

CHAPTER 10

CROSS-BORDER TRADE IN SERVICES

*This Chapter is similar to that of TPP, together with note of freeze clause under CPTPP (according to WTO Center-VCCI)

Article 10.1: Definitions

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

- (a) from the territory of a Party into the territory of another Party;
- (b) in the territory of a Party to a person of another Party; or
- (c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the laws of a Party, or a branch located in the territory of a Party and carrying out business activities there;

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as

de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

measures adopted or maintained by a Party means measures adopted or maintained by:

- (a) central, regional, or local governments or authorities; or
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 10.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

- (d) the presence in the Party's territory of a service supplier of another Party; and
 - (e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. In addition to paragraph 1:
- (a) Article 10.5 (Market Access), Article 10.8 (Domestic Regulation) and Article 10.11 (Transparency) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment¹; and
 - (b) Annex 10-B (Express Delivery Services) shall also apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment.
3. This Chapter shall not apply to:
- (a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party's territory;
 - (b) government procurement;
 - (c) services supplied in the exercise of governmental authority; or
 - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. This Chapter does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.
5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:
- (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

¹ For greater certainty, nothing in this Chapter, including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-Conforming Measures Ratchet Mechanism), is subject to investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment).

- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.

7. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the *Annex on Air Transport Services* of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

Article 10.3: National Treatment²

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 10.4: Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.

² For greater certainty, whether treatment is accorded in “like circumstances” under Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 10.5: Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;³ or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 10.6: Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 10.7: Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to:

³ Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex I;
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence).⁴

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.⁵

Article 10.8: Domestic Regulation

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

⁴ With respect to Viet Nam, Annex 10-C (Non-Conforming Measures Ratchet Mechanism) applies.

⁵ For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service; and
- (b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.⁶

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (b) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;
- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
- (e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and
- (f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

⁶ "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.⁷

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of another Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

Article 10.9: Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to

⁷ For the purposes of this paragraph, authorisation 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.

accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to another Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between Parties and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. As set out in Annex 10-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 10.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of any Party other than the denying Party.

Article 10.11: Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.⁸

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 26.2.2 (Publication) with respect to regulations that relate to

⁸ The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

Article 10.12: Payments and Transfers⁹

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws¹⁰ that relate to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.13: Other Matters

The Parties recognise the importance of air services in facilitating the expansion of trade and enhancing economic growth. Each Party may consider working with other Parties in appropriate fora toward liberalising air services, such as through agreements allowing air carriers to have flexibility to decide on their routing and frequencies.

⁹ For greater certainty, this Article is subject to Annex 9-E (Transfers).

¹⁰ For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

ANNEX 10-A

PROFESSIONAL SERVICES

General Provisions

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.
2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures.
3. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.
4. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Engineering and Architectural Services

5. Further to paragraph 3, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.
6. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.
7. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers.

Temporary Licensing or Registration of Engineers

8. Further to paragraph 4, in taking steps to implement a temporary or project-specific licensing or registration regime for engineers, a Party shall consult with its relevant professional bodies with respect to any recommendations for:

- (a) the development of procedures for the temporary licensing or registration of engineers of another Party to permit them to practise their engineering specialties in its territory;
- (b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing or registration of those engineers;
- (c) the engineering specialties to which priority should be given in developing temporary licensing or registration procedures; and
- (d) other matters relating to the temporary licensing or registration of engineers identified in the consultations.

Legal Services

9. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

10. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

- (a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;
- (b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;
- (c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;
- (d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional

indemnity insurance or alternatively disclose to clients that they lack that insurance;

- (e) the following modes of providing transnational legal services are accommodated:
 - (i) on a temporary fly-in, fly-out basis;
 - (ii) through the use of web-based or telecommunications technology;
 - (iii) by establishing a commercial presence; and
 - (iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);
- (f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and
- (g) a foreign law firm may use the firm name of its choice.

Professional Services Working Group

11. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party, to facilitate the activities listed in paragraphs 1 through 4.

12. The Working Group shall liaise, as appropriate, to support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 4. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in the Parties' territories.

13. The Working Group shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in paragraphs 1 through 4. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Group.

14. The Working Group shall report to the Commission on its progress and on the future direction of its work, within two years of the date of entry into force of this Agreement.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

- (a) otherwise agreed by all Parties; or
- (b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

ANNEX 10-B

EXPRESS DELIVERY SERVICES

1. For the purposes of this Annex, **express delivery services** means the collection, transport and delivery of documents, printed matter, parcels, goods or other items, on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include air transport services, services supplied in the exercise of governmental authority, or maritime transport services.¹¹
2. For the purposes of this Annex, **postal monopoly** means a measure maintained by a Party making a postal operator within the Party's territory the exclusive supplier of specified collection, transport and delivery services.
3. Each Party that maintains a postal monopoly shall define the scope of the monopoly on the basis of objective criteria, including quantitative criteria such as price or weight thresholds.¹²
4. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that each provides on the date of its signature of this Agreement. If a Party considers that another Party is not

¹¹ For greater certainty, express delivery services does not include: (a) for Australia, services reserved for exclusive supply by Australia Post as set out in the *Australian Postal Corporation Act 1989* and its subordinate legislation and regulations; (b) for Brunei Darussalam, reserved exclusive rights for collection and delivery of letters by the Postal Services Department as set out in the *Post Office Act* (Chapter 52 of the Laws of Brunei), the Guidelines to Application of License for the Provision of Local Express Letter Service (2000) and the Guidelines to Application of License for the Provision of International Express Letter Service (2000); (c) for Canada, services reserved for exclusive supply by Canada Post Corporation as set out in the *Canada Post Corporation Act* and its regulations; (d) for Japan, correspondence delivery services within the meaning of the *Law Concerning Correspondence Delivery Provided by Private Operators* (Law No. 99, 2002) other than special correspondence delivery services as set out in Article 2, paragraph 7 of the law; (e) for Malaysia, reserved exclusive rights for collection and delivery of letters by Pos Malaysia as provided for under the *Postal Services Act 2012*; (f) for Mexico, mail services reserved for exclusive supply by the Mexican Postal Service as set out in the Mexican Postal laws and regulations, as well as motor carrier freight transportation services, as set forth in Title III of the *Roads, Bridges, and Federal Motor Carrier Transportation Law* and its regulations; (g) for New Zealand, the fastpost service and equivalent priority domestic mail services; (h) for Singapore, postal services as set out in the *Postal Services Act* (Cap 237A, 2000 Rev Ed) and certain express letter services which are administered under the Postal Services (Class License) Regulations 2005; (i) for the United States, delivery of letters over post routes subject to 18 U.S.C. 1693–1699 and 39 U.S.C. 601–606, but does include delivery of letters subject to the exceptions therein; and (j) for Viet Nam, reserved services as set out in Viet Nam Postal Law and relevant legal documents.

¹² For greater certainty, the Parties understand that the scope of Chile's postal monopoly is defined on the basis of objective criteria by Decree 5037 (1960) and the ability of suppliers to supply delivery services in Chile is not limited by this Decree.

maintaining that level of market openness, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, provide information in response to inquiries regarding the level of market openness and any related matter.

~~5. No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidise its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services.¹³~~

~~6. Each Party shall ensure that any supplier of services covered by a postal monopoly does not abuse its monopoly position to act in the Party's territory in a manner inconsistent with the Party's commitments under Article 9.4 (National Treatment), Article 10.3 (National Treatment) or Article 10.5 (Market Access) with respect to the supply of express delivery services.¹⁴~~

~~*(This clause is freeze under CPTPP)~~

7. No Party shall:

- (a) require an express delivery service supplier of another Party, as a condition of authorisation or licensing, to supply a basic universal postal service; or
- (b) assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.¹⁵

8. Each Party shall ensure that any authority responsible for regulating express delivery services is not accountable to any supplier of express delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory and transparent with respect to all express delivery service suppliers in its territory.

¹³ ~~In the case of Viet Nam, this obligation shall not apply until three years after the date of entry into force of this Agreement for it. During this period, if a Party considers that Viet Nam is allowing such cross-subsidisation, it may request consultations. Viet Nam shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the cross-subsidisation.~~

¹⁴ ~~For greater certainty, a supplier of services covered by a postal monopoly that exercises a right or privilege incidental to or associated with its monopoly position in a manner that is consistent with the Party's commitments listed in this paragraph with respect to express delivery services is not acting in a manner inconsistent with this paragraph.~~

¹⁵ This paragraph shall not be construed to prevent a Party from imposing non-discriminatory fees on delivery service suppliers on the basis of objective and reasonable criteria, or from assessing fees or other charges on the express delivery services of its own supplier of services covered by a postal monopoly.

ANNEX 10-C

NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 10.7.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

- (a) Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence);
- (b) Viet Nam shall not withdraw a right or benefit from a service supplier of another Party, in reliance on which the service supplier has taken any concrete action,¹⁶ through an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and
- (c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

¹⁶ Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licenses.

CHAPTER 13

TELECOMMUNICATIONS

*This Chapter is similar to that of TPP, together with note of freeze clause under CPTPP (according to WTO Center-VCCI)

Article 13.1: Definitions

For the purposes of this Chapter:

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

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

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

enterprise means an enterprise as defined in Article 1.3 (General Definitions) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications 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 network is located;

leased circuit means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user

and supplied by a supplier of a fixed telecommunications service;

licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications service, including concessions, permits or registrations;

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

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

network element means a facility or equipment used in supplying a fixed public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

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

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. These services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates and conditions for interconnection so that a supplier of public telecommunications

services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

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

telecommunications regulatory body means a body or bodies responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

virtual co-location means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

Article 13.2: Scope

1. This Chapter shall apply to:
 - (a) any measure relating to access to and use of public telecommunications services;
 - (b) any measure relating to obligations regarding suppliers of public telecommunications services; and
 - (c) any other measure relating to telecommunications services.
2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:
 - (a) Article 13.4.1 (Access to and Use of Public Telecommunications Services) shall apply with respect to a cable or broadcast service supplier's access to and use of public telecommunications services; and
 - (b) Article 13.22 (Transparency) shall apply to any technical measure to the extent that the measure also affects public telecommunications services.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public

generally;¹

- (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or
- (c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

4. Annex 13-A (Rural Telephone Suppliers – United States) and Annex 13-B (Rural Telephone Suppliers – Peru) include additional provisions relating to the scope of this Chapter.

Article 13.3: 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 or if a service is new to a market. 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, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities;²
or

¹ For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of another Party to establish, construct, acquire, lease, operate or supply public telecommunications services, unless otherwise provided for in this Agreement.

² Consistent with this subparagraph, the United States, based on its evaluation of the state of competition of the U.S. commercial mobile market, has not applied major supplier-related measures pursuant to Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.9.2 (Resale), Article 13.11 (Interconnection with Major Suppliers), Article 13.13 (Co-Location by Major Suppliers) or Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-Way Owned or Controlled by Major Suppliers) to the commercial mobile market.

- (c) use any other appropriate means that benefit the long-term interest of end-users.

3. When a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying that regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body or other competent body determines that:

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

Article 13.4: Access to and Use of Public Telecommunications Services³

1. Each Party shall ensure that any enterprise of another Party has access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any service supplier of another Party is permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;
- (b) provide services to individual or multiple end-users over leased or owned circuits;
- (c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;⁴

³ For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

⁴ In Viet Nam, networks authorised to establish for the purpose of carrying out, on a non-commercial basis, voice and data telecommunications between members of a closed user group can only directly interconnect with each other where approved in writing by the telecommunications regulatory body. Viet Nam shall ensure that upon request an applicant receives the reasons for the denial of an authorisation. Viet Nam shall review this requirement to obtain written approval within two years of the date of entry into force of this Agreement.

- (d) perform switching, signalling, processing and conversion functions; and
- (e) use operating protocols of their choice.

3. Each Party shall ensure that an enterprise of any Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services generally available to the public; or
- (b) protect the technical integrity of public telecommunications networks or services.

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

- (a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;
- (b) a requirement, when necessary, for the interoperability of those networks and services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and
- (d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with a Party's laws or regulations.

Article 13.5: Obligations Relating to Suppliers of Public Telecommunications Services

*Interconnection*⁵

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly within the same territory, interconnection with suppliers of public telecommunications services of another Party.
2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.
3. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Number Portability

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions.⁶

⁵ For greater certainty, the term “interconnection”, as used in this Chapter, does not include access to unbundled network elements.

⁶ With respect to certain Parties, this paragraph shall apply as follows:

- (a) for Brunei Darussalam, this paragraph shall not apply until such time as it determines, pursuant to periodic review, that it is economically feasible to implement number portability in Brunei Darussalam;
- (b) for Malaysia, this paragraph shall apply only with respect to commercial mobile services until such time as it determines that it is economically feasible to apply number portability to fixed services; and
- (c) for Viet Nam, this paragraph shall apply to fixed services at such time as it determines that it is technically and economically feasible. Within four years of the date of entry into force of this Agreement for Viet Nam, it shall conduct a review for it to determine the economic feasibility of applying number portability to fixed services. With respect to commercial mobile services, this paragraph shall apply to Viet Nam no later than 2020.

Access to Numbers

5. Each Party shall ensure that suppliers of public telecommunications services of another Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.⁷

Article 13.6: International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. A 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 another Party can access telecommunications services using the device of their choice.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with other Parties to facilitate the implementation of those measures, including by entering into arrangements with those Parties.

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which:⁸

⁷ For Viet Nam, this paragraph shall not apply with respect to blocks of numbers that have been allocated prior to entry into force of this Agreement.

⁸ For greater certainty, no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

- (a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the two Parties;⁹ or
- (b) in the absence of an arrangement of the type referred to in subparagraph (a), the supplier of public telecommunications services of the second Party, of its own accord:
 - (i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions;¹⁰ and
 - (ii) meets any additional requirements¹¹ that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 10.4 (Most-Favoured-Nation Treatment), Article 13.4.1 (Access to and Use of Public Telecommunications Services), and Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services) with respect to international mobile roaming services.

6. Each Party shall provide to the other Parties information on rates for retail international mobile roaming services for voice, data and text messages offered to consumers of the Party when visiting the territories of the other Parties. A Party shall provide that information no later than one year after the date of entry into force of this Agreement for the Party. Each Party shall update that information

⁹ For greater certainty, access under this subparagraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

¹⁰ For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

¹¹ For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

and provide it to the other Parties on an annual basis or as otherwise agreed. Interested Parties shall endeavour to cooperate on compiling this information into a report to be mutually agreed by the Parties and to be made publicly available.

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

Article 13.7: Treatment by Major Suppliers of Public Telecommunications Services

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of another Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries, its affiliates or non-affiliated service suppliers regarding:

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

Article 13.8: Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 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, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 13.9: Resale

1. No Party shall prohibit the resale of any public telecommunications

service.¹²

2. Each Party shall ensure that a major supplier in its territory:
 - (a) offers for resale, at reasonable rates¹³, to suppliers of public telecommunications services of another Party, public telecommunications services that the major supplier provides at retail to end-users; and
 - (b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.¹⁴
3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers pursuant to paragraph 2, based on the need to promote competition or to benefit the long-term interests of end-users.
4. If a Party does not require that a major supplier offer a specific public telecommunications service for resale, it nonetheless shall allow service suppliers to request that the service be offered for resale consistent with paragraph 2, without prejudice to the Party's decision on the request.

Article 13.10: Unbundling of Network Elements by Major Suppliers

Each Party shall provide its telecommunications regulatory body or another appropriate body with the authority to require a major supplier in its territory to offer to public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

¹² Brunei Darussalam may require that licensees who purchase public telecommunications services on a wholesale basis only resell their services to an end-user.

¹³ For the purposes of this Article, each Party may determine reasonable rates through any methodology it considers appropriate.

¹⁴ Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Article 13.11: Interconnection with Major Suppliers

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

- (a) at any technically feasible point in the major supplier's network;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and
- (e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

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

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

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

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

5. Each Party shall provide means for suppliers of another Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

- (a) the public availability of interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory;
- (b) the public availability of rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or
- (c) the public availability of a reference interconnection offer.

Services for which those rates, terms and conditions are made publicly available do not have to include all interconnection-related services offered by a major supplier, as determined by a Party under its laws and regulations.

Article 13.12: Provisioning and Pricing of Leased Circuits Services by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides to service suppliers of another Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of another Party at capacity-based and cost-oriented prices.

Article 13.13: Co-Location by Major Suppliers

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of another Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally

available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution, such as facilitating virtual co-location, based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. When the Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on such a request.

Article 13.14: Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers¹⁵

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and rights-of-way or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

¹⁵ Chile may comply with this obligation by maintaining appropriate measures for the purpose of preventing a major supplier in its territory from denying access to poles, ducts, conduits and rights-of-way, owned or controlled by the major supplier.

Article 13.15: International Submarine Cable Systems^{16, 17}

Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, consistent with the provisions of Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers) and Article 13.13 (Co-Location by Major Suppliers), to public telecommunications suppliers of another Party.

Article 13.16: Independent Regulatory Bodies and Government Ownership

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest¹⁸ or maintain an operating or management role¹⁹ in any supplier of public telecommunications services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body or other competent authority related to provisions contained in this Chapter are impartial with respect to all market participants.

3. No Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

¹⁶ For Chile, this provision shall apply when its telecommunications regulatory body obtains the authority to implement this provision. Nonetheless, Chile shall ensure reasonable and non-discriminatory access to international submarine cable systems including landing stations in its territory.

¹⁷ For Viet Nam, co-location for international submarine landing stations owned or controlled by the major supplier in the territory of Viet Nam excludes physical co-location.

¹⁸ This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

¹⁹ Viet Nam's telecommunications regulatory body assumes the role of representing the government as owner of certain telecommunications suppliers. In this context, Viet Nam shall comply with this provision by ensuring that any regulatory actions with respect to those suppliers do not materially disadvantage any competitor.

Article 13.17: Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.18: Licensing Process

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall ensure the public availability of:

- (a) all the licensing criteria and procedures that it applies;
- (b) the period that it normally requires to reach a decision concerning an application for a licence; and
- (c) the terms and conditions of all licences in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the:

- (a) denial of a licence;
- (b) imposition of supplier-specific conditions on a licence;
- (c) revocation of a licence; or
- (d) refusal to renew a licence.

Article 13.19: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of frequency bands allocated and assigned to specific suppliers²⁰ but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum

²⁰ For Peru, the commitment to make publicly available assigned bands shall apply only to bands used to provide access to end-users.

and managing frequency are not *per se* inconsistent with Article 10.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.2.2 (Scope) to an investor or covered investment of another Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

Article 13.20: Enforcement

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Article 13.4 (Access to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

Article 13.21: Resolution of Telecommunications Disputes

1. Further to Article 26.3 (Administrative Proceedings) and Article 26.4 (Review and Appeal), each Party shall ensure that:

Recourse

- (a) enterprises have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Article 13.4 (Access

to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.6 (International Mobile Roaming), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems);

- (b) if a telecommunications regulatory body 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;²¹
- (c) suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier; and

~~Reconsideration~~²²

- (d) ~~any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body or other relevant body to reconsider that determination or decision. No Party shall permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the regulatory or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which reconsideration is available, in accordance with its laws and regulations.~~

*(This clause is freeze under CPTPP)

²¹ For the United States, this subparagraph applies only to the national regulatory body.

²² ~~With respect to Peru, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 26.1 (Definitions), unless provided for under its laws and regulations. For Australia, paragraph 1(d) does not apply.~~

Judicial Review

2. No Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

Article 13.22: Transparency

1. Further to Article 26.2.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input²³ for a proposal for a regulation, that body shall:

- (a) make the proposal public or otherwise available to any interested persons;
- (b) include an explanation of the purpose of and reasons for the proposal;
- (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;
- (d) to the extent practicable, make publicly available all relevant comments filed with it; and
- (e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.²⁴

2. Further to Article 26.2.1 (Publication), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces;
- (c) conditions for attaching terminal or other equipment to the public telecommunications network;
- (d) licensing, permit, registration or notification requirements, if any;
- (e) general procedures relating to resolution of telecommunications

²³ For greater certainty, seeking input does not include internal governmental deliberations.

²⁴ For greater certainty, a Party may consolidate its responses to the comments received from interested persons. Viet Nam may comply with this obligation by responding to any questions regarding its decisions upon request.

disputes provided for in Article 13.21 (Resolution of Telecommunications Disputes); and

- (f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending and adopting standards-related measures affecting access and use.

Article 13.23: Flexibility in the Choice of Technology

1. No Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so consistent with Article 13.22 (Transparency).

2. When a Party finances the development of advanced networks²⁵, it may make its financing conditional on the use of technologies that meet its specific public policy interests.

Article 13.24: Relation to Other Chapters

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

Article 13.25: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

Article 13.26: Committee on Telecommunications

1. The Parties hereby establish a Committee on Telecommunications (Committee) composed of government representatives of each Party.

2. The Committee shall:

- (a) review and monitor the implementation and operation of this

²⁵ For greater certainty, “advanced networks” includes broadband networks.

Chapter, with a view to ensuring the effective implementation of the Chapter by enabling responsiveness to technological and regulatory developments in telecommunications to ensure the continuing relevance of this Chapter to Parties, service suppliers and end users;

- (b) discuss any issues related to this Chapter and any other issues relevant to the telecommunications sector as may be decided by the Parties;
- (c) report to the Commission on the findings and the outcomes of discussions of the Committee; and
- (d) carry out other functions delegated to it by the Commission.

3. The Committee shall meet at such venues and times as the Parties may decide.

4. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of private sector entities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Committee.

ANNEX 13-A

RURAL TELEPHONE SUPPLIERS – UNITED STATES

The United States may exempt rural local exchange carriers and rural telephone companies, as defined, respectively, in sections 251(f)(2) and 3(37) of the *Communications Act of 1934*, as amended, (47 U.S.C. 251(f)(2) and 153(44)), from the obligations contained in Article 13.5.4 (Obligations Relating to Suppliers of Public Telecommunications Services – Number Portability), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers) and Article 13.13 (Co-Location by Major Suppliers).

ANNEX 13-B

RURAL TELEPHONE SUPPLIERS – PERU

1. With respect to Peru:
 - (a) a rural operator shall not be considered a major supplier;
 - (b) Article 13.5.4 (Obligations Relating to Suppliers of Public Telecommunications Services – Number Portability) shall not apply to rural operators; and
 - (c) Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers) and Article 13.14 (Access to Poles, Ducts, Conduits, and Rights-of-way Owned or Controlled by Major Suppliers) shall not apply to the facilities deployed by major suppliers in rural areas.
2. For the purposes of this Annex, for Peru:
 - (a) rural area means a population centre:
 - (i) that is not included within urban areas, with a population of less than 3,000 inhabitants, a low population density and a lack of basic services; or
 - (ii) with a teledensity rate of less than two fixed lines per 100 inhabitants; and
 - (b) rural operator means a rural telephone company that has at least 80 per cent of its total fixed subscriber lines in operation in rural areas.

CHAPTER 14

ELECTRONIC COMMERCE

*This Chapter of CPTPP remain unchanged in comparison with that of TPP (according to WTO Center-VCCI)

Article 14.1: Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person¹ means:

- (a) a covered investment as defined in Article 9.1 (Definitions);
- (b) an investor of a Party as defined in Article 9.1 (Definitions), but does not include an investor in a financial institution; or
- (c) a service supplier of a Party as defined in Article 10.1 (Definitions),

but does not include a “financial institution” or a “cross-border financial service supplier of a Party” as defined in Article 11.1 (Definitions);

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;^{2, 3}

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

personal information means any information, including data, about an identified or identifiable natural person;

¹ For Australia, a covered person does not include a credit reporting body.

² For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

³ The definition of digital product should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 14.2: Scope and General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

- (a) government procurement; or
- (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means), Article 14.13 (Location of Computing Facilities) and Article 14.17 (Source Code) are:

- (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services); and
- (b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 9.12 (Non-Conforming Measures), Article 10.7 (Non-Conforming Measures) or Article 11.10 (Non-Conforming Measures).

Article 14.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 14.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.⁴

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 18 (Intellectual Property).

3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Article shall not apply to broadcasting.

Article 14.5: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York,

⁴ For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.

November 23, 2005.

2. Each Party shall endeavour to:
 - (a) avoid any unnecessary regulatory burden on electronic transactions; and
 - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 14.6: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. No Party shall adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.
4. The Parties shall encourage the use of interoperable electronic authentication.

Article 14.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 16.6.2 (Consumer Protection) when they engage in electronic commerce.
2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 16.6.5 and Article 16.6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 14.8: Personal Information Protection⁵

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.⁶

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

- (a) individuals can pursue remedies; and
- (b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

⁵ Brunei Darussalam and Viet Nam are not required to apply this Article before the date on which that Party implements its legal framework that provides for the protection of personal data of the users of electronic commerce.

⁶ For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 14.9: Paperless Trading

Each Party shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 14.10: Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

- (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;⁷
- (b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and
- (c) access information on the network management practices of a consumer's Internet access service supplier.

Article 14.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction

⁷ The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

on trade; and

- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 14.12: Internet Interconnection Charge Sharing

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of another Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

Article 14.13: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 14.14: Unsolicited Commercial Electronic Messages⁸

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

⁸ Brunei Darussalam is not required to apply this Article before the date on which it implements its legal framework regarding unsolicited commercial electronic messages.

- (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;
 - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.
3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 14.15: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist SMEs to overcome obstacles to its use;
- (b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - (i) personal information protection;
 - (ii) online consumer protection, including means for consumer redress and building consumer confidence;
 - (iii) unsolicited commercial electronic messages;
 - (iv) security in electronic communications;
 - (v) authentication; and
 - (vi) e-government;
- (c) exchange information and share views on consumer access to products and services offered online among the Parties;

- (d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and
- (e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 14.16: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

- (a) building the capabilities of their national entities responsible for computer security incident response; and
- (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

Article 14.17: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

- (a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
- (b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 14.18: Dispute Settlement

1. With respect to existing measures, Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this Agreement for Malaysia.
2. With respect to existing measures, Viet Nam shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) for a period of two years after the date of entry into force of this Agreement for Viet Nam.