



## JOINT STATEMENT ON ELECTRONIC COMMERCE

### COMMUNICATION FROM THE EUROPEAN UNION

*EU proposal for WTO disciplines and commitments relating to electronic commerce:  
Revision of disciplines relating to Telecommunications Services*

The following communication, dated 14 October 2019, is being circulated at the request of the delegation of the European Union.

#### INTRODUCTION

1. The EU will seek to use the ongoing WTO Joint Statement Initiative on Electronic Commerce to negotiate a set of comprehensive and ambitious WTO disciplines and commitments, to be endorsed by as many WTO Members as possible.
2. To this end, in submission INF/ECOM/22 the EU proposed, among others, to negotiate a series of WTO disciplines relating to telecommunications services to be incorporated in the schedules of the individual Members as a replacement of the WTO Reference Paper on Basic Telecommunications Services.
3. The EU text proposals on telecommunications services were discussed at length during the Spring 2019 meetings of the e-commerce Joint Statement initiative. Taking stock of the comments and questions received during those discussions, in this communication the EU proposes some adjustments to its original text proposals.
4. The EU and its Member States maintain the possibility to define and implement cultural and audio-visual policies for the purposes of preserving their cultural diversity, including by not taking commitments on audio-visual services.
5. This proposal is without prejudice to the EU position with respect to the final negotiated outcome, which in some cases may depend on the level of support for individual provisions.
6. The EU reserves the right to table additional text proposals on other issues in the course of the negotiations.
7. The text proposals included in this communication replace section 3 "REVISION OF THE WTO REFERENCE PAPER ON TELECOMMUNICATIONS SERVICES" of the EU's submission INF/ECOM/22.

#### 3 REVISION OF THE WTO REFERENCE PAPER ON TELECOMMUNICATIONS SERVICES

The EU proposes that the following set of disciplines replaces the WTO reference paper on telecommunication services.

### 3.1 Scope

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

### 3.2 Definitions

For the purpose of these principles:

1. "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;
2. "interconnection" means linking with suppliers of public telecommunications networks or services in order to allow users of one supplier to communicate with users of the same or another supplier or to access services provided by the suppliers involved or any other supplier who has access to the network;
3. "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications services as a result of:
  - a. control over essential facilities; or
  - b. use of its position in the market;
4. "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
5. "public telecommunications network" means the telecommunications infrastructure used for the provision of public telecommunications services between and among defined network termination points;
6. "public telecommunications service" means any telecommunications service that is offered to the public generally;
7. "telecommunications regulatory authority" means the body or bodies charged by a Member with the regulation of telecommunications networks and services covered by these principles;
8. "telecommunications service" means a service consisting of the transmission and reception of signals by any electromagnetic means irrespective of the technology used;
9. "user" means a service consumer or a service supplier.

### 3.3 Competitive safeguards

1. Appropriate measures shall be maintained for the purpose of preventing suppliers of telecommunications networks or services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 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.

### **3.4 Interconnection**

1. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be 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. The procedures applicable for interconnection to a major supplier shall be made publicly available.

3. Major suppliers shall make publicly available either their interconnection agreements or a reference interconnection offer.

### **3.5 Universal service**

1. Any Member has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Universal service obligations shall be administered in a transparent, objective and non-discriminatory manner, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Member.

3. The designation of universal service suppliers shall be made through an efficient, transparent and non-discriminatory mechanism that is open to all suppliers of public telecommunications networks or services.

4. Where suppliers of public telecommunications networks or services are compensated for the provision of universal service, such compensation shall not exceed the financial needs directly attributable to the universal service obligations.

### **3.6 Licencing and Authorisation**

1. Authorisation to provide telecommunications networks or services should in principle be granted without a formal licencing procedure, so that the supplier may start providing its networks or services without having to wait for a decision by the telecommunications regulatory authority.

2. Where a licence is required, the following shall be made publicly available:

- a. the types of networks or services requiring a licence;
- b. all the licencing criteria, applicable procedures and the period of time normally required to reach a decision concerning an application for a licence; and

- c. the terms and conditions of individual licences.

3. An applicant for a licence shall receive, on request, the reasons for any denial of a license, imposition of supplier-specific conditions on a license, revocation of a license, or refusal to renew a license.

### **3.7 Telecommunications Regulatory Authority**

1. The telecommunications regulatory authority shall be separate from, and not accountable to, any supplier of telecommunications networks or services. To this end, the telecommunications regulatory authority shall not hold a financial interest or maintain an operating or management role in any such supplier.

2. Tasks shall be assigned by law to the telecommunications regulatory authority to enforce the obligations set out in these principles, and shall be made public in an easily accessible and clear form.

3. The telecommunications regulatory authority shall have the power, including the ability to impose sanctions, to carry out the tasks assigned to it by law. Such power shall be exercised transparently and in a timely manner.

4. The decisions of and the procedures used by the telecommunications regulatory authority shall be impartial with respect to all market participants.

### **3.8 Allocation and use of scarce resources**

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.

2. 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.

3. The assignment of frequency bands for public telecommunication services shall be carried out via an open process that takes into account the overall public interest, including the promotion of competition. Such assignment should in principle be carried out using market-based approaches, including through mechanisms such as auctions where appropriate.

### **3.9 Essential Facilities**

1. A major supplier shall make its essential facilities available to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, when this is necessary to achieve effective competition.

2. Where a decision by the telecommunications regulatory authority is required to ensure compliance with paragraph 1:

- a. such decision shall be justified on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority;
- b. the telecommunications regulatory authority shall be empowered to:
  - i. determine those essential facilities required to be made available by a major supplier; and
  - ii. require a major supplier to offer access on an unbundled basis to its network elements that are essential facilities.

### **3.10 Resolution of Disputes**

A supplier of telecommunications networks or services shall have recourse, within a reasonable and publicly available period of time, to the telecommunications regulatory authority or other competent authority to resolve disputes regarding the measures relating to matters set out in these principles.

### **3.11 Transparency**

Further to Article 4 of the GATS Annex on Telecommunications and to other dispositions in these principles pertaining to publication of information, any measure relating to telecommunications networks or services shall be made publicly available.

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