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The texts will be finalised upon signature and become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

Japan-EU EPA/FTA

Consolidated Text

(Status 7 December 2017)

CHAPTER 8

TRADE IN SERVICES, INVESTMENT LIBERALISATION AND ELECTRONIC COMMERCE

SECTION E

REGULATORY FRAMEWORK

Sub-section 1

DOMESTIC REGULATION

Article 1

Scope and Definitions

1. The following disciplines apply to measures by the Parties relating to licencing requirements and procedures, qualification requirements and procedures and technical standards¹ that affect:

- (a) cross-border trade in services as defined in subparagraph 5(e) of Article 1 of Section A [GENERAL PROVISIONS];

¹ For greater certainty, as far as measures relating to technical standards are concerned, this Sub-section only applies to such measures affecting trade in services.

(b) establishment as defined in subparagraph 5(i) of Article 1 of Section A [GENERAL PROVISIONS] and operation as defined in subparagraph 5(t) of Article 1 of Section A [GENERAL PROVISIONS]; and,

(c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party, in accordance with Article 5 (obligations in other Section) of Section D [Entry and Temporary Stay of Natural Persons].

2. This Sub-section does not apply to licensing requirements and procedures, qualification requirements and procedures and technical standards:

(a) pursuant to a measure that is non-conforming with article 2 [MA] or 3 [NT] of Section C [Cross-Border Trade in Services] or article 2 [MA] or 3 [NT] of Section B [Investment Liberalisation] and referred to in subparagraphs 1 (a), (b) and (c) of Article 5 of Section C [Cross Border Trade in Services] or subparagraphs 1(a), (b) and (c) of Article 7 of Section B [Investment Liberalisation]; or

(b) pursuant to a measure referred to in paragraph 2 of Article 5 of Section C [Cross Border Trade in Services] and paragraph 2 of Article 7 of Section B [Investment Liberalisation].

3. For the purpose of this Sub-section, a ‘Competent authority’ is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through commercial presence or concerning the authorisation to establish in an economic activity other than services.

Article 2

Conditions for licencing and qualification

Measures relating to licencing requirements and procedures, qualification requirements and procedures of each Party shall be based on the following criteria:

- (a) clear;
- (b) objective
- (c) transparent
- (d) made public in advance; and
- (e) accessible.

Article 3

Licencing and qualification procedures

1. Licencing and qualification procedures shall be clear, made public in advance and be such as to ensure the applicants that their application will be dealt with objectively and impartially.

2. Licencing and qualification procedures shall be as simple as possible and shall not in themselves be a restriction on the supply of the service or the pursuit of any other economic activity. Any authorization

fees² which the applicants may incur from their application should be reasonable, transparent and shall not in themselves restrict the supply of the service or the pursuit of any other economic activity.

3. The procedures used by, and the decisions of, the competent authority in the licencing or authorisation process shall be impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorisation is required.

4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

5. The competent authorities of each Party shall complete the processing of an application, including reaching a final decision, within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application and shall make publicly available such timeframe, when established.

6. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

7. Authenticated copies should be accepted, where possible, in place of original documents.

8. If an application is rejected by the competent authority, the applicant shall be informed in principle in writing, and without undue delay. The applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

9. An authorisation or a licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.

10. The competent authorities of a Party shall ensure that a licence or an authorization, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

Article 4

Technical standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body designated to develop technical standards to use open and transparent processes.

² Authorization fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Sub-section 2

PROVISIONS OF GENERAL APPLICATION

Article 1

Administration of measures of general application

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Paragraph 1 shall not apply to:

(a) the aspects of a measure that are non-conforming with article 2 [MA] or 3 [NT] of Section C [Cross Border Trade in Services] or article 2 [MA] or 3 [NT] of Section B [Investment Liberalisation] and referred to in subparagraphs 1 (a), (b) and (c) of Article 5 of Section C [Cross Border Trade in Services] or subparagraphs 1(a), (b) and (c) of Article 7 of Section B [Investment Liberalisation]; or

(b) a measure referred to in paragraph 2 of Article 5 of Section C [Cross Border Trade in Services] and paragraph 2 of Article 7 of Section B [Investment Liberalisation] .

Article 2

Review Procedures for Administrative Decisions

Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected entrepreneur or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary stay of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

Article 3

Mutual recognition

1. Nothing in this section shall prevent a Party from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies in their respective territories to provide joint recommendations on mutual recognition to the [Specialized Committee referred to in paragraph 1 of Article 2 of Section A[General Provisions]], for the purpose of the fulfilment, in whole or in part, by entrepreneurs and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers and, in particular, professional services.

3. On receipt of a recommendation referred to in the preceding paragraph, the [Specialized Committee referred to in paragraph 1 of Article 2 of Section A[General Provisions]] shall, within a reasonable time, review this recommendation with a view to ensuring its consistency with this Agreement, and on the basis of the information contained, assess notably:

- the extent to which the standards and criteria applied by each Party for the authorisation, licencing, operation and certification referred to in paragraph 2 are converging, and;

- the potential economic value of a mutual recognition agreement for the authorisation, licencing, operation and certification referred to in paragraph 2.

4. Where these requirements are satisfied, the [Specialized Committee referred to in paragraph 1 of Article 2 of Section A [General Provisions]] shall establish the necessary steps to negotiate and thereafter the Parties shall engage into negotiations through their competent authorities, of a mutual recognition agreement for the authorisation, licencing, operation and certification referred to in paragraph 2.

5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

Sub-Section 3

POSTAL AND COURIER SERVICES

Article 1 Scope and definitions

1. This Sub-section sets out the principles of the regulatory framework for the provision of postal and courier services, and shall apply to measures by a Party affecting trade in postal and courier services.
2. For the purpose of this Sub-section:
 - (a) A “licence” means an authorisation, granted to an individual supplier by an independent regulatory authority, which may be required before carrying out the activity of supplying a given service;
 - (b) “Universal service” means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

Article 2 Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain. A universal service obligation will not be regarded as anti-competitive per

se, provided it is administered in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party, with regard to all suppliers subject to the obligation.

2. Within the framework of its postal legislation or by other customary means, each Party shall set forth the scope of universal service obligation, fully taking into account the needs of the users and national conditions, including market forces, of that Party.
3. Each Party shall ensure that a supplier of postal and courier services in its territory subject to a universal service obligation under its laws and regulations does not engage in the following practices:
 - (a) excluding the business activities of other enterprises by cross-subsidising from the supply of the universal service the supply of express mail services (EMS)³ or any non-universal service in a way which constitutes a private monopolisation in contravention of Article 3 of the Japanese Anti-Monopoly Act or an abuse of a dominant market position in contravention of the competition law of the European Union respectively, or⁴
 - (b) unjustifiably differentiating among customers, such as large volume mailers or consolidators, where like conditions prevail with respect to charges and the provisions concerning acceptance, delivery, forwarding, return and the numbers of days required for delivery for the supply of a service subject to a universal service obligation.

Article 3

Border procedures

1. The border procedures for international postal services and international courier services⁵ are enforced in accordance with related international agreements, and the laws and regulations of each Party.
2. Without prejudice to paragraph 1, each Party shall not unduly accord a less favourable treatment to international courier services over international postal services, with respect to border procedures.

³ For greater certainty, express mail services (EMS) means services referred to in subparagraph 1.1 of Article 16 of the Universal Postal Convention.

⁴ For greater certainty, the enforcement of each Party's competition rules and the related decisions by competition authority shall be covered by the provisions of Chapter 11 (Competition Policy).

⁵ For greater certainty, for the purpose of this Article, international postal services means services that designated operators referred to in subparagraph 1.9 of Article 1 of the Universal Postal Convention provide in accordance with the Universal Postal Union Acts. International courier services means services consisting of the collection, sorting, transport and delivery of documents, printed matter, parcels and goods for international destinations, not regulated by the Universal Postal Union Acts.

**Article 4
Licences**

1. Parties may require licences for the provision of services covered by this Sub-section.
2. Where a licence is required, the following shall 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 licence, and
 - (b) the terms and conditions of licences.
3. If a licence application is rejected by the competent authority, the applicant shall be informed of the reasons for such rejection upon request and an appeal procedure through an independent body shall be established at the Party's level. Such a procedure shall be transparent, non-discriminatory, and based on objective criteria.

**Article 5
Independence of the regulatory body**

A regulatory body⁶ of each Party for services covered by this Sub-section shall be legally separated from, and not accountable to, any supplier of such services. Subject to the laws and regulations of each Party, decisions of, and procedures used by such regulatory body shall be impartial.

**Sub-Section 4
TELECOMMUNICATIONS SERVICES**

**Article 1
Scope**

⁶ The regulatory body referred to in this article shall not include customs authorities of each Party.

1. This Sub-section sets out principles of the regulatory framework for all telecommunications services and shall apply to measures by a Party affecting trade in telecommunications services, which consist in the conveyance of signals including, *inter alia*, transmission of video and audio signals (irrespective of the types of protocols and technologies used) through public telecommunications transport networks.

2. For greater certainty, this Sub-section shall not apply to measures affecting:

- (a) broadcasting services as defined in the laws and regulations of each Party; and
- (b) services providing, or exercising editorial control over, content transmitted using telecommunications transport networks and services.

Notwithstanding subparagraph (a), suppliers of broadcasting services shall be considered as suppliers of public telecommunications transport services and their networks as public telecommunications transport networks, when and to the extent that such networks are also used for providing public telecommunications transport services.

3. Nothing in this Sub-section shall be construed to:

- (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in this Agreement; or
- (b) require a Party (or require a Party 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.

Article 2

Definitions

For the purposes of this Sub-section:

- (a) “associated facilities” means those services and infrastructures associated with public telecommunications transport networks or services which are necessary for the provision of services via those networks or services, such as buildings (including entries and wiring), ducts and cabinets, masts and antennae;
- (b) “cost-oriented” means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) “enabling use of network facilities” means the making available of facilities and/or services to another supplier of public telecommunications transport networks or services under defined conditions, for the purpose of providing public telecommunications

- transport services. It may include the use of active or passive network elements, associated facilities, virtual network services, co-location or other forms of associated facilities sharing, the use of leased circuits and the use of specified network facilities or elements, including the local loop, on an unbundled basis;
- (d) “end user” means a final consumer of, or subscriber to, a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (e) “essential facilities” means facilities of a public telecommunications transport network or service that:
- (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (f) “interconnection” means linking⁷ with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with the users of another supplier or to access services provided by another supplier. Such services may be provided by the suppliers involved or other suppliers who have access to the network;
- (g) “international mobile roaming service” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user’s home public telecommunications transport network is located;
- (h) “leased circuits” means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user, irrespective of the technology used;
- (i) “major supplier” means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications transport services as a result of:
- (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (j) “non-discriminatory” means treatment no less favorable than that accorded, under like circumstances, to its own like services, as well as service suppliers and users of like public telecommunications transport networks or services;
- (k) “number portability” means the ability of end users of public telecommunications transport services who so request to retain, at the same location, the same telephone

⁷ For greater certainty, this may include physical or logical linking, as appropriate.

numbers without impairment of quality or reliability when switching between the same category of suppliers of like public telecommunications transport services;

- (l) “public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (m) “public telecommunications transport service” means any telecommunications transport service offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving 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;
- (n) “regulatory authority” means the body or bodies of a Party responsible for the regulation of telecommunications mentioned in this Sub-section;
- (o) “telecommunications” means the transmission and reception of signals by wire, radio, optical, or any other electromagnetic means;
- (p) “users” means end users or suppliers of public telecommunications transport networks or services.

Article 3

Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Sub-section.

2. In this respect, the Parties recognise that a Party may:

- (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market; or
- (b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities.

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with subparagraph 2(b), remains subject to the obligations of this Sub-section. Nothing in this article shall prevent a Party from applying a regulation to a telecommunications service.

Article 4

Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to the provisions of paragraphs 5 and 6, that such suppliers are permitted:

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and
- (c) to use operating protocols of their 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.

3. Each Party shall ensure that service suppliers of the other Party 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 either Party or in any other member of the WTO.

4. Notwithstanding the provisions of paragraph 3, a Party 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.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (a) 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; or
- (b) to protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;
- (c) requirements, where necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 15;
- (d) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;
- (e) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or
- (f) notification, permit, registration and licensing.

Article 5

Number Portability

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability for mobile services and, any other services designated by that Party, on a timely basis and on reasonable terms and conditions.

Article 6

Resale

Where a Party requires suppliers of public telecommunications transport services to offer their public telecommunications transport services for resale, the Party shall ensure that such suppliers of public telecommunications transport services do not impose unreasonable or discriminatory conditions or limitations on the resale of their public telecommunications transport services.

Article 7

Enabling use of network facilities and Interconnection to be ensured

1. The Parties recognise that enabling use of network facilities and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications transport networks or services concerned.
2. Each Party shall ensure that any supplier of public telecommunications transport networks or services has a right and, when requested by a supplier of public telecommunications transport networks or services of the other Party, an obligation to negotiate interconnection for the purpose of providing public telecommunications transport networks or services. Each Party shall provide its telecommunications regulatory body with the authority to require, where it considers necessary, suppliers of public telecommunications transport networks or services to provide interconnection with suppliers of public telecommunications transport services of the other Party.
3. Neither Party shall adopt or maintain any measures which oblige suppliers of public telecommunications transport networks or services enabling use of network facilities or granting interconnection to offer different terms and conditions to different suppliers for like services or impose obligations that are not related to the services provided.

Article 8

Obligations Relating to Major Suppliers

Competitive safeguards

1. Each Party shall adopt or 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. These anti-competitive practices shall include in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (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.

Treatment by Major Suppliers

2. Each Party shall provide its regulatory authority with the power to require, where appropriate, that a major supplier in its territory accords suppliers of public telecommunications transport networks or services of the other Party treatment no less

favorable than such major supplier accords in like circumstances to its subsidiaries or its affiliates, regarding:

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

Interconnection with Major Suppliers

3. Each Party shall ensure that major suppliers in its territory provide interconnection at any technically feasible point in the network. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and rates, and of a quality no less favourable than that provided for the own like services of such major supplier, 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 with respect to technical standards, specifications, quality and maintenance) 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.

4. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications transport services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

- (a) 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 transport services; or
- (b) the terms and conditions of an interconnection agreement in effect.

5. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

6. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or reference interconnection offer.

7. Each Party shall ensure that major suppliers that acquire information from another supplier of public telecommunications transport networks or services in the process of negotiating arrangements on, and as a result of, the use of network facilities or interconnection, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

Enabling use of network facilities and Interconnection

8. Each Party shall ensure that a major supplier in its territory enables the use of network facilities, which may include, inter alia, network elements and associated facilities, to suppliers of public telecommunications transport networks or services on transparent, reasonable and non-discriminatory (including with respect to timeliness) terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance).

For greater certainty, nothing in this paragraph shall prevent a Party from allowing a major supplier in its territory to reject co-location where there is a reasonable ground for rejection, in particular with regard to technical feasibility.

Article 9

The Regulatory Authority

1. Each Party shall ensure that its regulatory authority is legally distinct, and functionally independent from any supplier of telecommunications services, telecommunications networks, or telecommunications network equipment.

Note: For greater certainty, the regulatory authority of a Party shall not be regarded as not “functionally independent” solely based on the fact that an authority of that Party (other than the regulatory authority) holds shares or other equity interest in a supplier of telecommunications services, telecommunications networks, or telecommunications network equipment.

2. A Party that retains ownership or control of providers of public telecommunications transport networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. The regulatory authority shall be sufficiently empowered to regulate the sector, and to carry out the task assigned to it, including enforcement of the measures relating to the obligations set out in this Sub-section. The tasks to be undertaken by the regulatory authority shall be made public in an easily accessible and clear form.

4. Each Party shall ensure that the decisions of, and the procedures used by, its regulatory authority are impartial with respect to all market participants.

5. The regulatory authority shall perform its tasks in a transparent manner and, to the extent practicable, without undue delay.

6. The regulatory authority shall have the power to request from suppliers of telecommunications networks and services all the information, including financial

information, which is necessary to enable the regulatory authority to carry out its tasks in accordance with this Sub-section. Information requested shall not be more than necessary to perform the regulatory authority's tasks and shall be treated in accordance with each Party's laws and regulations relating to business confidentiality.

Article 10

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.
3. All suppliers of telecommunications services should be eligible to provide universal service. Universal service suppliers shall be designated through a transparent, non-discriminatory and not unduly burdensome mechanism.
4. The regulatory authority may determine whether a mechanism is required to compensate the net cost of the supplier(s) designated to provide universal service, taking into account the market benefit, if any, accruing to such supplier(s), or to share the net cost of universal service obligations.

Article 11

Authorisation to provide telecommunications networks and services

1. Each Party shall authorise the provision of telecommunications networks or services, to the extent possible, upon simple notification or registration without requiring a prior explicit decision by the regulatory authority. The rights and obligations resulting from such authorisation shall be made publicly available in an easily accessible form.
2. Where necessary, a license for the right of use for radio frequencies and numbers can be required in order to, in particular:
 - (a) avoid harmful interference;
 - (b) ensure technical quality of service; or
 - (c) safeguard efficient use of spectrum.
3. Where a license is required, each Party shall make publicly available:

- (a) all the licensing criteria and a reasonable period of time normally required to obtain such a decision; and
- (b) the terms and conditions of individual licenses.

4. Each Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for or revoke a license, each Party shall make known to the applicant in principle in writing, upon request, the reasons for the denial or revocation. In such a case, the applicant shall be able to seek recourse before an appeal body as referred to in Article 14.

5. Administrative fees imposed on suppliers, if any, shall be objective, transparent and commensurate with the administrative costs of the regulatory authority. Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

Article 12

Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, numbers and rights of way, in an open objective, timely, transparent and non-discriminatory and not unduly burdensome 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 government uses.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article on Market Access in both Cross-Border Trade in Services Section and Investment Liberalisation Section. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 13

Transparency

Each Party shall ensure that its measures relating to access to and use of public telecommunications transport networks and services are made publicly available, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces;
- (c) bodies responsible for the preparation, amendment and adoption of standards affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and
- (e) notifications, permit, registration or licensing requirements, if any.

Article 14

Resolution of Telecommunications Disputes

1. Each Party shall ensure, in accordance with its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to the regulatory authority of the Party to resolve disputes in connections with rights and obligations that arise from this Sub-section.

In such cases, the regulatory authority shall aim to issue a binding decision as appropriate, to resolve the dispute without undue delay.

2. If a regulatory authority declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time.

3. The regulatory authority shall make the dispute concluding decision available to the public, in accordance with its laws and regulations, and having regard to the requirements of business confidentiality.

4. Each Party shall ensure that a supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its regulatory authority may obtain review of such determination or decision by either the regulatory authority or an independent appeal body, which may or may not be a judicial authority.

5. Each Party shall ensure that a supplier of public telecommunications transport networks or services affected by a decision of its regulatory authority or independent appeal body, where the latter is not a judicial authority, may obtain further review of such decision by an independent judicial authority, save in cases where the supplier has accepted a procedure where the regulatory authority or independent appeal body issues a final decision, in accordance with the laws and regulations of the Party.

6. Neither Party shall permit an application for review by an appeal body or a judicial authority to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant appeal body or judicial authority withholds, suspends or repeals such determination or decision.

7. The procedure referred to in paragraphs 1 to 3 of this Article shall not preclude either party concerned from bringing an action before the courts.

Article 15

Relation to International Organizations

The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunications transport 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.

Article 16

Confidentiality of information

Each Party shall ensure the confidentiality of telecommunications and related traffic data of subscribers and users over public telecommunications transport network and services without unduly restricting trade in services.

Article 17

International Mobile Roaming

1. Each Party shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.

2. Each Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

3. Each Party shall encourage suppliers of public telecommunications transport services in its territory to make publicly available information on retail rates for international mobile roaming services, for voice, data and text messages offered to its end users when visiting the territory of the other Party.

4. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Note: This article does not apply to intra-EU roaming services.

Sub-section 5

FINANCIAL SERVICES

Article 1 Scope

1. This Sub-section shall apply to measures by a Party affecting trade in financial services.
2. For the purpose of Article 1.5 (v) of Section A [General Provisions] "services supplied in the exercise of governmental authority" means the following:
 - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.
3. For the purposes of Article 1.5 (v) of Section A [General Provisions], if a Party allows any of the activities referred to in paragraph 2 (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

4. Article 1.5 (w) of Section A [General Provisions] shall not apply to services covered by this Sub-section.

Article 2

Definitions

For the purposes of this Section and of Sections B, C and D of this Chapter

(a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(i) Insurance and insurance-related services

(A) direct insurance (including co-insurance):

(aa) life;

(bb) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(ii) Banking and other financial services (excluding insurance)

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(aa) money market instruments (including cheques, bills and certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and provision of services related to

such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) “financial service supplier” means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity;

(c) “new financial service” means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

(d) “public entity” means:

(i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or a monetary authority, when exercising those functions;

(e) “self-regulatory organisation” means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

Article 3

Financial Services new to the territory of a Party

A Party shall permit financial service suppliers of the other Party established in the territory of the former Party to offer in the territory of the former Party any new financial service.

Notwithstanding Article X.3 b) of Section B[Investment Liberalisation (Market Access, paragraph on juridical form)], a Party may determine the juridical form through which the new financial service may be supplied and may require authorization for the supply of the service.

Where such authorization is required, it may be refused for prudential reasons and not for the only reason that the service is new to the territory of a Party.

Article 4

Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 5

Self-regulatory organisations

When a Party requires membership or participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure that such self-regulatory organisations observe the obligations of Article [X] (National Treatment – Investment Liberalisation) with respect to financial service suppliers of the other Party.

Article 6

Transfers of Information and Processing of Information

1. Neither Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.

2. Nothing in paragraph 1 restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Article.

Article 7

Effective and transparent regulation

1. Where a license is required for the supply of a financial service, a Party shall make the requirements and procedures for such a license publicly available.
2. If a Party requires additional information from the applicant in order to process its application, it shall notify the applicant without undue delay.
3. Each Party shall endeavor to ensure that the rules of general application adopted or maintained by self-regulatory bodies in that Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

Article 8

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, including for:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
 - (b) ensuring the integrity and stability of the Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's obligations under this Agreement.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 9

Supply of Insurance Services by Postal Insurance Entities

1. The disciplines set out in this sub-section apply where a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.
2. No Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

- (a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
- (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities as apply to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of such services. The statement shall provide the level of detail required by the relevant generally accepted accounting principles and shall be subject to auditing standards, applied in the Party's territory with respect to publicly traded private enterprises supplying like services, or equivalent rules.

5. Paragraphs 1 to 4 do not apply to a postal insurance entity in the territory of a Party:

- (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
- (b) if neither the sale of direct life nor non-life insurance underwritten by the postal insurance entity accounts for more than ten percent of total annual premium income in the relevant segment of the Party's market.

6. For purposes of this sub-section, postal insurance entity means an entity that underwrites and sells insurance to the general public and is owned or controlled, directly or indirectly, by a postal entity of the Party.

Sub-Section 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 1

Scope, definitions and principles

1. This Sub-section sets out the principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B, C and D of this Chapter, and shall apply to measures by a Party affecting trade in international maritime transport services.

2. Definitions

For the purpose of this Sub-section and Sections B, C and D of this Chapter:

- (a) ‘international maritime transport services’ means the transport of passengers and/or cargo by sea-going vessels between a port of a Party and a port of the other Party or a non-party. This includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services.
- (b) ‘door-to-door or multimodal transport operations’ means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document.
- (c) ‘maritime auxiliary services’ means maritime cargo handling services, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services, and maritime freight forwarding services.
- (d) ‘maritime cargo handling services’ means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - the loading/discharging of cargo to/from a ship;
 - the lashing/unlashing of cargo;
 - the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (e) “storage and warehousing services” means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods, including: cotton, grain, wool, tobacco, other farm products, and other household goods;
- (f) ‘customs clearance services’ (alternatively ‘customs house brokers’ services’) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (g) ‘container station and depot services’ means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;

- (h) ‘maritime agency services’ means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (i) ‘freight forwarding services’ means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

3. Obligations

Without prejudice to non-conforming measures or other measures referred to in Articles [Y (NCM Article in Section B -Investment Liberalisation)] and [YY (NCM Article in Section C - Cross-border Trade in Services)],

- (a) the Parties shall respect the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

In applying the principles of (a) and (b), the parties shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Any such arrangements in any agreement in force or signed prior to the date of entry into force of this Agreement shall be terminated upon the entry into force of this Agreement.

- (c) each Party shall permit international maritime service suppliers of the other Party to have an enterprise in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers.
- (d) The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain’s services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.
