

Japan-EU EPA/FTA Negotiation
Consolidated Text
(Status 30 January 2017)

Text in green is in principle agreed subject to confirmation in the next round

SECTION [V] – TELECOMMUNICATIONS SERVICES

Article [X1]

Scope

1. This 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 section shall not apply to measures affecting:
 - i) broadcasting services as defined in the laws and regulations of each Party; and
 - ii) services providing, or exercising editorial control over, content transmitted using telecommunications transport networks and services.

Cable or broadcast services suppliers shall be considered as public telecommunication transport services suppliers and their network as public telecommunication transport networks, when and to the extent providing public telecommunication transport services.

3. Nothing in this [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 [X2]

Definitions¹

For the purposes of this [Section]:

¹ Consistent use throughout the Agreement of introducing definitions by "the term XX means..." versus "XX is..." is to be decided later on.

- (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
- are exclusively or predominantly provided by a single or limited number of suppliers; and
 - cannot feasibly be economically or technically substituted in order to provide a service;
- (f) “interconnection” means linking² 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 [EU: Territory] [JPN: Area] 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,

² For greater certainty, this may include physical or logical linking, as appropriate.

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) its position in the market;
- (j) “non-discriminatory” means treatment no less favourable 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 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 Section;
- (o) “telecommunications” means the transmission and reception of signals by wire, radio, optical, or any other electromagnetic means;

[JPN: (p) “trade in telecommunications services” means:

- i) cross-border trade in telecommunications services; and
- ii) the supply of telecommunications services by an investments of an investor of a Party, as defined in Article [] of Chapter [*] (Investment Chapter), in the Area of the other Party; and

Note: “cross-border trade in telecommunications services” shall be understood in accordance with the definition contained in subparagraph [] of Article [] of Chapter

[*] (definition of “cross-border trade in services” in the Chapter of Cross-Border Trade in Services).]

- (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 Chapter.
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;
 - 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 paragraph 2 (b), remains subject to the obligations of this Section. Nothing in this article shall prevent a Party from applying a regulation to a telecommunications service.

Article [X4] 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 databases 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 [X18] (Relation to International Organizations);
- 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 [X5]
Number Portability

Each Party shall ensure that suppliers of public telecommunications transport services in its [EU: Territory] [JPN: Area] 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 [X6]
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 [X7]
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 [X8]
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 [EU: Territory] [JPN: Area] accords suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable 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 [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] to reject co-location where there is a reasonable ground for rejection, in particular with regard to technical feasibility.

Article [X9] 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.

[EU: 3. The regulatory authority shall act independently of, and shall not seek or take instructions from, any other body in relation to the exercise of the tasks assigned to it under its laws and regulations.]

4. 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 Section. The tasks to be undertaken by the regulatory authority shall be made public in an easily accessible and clear form.

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

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

7. 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 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 [X10] **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 [X11]

Authorisation to Provide Telecommunication Networks and Services

1. Each Party shall authorise the provision of telecommunication 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;
- 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 [X14].

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 [X12]

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 Chapter and Investment chapter. 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 [X13] 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.

[Note: subject to final decision on placing this article in the horizontal chapter]

Article [X14] 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 Annex.

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 any 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. The decisions of the regulatory authority or independent appeal body, where the latter is not a judicial authority, may also be subject to further review by an independent judicial authority, save in cases where the parties concerned have accepted an procedure where the regulatory authority or independent appeal body issues a final determination.
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 [X15]
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.

[JPN: Article [X16]]
Working Group on Telecommunications

1. For the purposes of the effective implementation and operation of Chapter [*] (Cross-Border Trade in Services) and the BIT including this Annex with respect to telecommunications, a Working Group on Telecommunications (hereinafter referred to in this

Article as “the Working Group”) is hereby established under the Sub-Committee on Cross-Border Trade in Services (hereinafter referred to in this Article as “the Sub-Committee”).

2. The functions of the Working Group shall be:
 - a) reviewing and monitoring the implementation and operation of Chapter [*] (Cross-Border Trade in Services) and the Chapter [**] (Investment) including this Annex with respect to telecommunications;
 - b) discussing any issues related to this Annex and other issues relevant to the telecommunications sectors agreed on by the Parties;
 - c) as appropriate, reporting its findings and its outcomes of discussions to the Sub-Committee; and
 - d) carrying out other functions as may be delegated by the Sub-Committee.
3. The Working Group shall meet in conjunction with the Sub-Committee meetings, or as otherwise agreed upon between the Parties.
4. The Working Group shall be:
 - a) composed of representatives of the Governments of the Parties;
 - b) co-chaired by officials of the Governments of the Parties.
5. The activities of the Working Group are without prejudice to existing or future relations between supervisory authorities of the Parties within the scope of their competence.
6. The Working Group may invite by mutual consent of the Parties, representatives of relevant entities other than the Governments of the Parties, with the necessary expertise relevant to the issues to be discussed].

Article [X17] Foreign Shareholding

With regard to the provision of telecommunications transport networks and services through commercial presence, each Party [shall endeavour not to] [should not] impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment. [JPN: except those adopted or maintained in accordance with Articles [X] (Non-Conforming Measures) in Chapter [X] (CBTS) or Article [Y] (Non-Conforming Measures) in Chapter [Y] (Investment).]

Article [X18]

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 [19] 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 [EU: Territory] [JPN: Area] of a Party from the [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] 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 [EU: Territory] [JPN: Area] 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.