

ANNEX 6

TELECOMMUNICATION SERVICES

PREAMBLE

The State Parties;

PURSUANT to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the said Protocol;

HAVING REGARD to the provisions of Article 2.4 of the SADC Trade in Services, that requires State Parties to ensure consistency between liberalisation of trade in services and the various Protocols in the specific services sectors;

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;

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of public telecommunications, transport networks and services;

NOTING that this Head Note provides notes and supplementary provisions to the liberalisation commitments in telecommunication services,

HEREBY AGREE as follows:

ARTICLE 1

TERMS AND DEFINITIONS

For purposes of this Annex, the following terms and definitions shall apply on the regulatory framework for the basic telecommunications services:

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.

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.

ARTICLE 2

COMPETITIVE SAFEGUARDS

1. State Parties shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. 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 service.

ARTICLE 3

INTERCONNECTION

1. This Article 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. Interconnection with major suppliers 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.
- 3. With respect to interconnection rates referred to in Paragraph 2(a) a State Party may reserve the right to determine different rates in respect of different services rendered in different areas under different circumstances on a non-discriminatory basis.
- 4. The procedures applicable for interconnection to a major supplier will be made publicly available.
- 5. State Parties shall ensure that a major supplier will make publicly available either its interconnection agreements or reference interconnection offers.
- 6. In the event of a dispute, 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 knownto an independent domestic body, which may be a regulatory body as referred to in Article 6 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.

ARTICLE 4

UNIVERSAL SERVICE

Any State Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by a State Party.

ARTICLE 5

LICENSING CRITERIA

1. Where a licence is required, the following will be made publicly available:
 - (a) All the licensing criteria and, where practicable, the period of time normally required to reach a decision concerning an application for a licence and
 - (b) The terms and conditions of individual licences.
2. The reasons for the denial of a licence will be made known to the applicant upon request.

ARTICLE 6

INDEPENDENT REGULATORS

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

ARTICLE 7

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.