>4) As indicated in the horizontal section</p>	<p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 40 per cent</p> <p>4) None</p>
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¹This condition will be applied for at least 10 years.

THAILAND (@continued)

<p>Teleconference (part of CPC 75292)</p>	<p>1)1.1 Service providers must use public telecommunication network under national telecommunication authorities; 1.2 Radio application service is subject to frequency availability 2)None 3)a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed 40 per cent of the total number of shareholders of the company b) Such company shall be permitted under the built-transferred-operated concept by national telecommunication authorities² c) Must use public telecommunication network under national telecommunication authorities d) Selection of service providers shall be based on open tender</p>	<p>1)None 2)None 3)No limitations as long as foreign equity participation does not exceed 40 per cent</p>
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²This condition will be applied for at least 10 years.

THAILAND (continued)

<p>Domestic leased circuits (part of CPC 75299)</p>	<p>4)As indicated in the horizontal section</p> <p>1)1.1 Service providers must use public telecommunication network under national telecommunication authorities;</p> <p>1.2 Radio application service is subject to frequency availability</p> <p>2)None</p> <p>3)a) Shall be a Thai registered company with foreign equity participation not exceeding 40 per cent of the registered capital and the number of foreign shareholders must not exceed</p> <p>40 per cent of the total number of shareholders of the company</p> <p>b) Such company shall be permitted under the built-transferred-operated concept by national telecommunication authorities³</p> <p>c) Must use public telecommunication network under national telecommunication authorities</p>	<p>4)None</p> <p>1)None</p> <p>2)None</p> <p>3)No limitations as long as foreign equity participation does not exceed 40 per cent</p>
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³This condition will be applied for at least 10 years.

THAILAND (continued)

<p>D.Audiovisual Services</p> <p>a) Film/video production and distribution services excluding promotion or advertising services (CPC 96112+96113)</p> <p>c) Radio/television services only for production of radio/TV programmes (CPC 96131+96132)</p>	<p>d) Selection of service providers shall be based on open tender</p> <p>4) As indicated in the horizontal section</p> <p>1) Unbound</p> <p>2) None</p> <p>3) None other than that indicated in the horizontal section</p> <p>4) As indicated in the horizontal section</p> <p>1) Unbound</p> <p>2) None</p> <p>3) None other than that indicated in the horizontal section</p> <p>4) As indicated in the horizontal section</p>	<p>4) None</p> <p>1) Unbound</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 49 per cent</p> <p>4) None</p> <p>1) Unbound</p> <p>2) None</p> <p>3) No limitations as long as foreign equity participation does not exceed 49 per cent</p> <p>4) None</p>
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GATS-Thailand Schedule of Specific Commitments, Supplement 2

Trade in Services

THAILAND

Schedule of Specific Commitments

Supplement 2

(This is authentic in English only)

This text supplements the Telecommunication Services section contained in pages 15 to 21 of document GATS/SC/85.

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>Commitments undertaken in this offer are subject to the following general conditions:</p> <ul style="list-style-type: none"> -Each service to be supplied in Thailand requires a specific governmental licence. -Licences are granted only to service suppliers duly constituted according to the Thai legislation, which requires head office and management located in the Thai territory. -Due to scarce resources, the number of licences may be limited. -The services in the Schedule of Specific Commitments shall be on facilities basis. -The service provider shall be a Thai registered company with foreign equity participation not exceeding 20 per cent of the registered capital and the number of foreign shareholders must not exceed 20 per cent of the total number of shareholders of the company. -The Communications Authority of Thailand has exclusive right to link with Intelsat and Inmarsat. -Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, commitments on public telecommunication services will be introduced, and carried out in accordance with the implementing regulations to be issued by virtue of those acts. 			
<p>2.C.Telecommunication Services</p> <p>Public local, domestic long distance and international services:</p> <ul style="list-style-type: none"> a.Voice telephone services b.Telex services c.Telegraph services d.Facsimile services 	<p>1),2)None, other than -traffic shall be routed through a gateway in Thailand operated by a supplier duly licensed;</p> <p>-the provision of concerned services shall be agreed by the suppliers duly licensed of both ends.</p> <p>3)Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce the market access elements as contained in those acts into the relevant parts of its Schedule of Specific Commitments relating to the supply of public telecommunication services.</p> <p>4)Unbound as indicated in the horizontal section.</p>	<p>1),2)None</p> <p>3)Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce the national treatment elements as contained in those acts into the relevant parts of its Schedule of Specific Commitments relating to the supply of public telecommunication services.</p> <p>4)Unbound as indicated in the horizontal section.</p>	<p>Conditional upon passage and coming into force of all necessary new communication acts, commencing from the year of 2006, Thailand will introduce into its Schedule of Specific Commitments on public telecommunication services its treatment on the subjects relating to competitive safeguards, interconnection, universal service, public availability of licensing criteria, separation of regulatory and operational functions, and the allocation and use of scarce resources.</p>

ภาคผนวก จ

U.S.-Chile FTA (Telecommunications Chapter)

Chapter Thirteen

Telecommunications

Article 13.1: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of the public telecommunications network and services;
 - (b) measures adopted or maintained by a Party relating to obligations of major suppliers of public telecommunications services;
 - (c) measures adopted or maintained by a Party relating to the provision of information services; and
 - (d) other measures relating to public telecommunication networks or services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or telecommunications services, where such networks or services are not offered to the public generally;
 - (b) require a Party to compel any enterprise exclusively engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications network; or
 - (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

Article 13.2: Access to and Use of Public Telecommunications Networks and Services¹

1. Each Party shall ensure that enterprises of the other Party have 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, including as set out in paragraphs 2 through 6.
2. Each Party shall ensure that such enterprises are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;
 - (b) provide services to individual or multiple end-users over any leased or owned circuit(s);
 - (c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
 - (d) perform switching, signaling, processing, and conversion functions; and
 - (e) use operating protocols of their choice.
3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.
4. Further to Article 23.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take such measures as are necessary to:
 - (a) ensure the security and confidentiality of messages; or
 - (b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

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

¹ For greater certainty, access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 13.4(3).

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 providers of public telecommunications networks or 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 conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and
- (b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.3: Obligations Relating to Interconnection with Suppliers of Public Telecommunications Services

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure, in accordance with its domestic law and regulations, that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

Article 13.4: Additional Obligations Relating to Conduct of Major Suppliers of Public Telecommunications Services²

Treatment by Major Suppliers

1. Subject to Annex 13.4(1), each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party non-discriminatory treatment regarding:

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

Competitive Safeguards

- 2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) For purposes of subparagraph (a), examples of anti-competitive practices include:
 - (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

Unbundling of Network Elements

- 3. (a) Each Party shall provide its competent body the authority to require that major suppliers in its territory provide suppliers of public telecommunications

² For purposes of this Agreement, this Article does not apply to suppliers of commercial mobile services. Nothing in this Agreement shall be construed to preclude an authority from imposing measures set forth in this Article upon suppliers of commercial mobile services.

services of the other Party access to network elements on an unbundled basis for the supply of those services on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

- (b) Which network elements will be required to be made available in its territory, and which suppliers may obtain such elements, will be determined in accordance with national law and regulation(s).
- (c) In determining the network elements to be made available, each Party's competent body shall consider, at a minimum, in accordance with national law and regulation:
 - (i) whether access to such network elements as are proprietary in nature is necessary, and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services they seek to offer; or
 - (ii) other factors as established in national law or regulation,
 as that body construes these factors.

Co-Location

- 4. (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.
- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide:
 - (i) alternative solutions; or
 - (ii) facilitate virtual co-location,
 on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.

- (c) Each Party may determine which premises shall be subject to subparagraphs (a) and (b).

Resale

- 5. Each Party shall ensure that major suppliers in its territory:
 - (a) offer for resale, at reasonable rates,³ to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and
 - (b) subject to Annex 13.4(5)(b), do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

Number Portability

- 6. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

- 7. Each Party shall ensure that major suppliers in its territory provide dialing parity to suppliers of public telecommunications services of the other Party and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

Interconnection

- 8. (a) General Terms and Conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- (i) at any technically feasible point in the major supplier's network;

³ The standard of reasonableness in this paragraph is satisfied, among others, by wholesale rates or cost-oriented rates set pursuant to domestic law and regulations.

- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (v) 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.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

- (i) a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements with Major Suppliers

Each Party shall:

- (i) require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body, and
- (ii) make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in such territory.

*Leased Circuits Services*⁴

- 9. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms, conditions, and at rates that are reasonable and non-discriminatory.
- (b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits that are part of the public telecommunications services to enterprises of the other Party at flat-rate prices that are cost-oriented.

Article 13.5: Submarine Cable Systems

- 1. Each Party shall ensure that enterprises in its territory that operate submarine cable systems accord non-discriminatory treatment for access to submarine cable systems.
- 2. Whether to apply paragraph 1 may be based on classification by a Party of such submarine cable system within its territory as a public telecommunications service supplier.

⁴ For greater certainty, access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 13.4(3).

Article 13.6: Conditions for Supplying Information Services

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of information services (which supplies such services over facilities that it does not own) to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for such services;
- (c) file a tariff for such services;
- (d) interconnect its networks with any particular customer for the supply of such services; or
- (e) conform with any particular standard or technical regulation for interconnection for the supply of such services other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take appropriate action, including any of the actions described in paragraph 1, to remedy a practice of an information services supplier that the Party has found in a particular case to be anti-competitive under its law or regulation(s), or to otherwise promote competition or safeguard the interests of consumers.

Article 13.7: Independent Telecommunications Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

Article 13.8: Universal Service

Each Party shall administer any universal service obligation that it maintains or adopts 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 13.9: Licensing Procedures

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:
 - (a) the licensing criteria and procedures it applies, and the time it normally requires to act on an application, for issuing a license; and
 - (b) the terms and conditions of all licenses it has issued.
2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

Article 13.10: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for allocating and using scarce telecommunications resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific uses.
3. Decisions on allocating and assigning spectrum and frequency management are not measures that are inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1(3) (Scope and Coverage). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

Article 13.11: Enforcement

Each Party shall ensure that its competent authority is authorized to enforce domestic measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

Article 13.12: Procedures for Resolving Domestic Telecommunications Disputes

Further to Articles 20.4 (Administrative Proceedings) and 20.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

- (a) (i) Each Party shall ensure that enterprises of the other Party may have recourse to a national telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 13.2 through 13.5.
- (ii) Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in its territory may have recourse, within a reasonable and publicly available period of time after the supplier requests interconnection, to a national telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

- (b) Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a national telecommunications regulatory body or other relevant body may petition the body to reconsider its determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body or other relevant body unless an appropriate authority stays such determination or decision.

Judicial Review

- (c) Each Party shall ensure that any enterprise aggrieved by a determination or decision of the national telecommunications regulatory body or other relevant body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

Article 13.13: Transparency

Further to Article 20.2 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications services including its

measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications for technical interfaces;
- (c) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
- (d) conditions for attaching terminal or other equipment to the public telecommunications network; and
- (e) notification, permit, registration, or licensing requirements, if any.

Article 13.14: Flexibility in the Choice of Technologies

Each Party shall endeavor to not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services.

Article 13.15: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, where provided for under domestic law, each Party may forbear from applying regulation to a telecommunication service that the Party classifies as a public telecommunications service if its telecommunications regulatory body determines that:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

Article 13.16: Relationship to Other Chapters

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

Article 13.17: Definitions

For purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of a subscriber to use of an equal number of digits to access a public telecommunications service, regardless of the public telecommunications services supplier chosen by such end-user;

enterprise means an "enterprise" as defined in Article 2.1 (Definitions of General Application) and includes a branch of an enterprise;

end-user means a final consumer of or subscriber to a public telecommunications service, including any service supplier other than a supplier of public telecommunications services;

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 provide a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications 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;

leased circuit means telecommunications facilities between two or more designated points that are made available solely to, or dedicated exclusively for use by, a particular customer or other users of the customer's choosing;

major supplier means a supplier of public telecommunications 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;

network 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;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching like suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

private network means a telecommunications network that is used exclusively for intraenterprise communications;

public telecommunications network means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service which 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 points without any end-to-end change in the form or content of the customer's information, but does not include the offering of information services;

reference interconnection offer means an interconnection offer that a major supplier extends and that is filed with or approved by a telecommunications regulatory body and that is sufficiently detailed to enable a supplier of public telecommunications services that is

willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier concerned;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.

Annex 13.4(1)

Article 13.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1996, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1996, from the obligations contained in Article 13.4.

Annex 13.4(5)(b)

In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers.

ภาคผนวก จ

U.S.-Singapore FTA (Telecommunications Chapter)

CHAPTER 9 : TELECOMMUNICATIONS

ARTICLE 9.1 : SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services.
2. This Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.⁹⁻¹
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or telecommunications services where such networks or services are not offered to the public generally; or
 - (b) require a Party to compel any enterprise engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network, unless a Party specifically designates such facilities as such.

ARTICLE 9.2 : ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES⁹⁻²

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport network and service, including leased circuits, offered in its territory or across its borders on reasonable, non-discriminatory (including with respect to timeliness), and transparent terms and conditions, including as set out in paragraphs 2 through 4.
2. Each Party shall ensure that such enterprises are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;
 - (b) provide services to individual or multiple end-users over any leased or owned circuit(s);

⁹⁻¹ For greater certainty, Singapore's obligations under this Chapter shall not apply to measures adopted or maintained relating to broadcasting services as defined in Singapore's Schedule to Annex 8B.

⁹⁻² This Article does not apply to access to unbundled network elements, including access to leased circuits as an unbundled network element, which is addressed in Article 9.4.3.

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- (c) connect leased or owned circuits with public telecommunications transport networks and services in the territory, or across the borders, of that Party, or with circuits leased or owned by another enterprise;
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of customer proprietary network information;

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.

ARTICLE 9.3 : INTERCONNECTION WITH SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the facilities and equipment of suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of proprietary information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing public telecommunications services.

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ARTICLE 9.4 : CONDUCT OF MAJOR SUPPLIERS^{9-3 9-4}

Treatment by Major Suppliers

1. Each Party shall ensure that any major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:

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

A Party shall assess such treatment on the basis of whether such suppliers of public telecommunications services, subsidiaries, affiliates, and non-affiliated service suppliers are in like circumstances.

Competitive Safeguards

- 2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) For purposes of subparagraph (a), anti-competitive practices include:
 - (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that is necessary for them to provide public telecommunications services.

⁹⁻³ For the purpose of the United States' obligations, Article 9.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, from the obligations contained in Article 9.4.

⁹⁻⁴ Article 9.4 does not apply to suppliers of commercial mobile services.

Unbundling of Network Elements

3. (a) Recognizing that both Parties currently provide for access to unbundled network elements, each Party shall provide its telecommunications regulatory body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis at terms, conditions, and cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent for the supply of public telecommunications services.
- (b) Which network elements will be required to be made available in the territory of a Party, and which suppliers may obtain such elements, shall be determined in accordance with national law and regulation.
- (c) In determining the network elements to be made available, a Party's telecommunications regulatory body shall consider, at a minimum, in accordance with national law and regulation:
 - (i) whether access to such network elements as are proprietary in nature are necessary; and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services it seeks to offer; or
 - (ii) whether the network elements can be replicated or obtained from other sources at reasonable rates, such that the unavailability of these network elements from the major supplier will not impair the ability of other suppliers of public telecommunications services to provide a competing service; or
 - (iii) whether the network elements are technically or operationally required for the provision of a competing service; or
 - (iv) other factors as established in national law;as that body construes these factors.

Co-Location

4. (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location, at premises owned or controlled by the major supplier, of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide or facilitate virtual co-location on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.
- (c) Each Party may determine, in accordance with national law and regulation, which premises in its territory shall be subject to subparagraphs (a) and (b)

Resale

- 5. Each Party shall ensure that major suppliers in its territory:
 - (a) offer for resale, at reasonable⁹⁻⁵ rates, to suppliers of public telecommunications services of the other 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 public telecommunications services.⁹⁻⁶

Poles, Ducts, and Conduits

- 6. (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, and conduits, owned or controlled by such major suppliers to suppliers of public telecommunications services of the other Party, under terms, conditions, and cost-oriented⁹⁻⁷ rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.
- (b) Nothing shall prevent a Party from determining, under its domestic law and regulation, which particular structures owned or controlled by the major suppliers in its territory, are required to be made available in accordance with paragraph (a) provided that this is based on a determination that such structures cannot feasibly

⁹⁻⁵ In the United States, a wholesale rate set pursuant to domestic law and regulation shall be considered to be reasonable for purposes of subparagraph (a). In Singapore, wholesale rates are not required by the telecommunications regulatory body and therefore are not factored into a determination of what is considered to be reasonable for the purposes of subparagraph (a).

⁹⁻⁶ In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers. In Singapore, where national law and regulation provides for this, resellers that obtain public telecommunications services available at retail only to a category of subscribers at particular rates may be prohibited from offering such service to a different category of subscribers at that particular rate.

⁹⁻⁷ In the United States, this obligation may not apply to those states that regulate such rates as a matter of state law.

be economically or technically substituted in order to provide a competing service.

Number Portability

7. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Interconnection

8. (a) General Terms and Conditions

Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- (i) at any technically feasible point in the major supplier's network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major supplier for its own like services or for like services of non-affiliated suppliers of public telecommunications services or for its subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions, (including technical standards and specifications), and cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (v) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications services, subject to charges that reflect the cost of construction of necessary additional facilities.⁹⁻⁸

⁹⁻⁸ These costs may include the cost of physical or virtual co-location referenced in Article 9.4.4.

(b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

- (i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available either a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

- (i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.
- (ii) Each Party shall make available for inspection to suppliers of public telecommunications services which are seeking interconnection, interconnection agreements in force between a major supplier in its territory and any other supplier of public telecommunications services in such territory, including interconnection agreements concluded between a major supplier and its affiliates and subsidiaries.

(f) Resolution of Interconnection Disputes

Each Party shall ensure that suppliers of public telecommunications services of the other Party, that have requested interconnection with a major supplier in the Party's territory have recourse to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection within a reasonable and publicly available period of time.

*Provisioning and Pricing of Leased Circuits Services*⁹⁻⁹

9. (a) Each Party shall ensure that major suppliers of leased circuits services in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms and conditions under pricing structures, and at rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.
- (b) Each Party may determine whether rates for leased circuits services in its territory are reasonable by taking into account the rates of like leased circuits services in comparable markets in other countries.

ARTICLE 9.5 : SUBMARINE CABLE LANDING STATIONS

1. Where under national law and regulation, a Party has authorized a supplier of public telecommunications services in its territory to operate a submarine cable system (including the landing facilities and services) as a public telecommunications service, that Party shall ensure that such supplier provides that public telecommunications service⁹⁻¹⁰ to suppliers of public telecommunications services of the other Party on reasonable terms, conditions, and rates that are no less favorable than such supplier offers to any other supplier of public telecommunications services in like circumstances.

2. Where submarine cable landing facilities and services cannot be economically or technically substituted, and a major supplier of public international telecommunication services that controls such cable landing facilities and services has the ability to materially affect the price and supply for those facilities and services for the provision of public telecommunications services in a Party's territory, the Party shall ensure that such major supplier:

- (a) permits suppliers of public telecommunications services of the other 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 at the submarine cable landing station at terms, conditions, and cost-oriented rates, that are reasonable and non-discriminatory; and

⁹⁻⁹ The obligation under this article is not an obligation to provide leased circuits as an unbundled network element, which is addressed in Article 9.4.3.

⁹⁻¹⁰ This shall include any submarine cable landing facilities included as part of that authorization.

- (b) provides suppliers of telecommunications of the other Party submarine cable capacity, backhaul links, and cross-connect links in the submarine cable landing station at terms, conditions, and rates that are reasonable and non-discriminatory.

ARTICLE 9.6 : INDEPENDENT REGULATION AND PRIVATIZATION

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold any financial interest or maintain an operating role in such a supplier.
2. Each Party shall ensure that the decisions of, and procedures used by its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions of and procedures of its telecommunications regulatory body.
3. Where a Party has an ownership interest in a supplier of public telecommunications services, it shall notify the other Party of any intention to eliminate such interest as soon as feasible.

ARTICLE 9.7 : UNIVERSAL SERVICE

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 9.8 : LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:
 - (a) all the licensing criteria and procedures it applies;
 - (b) the period of time normally required to reach a decision concerning an application for a license; and
 - (c) the terms and conditions of all licenses it has issued.
2. Each Party shall ensure that an applicant receives, upon request, the reasons for the denial of a license.

ARTICLE 9.9 : ALLOCATION AND USE OF SCARCE RESOURCES⁹⁻¹¹

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory fashion.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies assigned or allocated by each government for specific government uses.

ARTICLE 9.10 : ENFORCEMENT

Each Party shall ensure that its telecommunications regulatory body maintains appropriate procedures and authority to enforce domestic measures relating to the obligations under Articles 9.2 through 9.5. Such procedures and authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or modification, suspension, and revocation of licenses.

ARTICLE 9.11 : RESOLUTION OF DOMESTIC TELECOMMUNICATIONS DISPUTES

Further to Articles 19.5 (Administrative Proceedings) and 19.6 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

1. Each Party shall ensure that enterprises of the other Party have recourse (within a reasonable period of time) to a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 9.2 through 9.5.

Reconsideration

2. Each Party shall ensure that any enterprise aggrieved or whose interests are adversely affected by a determination or decision of the telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the

⁹⁻¹¹ The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are *per se* inconsistent with Article 8.5 (Market Access) and Article 15.8 (Performance Requirements). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Judicial Review

3. Each Party shall ensure that any enterprise aggrieved by a determination or decision of the telecommunications regulatory body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

ARTICLE 9.12 : TRANSPARENCY

Further to Chapter 19 (Transparency), each Party shall ensure that:

1. rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
2. interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by the telecommunications regulatory body;
3. its measures relating to public telecommunications services are made publicly available, including:
 - (a) tariffs and other terms and conditions of service;
 - (b) specifications of technical interfaces;
 - (c) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and
 - (d) notification, permit, registration, or licensing requirements, if any; and
4. information on bodies responsible for preparing, amending, and adopting standards-related measures is made publicly available.

ARTICLE 9.13 : FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES

A Party shall endeavor not to prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile 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.

ARTICLE 9.14 : FORBEARANCE AND MINIMAL REGULATORY ENVIRONMENT

The Parties recognize the importance of relying on market forces to achieve wide choice and efficient supply of telecommunications services. To this end, each Party may forbear from applying regulation to a telecommunications service that such Party classifies, under its laws and

regulations, as a public telecommunications service upon a determination by its telecommunications regulatory body that:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

ARTICLE 9.15 : RELATIONSHIP TO OTHER CHAPTERS

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

ARTICLE 9.16 : DEFINITIONS

For purposes of this Chapter:

1. **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to the Party's public telecommunications transport network;
2. **physical co-location** means physical access to and control over space in order to install, maintain, or repair equipment used to provide public telecommunications services;
3. **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
4. **commercial mobile services** means public telecommunications services supplied through mobile wireless means;
5. **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching and routing equipment of different suppliers of public telecommunications services co-located in that submarine cable landing station;
6. **customer proprietary network information** means information made available to the supplier of public telecommunications services by the end-user solely by virtue of the end-user-telecommunications service supplier relationship. This includes information regarding the end-user's calling patterns (including the quantity, technical configuration, type, destination, location, and amount of use of the service) and other information that appears on or may pertain to an end-user's telephone bill;
7. **end-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier but excluding a supplier of public telecommunications services;

8. **enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or government owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization;
9. **essential facilities** means facilities of a public telecommunications transport 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 provide a service;
10. **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
11. **leased circuits** means telecommunications facilities between two or more designated points which are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;
12. **major supplier** means a supplier of public telecommunications 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;
13. **network element** means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment;
14. **non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
15. **number portability** means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;
16. **person** means either a natural person or an enterprise;
17. **public telecommunications transport network** means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

18. **public telecommunications service** means any telecommunications service (which a Party may define to include certain facilities used to deliver these telecommunications services) 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 points without any end-to-end change in the form or content of the customer's information;⁹⁻¹²
19. **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier concerned;
20. **service supplier** means any person that supplies a service;
21. **submarine cable landing station** means the premises and buildings where international submarine cables arrive and terminate and are connected to backhaul links;
22. **supplier of public telecommunications services** means any provider of public telecommunications services, including those who provide such services to other suppliers of public telecommunications services;⁹⁻¹³
23. **telecommunications** means the transmission and reception of signals by any electromagnetic means;⁹⁻¹⁴
24. **telecommunications regulatory body** means a national body responsible for the regulation of telecommunications; and

⁹⁻¹² Because the United States does not classify services described in 47 U.S.C. § 153(20) as public telecommunications services, these services are not considered public telecommunications services for the purposes of this Agreement. This does not prejudice either Party's positions in the WTO on the scope and definition of these services.

⁹⁻¹³ (a) For purposes of Singapore's obligations in Articles 9.3, 9.4.1, 9.4.5, 9.4.8, and 9.13, the phrase **supplier of public telecommunications services** means a facilities-based licensee or services-based licensee that uses switching or routing equipment, in accordance with the Singapore Code of Practice for Competition in the Provision of Telecommunications Services, 2000.

(b) For purposes of Singapore's obligations in Articles 9.4.3, 9.4.4, 9.4.6 and 9.5, the phrase **supplier of public telecommunications services** means a facilities-based licensee in accordance with the Singapore Code of Practice for Competition in the Provision of Telecommunications Services, 2000.

⁹⁻¹⁴ Including by photonic means.

25. **user** means an end-user or a supplier of public telecommunications services.

ประวัติผู้เขียนวิทยานิพนธ์

นางสาวจิตรา วิกฤษไพศาล

เกิดเมื่อ วันที่ 12 ธันวาคม พ.ศ. 2525

สถานที่เกิด กรุงเทพมหานคร



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