

Annex 8 Part B: New Zealand Schedule of Specific Commitments on Services

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE		<p>3) Under the Overseas Investment Regulations, 1985, issued under the Overseas Investment Act 1973, Overseas Investment Commission approval is required for the following investments by an "overseas person":¹</p> <ul style="list-style-type: none"> (a) acquisition or control of 25 per cent or more of the shares or voting power in a company where either the consideration of transfer or the value of the assets of the company exceeds \$NZ10 million; (b) the establishment of new business in New Zealand where the total expenditure in setting up the business exceeds \$NZ10 million; (c) the acquisition of the assets of the business where the total consideration paid or payable for the assets exceeds \$NZ10 million; (d) the issue or allotment of shares where the 25 per cent threshold has already been exceeded or will be exceeded as a result of the issue and where the total consideration paid or payable exceeds \$NZ10 million. 	

¹ See Attachment A.2

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
		<p>OIC consent is required, regardless of the dollar value of the investment, for acquisition of rural land. Approval is also required under the Land Settlement Promotion and Land Acquisition Act for the purchase of some classes of land.</p> <p>Unbound for enterprises currently in State ownership</p>	
		<p>1)2)Unbound for current and future measures at the central and sub-central levels according to more favourable treatment to any Maori person or organisation, in relation to the acquisition, establishment or operation of any commercial or industrial undertaking.</p>	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. SECTOR SPECIFIC COMMITMENTS			
1. BUSINESS SERVICES A. <u>Professional Services</u> (a) Legal Services, in respect of the following areas of law: Practice of New Zealand law (CPC 861) Provision of advice on international law (CPC 861) (b) Accounting, auditing and book-keeping services (CPC 862)	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	
(c) Taxation services Tax preparation , (CPC 86302, CPC 86303) (d) Architectural services (CPC 8671)	1) None 2) None 3) None 1) None 2) None 3) None	1) None 2) None 3) None 1) None 2) None 3) None	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(e) Engineering services (CPC 8672)	1) None 2) None 3) None	1) Certification of certain works involving health and safety is limited to Registered Engineers, who to become registered must be ordinarily resident in New Zealand. 2) None	
(i) Veterinary services (CPC 9320) B. <u>Computer and Related Services</u> (a) Consultancy services related to the installation of computer hardware (CPC 841) (b) Software implementation services (CPC 842) (c) Data processing services (CPC 843) (d) Data base services (CPC 844)	1) Unbound* 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	1) Unbound* 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	

* Unbound due to lack of technical feasibility

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Maintenance and Repair of office machinery and equipment, including computers (CPC 845) (e) Other Computer Services (CPC 849) D. <u>Real Estate Services</u> (a) Involving own or leased property (CPC 821) (b) On a fee or contract basis (CPC 822)	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	
E. <u>Rental/Leasing of Equipment without Crew</u> Transport and non transport (CPC 8310) F. <u>Other Business Services</u> (a) Advertising services (CPC 871) (f) Services incidental to agriculture, hunting and forestry	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Services incidental to agriculture (CPC 8811)	1) None 2) None 3) None	1) None 2) None 3) None	
Services incidental to animal husbandry (CPC 8812)	1) None 2) None 3) The Herd Testing Regulations under the Dairy Board Act 1961 restrict the provision of herd testing services to providers licensed by the NZ Dairy Board. The number of licences may be limited.	1) None 2) None 3) None	
Services incidental to hunting (CPC 8813)	1) None 2) None 3) None	1) None 2) None 3) None	
Services incidental to forestry and logging (CPC 8814)	1) None 2) None 3) None	1) None 2) None 3) None	
(o) Cleaning of buildings and similar activities (CPC 874)	1) Unbound* 2) None 3) None	1) Unbound* 2) None 3) None	
(p) Photographic Services (CPC 875)	1) None 2) None 3) None	1) None 2) None 3) None	
(t) Translation services (CPC 87905**)	1) None 2) None 3) None	1) None 2) None 3) None	

* Unbound due to lack of technical feasibility.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(t) Duplicating Services (CPC 87904)	1) None 2) None 3) None	1) None 2) None 3) None	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2. COMMUNICATION SERVICES			
C. <u>Telecommunication Services</u> (a) Voice telephone services (CPC 7521) (b) Packet-switched data transmission services (CPC 7523**) (c) Circuit-switched data transmission services (CPC 7523**) d) Telex services (CPC 7523**) (e) Telegraph services (CPC 7522) (f) Facsimile services (CPC 7521**, CPC 7529**) (g) Private leased circuit services (CPC 7522**, CPC 7523**)	1) None 2) None 3) None	1) None 2) None 3) None, other than: The Articles of Association of the Telecom Corporation of New Zealand Limited limit the shareholding by any single overseas entity to 49.9%. At least half of Board directors are required to be New Zealand citizens.	The principles set forth in the attached reference paper are incorporated in this schedule to the extent they are commitments additional to the obligations flowing from Part I and II, Article XXVIII and the Annex on Telecommunications of the General Agreement on Trade in Services in respect of the Article XVI and XVII commitments on telecommunication services contained herein.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>(o) Other Paging services (CPC 75291) Teleconferencing services (CPC 75292) Personal Communications Services (CPC 75213*) Cellular services (CPC 75213*) Trunked radio system services (CPC 7523**, CPC 75213*) Mobile data services (CPC 7523**)</p>			
<p>(h) Electronic mail (CPC 7523**) (i) Voice mail (CPC 7523**) (j) On-line information and data-base retrieval (CPC 7523**) (k) Electronic data interchange (EDI) (CPC 7523**) (l) Enhanced/value-added facsimile services (CPC 7523**) (m) Code and protocol conversion (n) On-line information and/or data processing (CPC 843**)</p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) The Articles of Association of the Telecom Corporation of New Zealand Limited limit the shareholding by any single overseas entity to 49.9 per cent. At least half of Board directors are required to be New Zealand citizens.</p>	

<p>D. <u>Audiovisual Services</u></p> <p>Production, distribution, exhibition and broadcasting of audiovisual works (CPC 9611-9613, CPC 96192**, CPC 7524, CPC 753)</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p>	<p>1), The Broadcasting Commission is directed by the Government, pursuant to the Broadcasting Act 1989, to allocate a minimum of 6 per cent of its budget to Maori programming. From 1995 all public funding for Maori broadcasting will be controlled by Te Reo Whakapuaki Irirangi (Maori Broadcasting Funding Agency). Government assistance to the film industry through the New Zealand Film Commission is limited to New Zealand films as defined in Section 18 of the New Zealand Film Commission Act 1978.</p> <p>2) None</p>	
---	--	--	--

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
A. <u>General Construction Work for Buildings</u> (CPC 512, CPC 515)	1) Unbound* 2) None 3) None	1) Unbound* 2) None 3) None	
B. <u>General Construction Work for Civil Engineering</u> (CPC 513)	1) Unbound* 2) None 3) None	1) Unbound* 2) None 3) None	
C. <u>Installation and Assembly Work</u> (CPC 514, CPC 516)	1) None for consultancy services 2) None 3) None	1) None for Consultancy services 2) None 3) None	
D. <u>Building Completion and Finishing Work</u> (CPC 517)	1) None for consultancy services 2) None 3) None	1) None for consultancy services 2) None 3) None	
E. <u>Other</u>			
Site preparation: new construction (other than pipelines) (CPC 511)	1) Unbound* 2) None 3) None	1) Unbound* 2) None 3) None	
Maintenance and repair of fixed structures	1) Unbound* 2) None 3) None	1) Unbound* 2) None 3) None	

* Unbound due to lack of technical feasibility.

<p>4. DISTRIBUTION SERVICES</p> <p>A. <u>Commission Agents' Services (CPC 6211, excluding CPC 62111, CPC 62112, and such services relating to CPC 2613-2615)</u></p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	
<p>B. <u>Wholesale Trade (CPC 622, excluding CPC 6221, CPC 6222 and such services relating to CPC 2613-2615)</u></p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	
<p>C. <u>Retail Trade (CPC 631, CPC 632, CPC 6111, CPC 6113 and CPC 6121)</u></p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	

5. EDUCATION SERVICES

Primary, Secondary, and Tertiary education in private institutions (CPC 921 CPC 922, CPC 923)

- 1) None
- 2) None
- 3) None

Other Education in respect of the following services only:

Training provided in private specialist language institutions;

Language assessment services provided through private Chinese language testing centres;

Tuition in subjects taught at the primary and secondary levels, provided by private specialist institutions operating outside the New Zealand compulsory school system²

CPC (929)**

- 1) None
- 2) None
- 3) None

² Examples of these services might include the provision of extension or remedial tuition in relation to Maths, Science or History.

6. ENVIRONMENTAL SERVICES³

Related to the following environmental services³ (CPC 940**)

- 1) None
- 2) None
- 3) None

- 1) None
- 2) None
- 3) None

A. Waste water management:

- (i) consultancy relating to waste water management;
- (ii) for all other aspects of this service: those contracted by private industry only.

(CPC 9401**)

³ The New Zealand commitments on environmental services exclude the collection, purification and distribution of water, including water for human use.

B. Waste Management	1) None	1) None	
	2) None	2) None	
Refuse disposal services:	3) None	3) None	
(i) consultancy relating to refuse disposal;			
(ii) for all other aspects of this service: those contracted by private industry only.			
(CPC 9402**)			
Sanitation and similar services:	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
(i) consultancy relating to sanitation and similar services;			
(ii) for all other aspects of this service: those contracted by private industry only.			
(CPC 9403**)			

<p>C. Protection of ambient air & climate:</p> <p>(i) consultancy relating to the protection of ambient air & climate</p> <p>(ii) for all other aspects of this service: those contracted by private industry only</p> <p>(CPC 9404**)</p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	
<p>D Remediation & cleanup of soil & water:</p> <p>(i) consultancy relating to the remediation & cleanup of soil & water</p> <p>(ii) for all other aspects of this service: those contracted by private industry only</p> <p>(CPC 9406**) ⁴</p>	<p>1) None 2) None 3) None</p>	<p>1) None 2) None 3) None</p>	

⁴ New Zealand's commitments under items 6.D and 6.F combine to cover the entirety of CPC 9406 services with respect to consultancy.

E. Noise & vibration abatement:	1) None 2) None 3) None	1) None 2) None 3) None	
(i) consultancy relating to noise & vibration abatement			
(ii) for all other aspects of this service: those contracted by private industry only			
(CPC 9405**)			
F. Protection of biodiversity & landscape:	1) None 2) None 3) None	1) None 2) None 3) None	
(i) consultancy relating to protection of biodiversity & landscape			
(ii) for all other aspects of this service: those contracted by private industry only			
(CPC 9406**) ⁵			

⁵ New Zealand's commitments under items 6.D and 6.F combine to cover the entirety of CPC 9406 services with respect to consultancy.

<p>G.Other environmental & ancillary services (including indoor environmental services):</p> <p>(i) consultancy relating to other environmental & ancillary services</p> <p>(ii) for all other aspects of these services: those contracted by private industry only</p> <p>(CPC 9409**)</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p>	
---	--	--	--

7. FINANCIAL SERVICES

1. New Zealand undertakes its specific commitments on Financial Services in accordance with the provisions of the WTO "GATS Understanding on Commitments in Financial Services" (the Understanding)
2. These commitments on financial services are subject to the general limitations contained in the "Horizontal Commitments" section of this Schedule.
3. Market access and national treatment commitments in Modes (1) and (2) are bound to the extent of the obligations in paragraphs B.3 and B.4 of the Understanding.
4. The admission to the market of new financial services or products may be subject to the existence of, and consistency with, a regulatory framework aimed at achieving the objectives indicated in Article 2(a) of the GATS Financial Services Annex.
5. Mode 3 commitments are subject to the provisions of the Financial Reporting Act 1993 and the Companies Act 1993. These require overseas companies to prepare financial statements on an annual basis comprising a balance sheet, a profit and loss statement and (if required by an applicable financial reporting standard approved by the Accounting Standards Review Board) a statement of cash flows. The Acts also require such financial statements in relation to an overseas company's New Zealand business. The Acts require the following companies to deliver annual audited financial statements to the Registrar of Companies for registration: (a) issuers (i.e. those which have raised investment from the public); (b) overseas companies; (c) subsidiaries of companies or bodies corporate incorporated outside New Zealand; (d) companies in which 25 per cent or more of the shares are held or controlled by : (i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary; (ii) a company or body corporate incorporated outside New Zealand; or (iii) a person not ordinarily resident in New Zealand.

<p>A. <u>Insurance and Insurance-related services</u></p> <p>(a) Life insurance services (CPC 8121)</p> <p>(b) Non-life insurance services (CPC 8129)</p>	<p>3) None</p> <p>1), The Accident Rehabilitation and 3) Compensation Insurance Act 1992 provides for compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed. The Act is administered by the Accident Rehabilitation and Compensation Insurance Corporation.</p> <p>1), The Earthquake Commission is the sole 3) insurer of residential property disaster insurance for replacement cover up to NZ\$100,000 per dwelling and NZ\$20,000 on personal property. These amounts may be increased by regulation.</p> <p>1), Under the Apple and Pear Marketing Act 3) 1971 the Apple and Pear Marketing Board has the power to organise compulsory hail insurance on behalf of growers and to require growers to pay a levy to recover the premium amount of this insurance.</p>	<p>3) None</p> <p>3) None</p>	
<p>(c) Reinsurance and retrocession (CPC 81299)</p>	<p>1),2) Unbound for marketing and sales related to & 3) products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261.</p> <p>3) None</p>	<p>3) None</p>	

<p>(d) Insurance intermediation, such as brokerage and agency services (CPC 8140**)</p>	<p>1), The Accident Rehabilitation and Compensation Insurance Act 1992 3) provides for compulsory worker's compensation insurance via levies on vehicle owners, employers, employees and the self-employed. The Act is administered by the Accident Rehabilitation and Compensation Insurance Corporation.</p> <p>1), Under the Apple and Pear Marketing Act 3) 1971 and the Wheat Producers Levy Act 1987 (or regulations enacted under the Commodities Levy Act 1990), the respective bodies (the Apple and Pear Marketing Board and United Wheat growers (NZ) Ltd) have the power to organise compulsory disaster insurance on behalf of growers and to require them to pay a levy to recover the premium amount of this insurance.</p>	<p>3) None</p>	
<p>(e) Services Auxiliary to Insurance, such as consultancy, actuarial, risk assessment and claim settlement services (CPC 8140**)</p>	<p>1),2) Unbound for loss of & 3) products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261.</p> <p>3) None</p>	<p>3) None</p>	

<p><u>A. Banking and other Financial Services</u> (excluding insurance)⁶</p> <p>(a) Acceptance of deposits and other repayable funds from the public (CPC 81115-81119)</p> <p>(b) Lending of all types, including consumer credit, mortgage, credit, factoring and financing of commercial transactions (CPC 8113)</p> <p>(c) Financial leasing (CPC 8112)</p> <p>(d) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (CPC 81339**)</p> <p>(e) Guarantees and commitments (CPC 81199**)</p>	<p>3) None</p>	<p>3) None</p>	
---	----------------	----------------	--

⁶ As defined in paragraph 5(a)(v)-(xvi) of the WTO GATS Annex on Financial Services.

- | | | | |
|--|--|--|--|
| <p>(f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:</p> <ul style="list-style-type: none">(i) money market instruments (cheques, bills, certificates of deposits etc) (CPC 81339**)(ii) foreign exchange (CPC 81333)(iii) derivative products including, but not limited to, futures and options (CPC 81339**)(iv) exchange rates and interest rate instruments, including products such as swaps, forward rate agreements etc (CPC 81339**)(v) transferable securities (CPC 81321)(vi) other negotiable instruments and financial assets, including bullion (CPC 81339**) | | | |
|--|--|--|--|

- | | | | |
|--|--|--|--|
| <p>(g) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues (CPC 8132)</p> <p>(h) Money broking (CPC 81339**)</p> <p>(i) Asset management, such as cash or portfolio management; all forms of collective investment management, pension fund management, custodial, depository and trust services (CPC 8119**, 81323*)</p> <p>(j) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments (CPC 81339**, 81319**)</p> <p>(k) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services (CPC 8131)</p> | | | |
|--|--|--|--|

<p>(l) Advisory, intermediation, and other auxiliary financial services on all the activities listed in (a) to (k) above, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy (CPC 8131, 8133)</p> <p>9. TOURISM AND TRAVEL RELATED SERVICES</p> <p>A. <u>Hotels and Restaurants</u> (CPC 641-643)</p> <p>B. <u>Travel Agencies,</u></p> <p>C. <u>Tour Guides and Tour Operator Services</u> (7471, 7472)</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>1) None</p> <p>2) None</p> <p>3) None</p>	
<p>11. TRANSPORT SERVICES</p> <p>A. <u>Maritime Transport Services</u></p> <p>International Transport (freight and passengers) (CPC 7211 and CPC 7212 less cabotage-as defined in Attachment A. 3)</p>	<p>General conditions applicable to all maritime service sectors: marketing and sales of maritime transport services for products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261; unbound,</p> <p>1) None</p> <p>2) None</p> <p>3) Unbound for establishment of registered company for the purpose of operating a fleet under the New Zealand flag.</p>	<p>1) None</p> <p>2) None</p> <p>3) Unbound as described in the market access column.</p>	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<u>Maritime Auxiliary Services</u> Storage and warehousing services (CPC 742) Maritime freight forwarding services (as defined in Attachment A. 4) C. <u>Air Transport Services</u> Selling and marketing of air transport services ⁷ Computer reservation system services ⁸ (CPC 7523**)	1) Unbound* 2) None 3) None 1) None 2) None 3) None 1)2) Unbound for products covered under CPC &3) 01, 02, 211, 213-216, 22, 2399 and 261. 1) None 2) None 3) None	1) Unbound* 2) None 3) None 1) None 2) None 3) None 1) None 2) None 3) None	
E. <u>Rail Transport Service</u> (CPC 711)	1) None 2) None 3) None	1) None 2) None 3) None	

* Unbound due to lack of technical feasibility.

⁷ As defined in paragraph 6(b) of the WTO GATS Annex on Air Transport Services.

⁸ As defined in paragraph 6(c) of the WTO GATS Annex on Air Transport Services.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
F. <u>Commercial Road Transport Services</u> (passenger, goods, rental and vehicle recovery) (712 except 71235)	1) None 2) None 3) None	1) None 2) None 3) None	
G. <u>Pipeline Transport</u> (CPC 713)	1) None 2) None 3) None	1) None 2) None 3) None	

ATTACHMENT A

NOTES TO THE SCHEDULE

1. Specific commitments in this schedule are prepared in accordance with the WTO Secretariat paper entitled "Scheduling of Initial Commitments on Trade in Services: Explanatory Note" (MTN.GNS/W/164). The classification of sectors in this schedule is based on the 1991 provisional Central Product Classification (CPC) of the United Nations Statistical Office, while the ordering reflects the classification system used by the Secretariat in MTN.GNS/W/120. In the context of CPC listings in the schedule, the use of ** against individual CPC listings indicates that the service specified constitutes only part of the total range of activities covered by the CPC concordance.

Overseas Investment

2. An "overseas person" is defined as an individual not normally resident in New Zealand; a company not incorporated in New Zealand; a New Zealand-incorporated company in which 25 per cent or more of any class of shares or 25 per cent or more of the voting power is held by overseas persons; or a nominee of the overseas person, whether or not the nominee is himself/herself an overseas person.

Maritime Transport Services

3. Cabotage: for purposes of this schedule only, cabotage is defined as the transportation of passengers or goods between a port located in New Zealand and another port located in New Zealand and traffic originating and terminating in the same port located in New Zealand.

4. Maritime Freight Forwarding Services: the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

ATTACHMENT B
REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services⁹.

Definitions

Users mean service consumers and service suppliers.

Essential facilities¹⁰ mean facilities of a public telecommunications transport network or service that

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

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

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

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;

⁹ This applies only to suppliers of basic telecommunications services and not to end-users of such services.

¹⁰ This definition of "essential facilities" will be applied only to the extent consistent with New Zealand's competition policy regime, which regulates the activities of "dominant suppliers".

- and
- (b) using information obtained from competitors with anti-competitive results;
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided:

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

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

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

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

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

6. Allocation and use of scarce resources

Any procedures¹¹ for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands

¹¹ Such procedures may be administered by means of a variety of mechanisms, including laws and regulations, public tendering process and consultative processes.

will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
