

GOVERNMENT RESOLUTION No. 9/2012

of 28 March 2012

**APPROVES THE TRANSACTION AGREEMENT
BETWEEN
THE STATE AND TIMOR TELECOM**

Whereas:

The State of the Democratic Republic of Timor-Leste and Timor Telecom, S.A., a company incorporated under the laws of Timor-Leste, are parties to a Concession Contract, dated 19 July 2002, for the provision of telecommunications services in the Democratic Republic of Timor-Leste; The Concession is granted for a period of fifteen years, which may be extended for ten years if the public interest so justifies and if Timor Telecom complies with its obligations provided herein;

In accordance with its terms, the object of the Concession is: (a) the establishment, management and operation of the infrastructures that constitute the fixed telecommunications network; (b) the establishment, management and operation of the infrastructures that constitute the mobile telecommunications network; and (c) the provision of local, national and international telecommunications services, including fixed telephone service, mobile telecommunications service, data transmission service, leased circuits service and broadcast telecommunications signal transport service in Timor-Leste;

Under the Concession, Timor Telecom shall be granted all rights and obligations necessary to establish, manage and operate the telecommunications infrastructure and to provide such telecommunications services;

Under the Concession, the provision of telecommunications services in Timor-Leste has been carried out with recourse to assets in the public domain, in such a way that Timor Telecom is granted titular possession of the infrastructures that integrate the fixed and mobile telecommunications networks, which are assets in the public domain;

In the usual manner in "Built, Operate and Transfer" or BOT model contracts, the Concession foresees that, at its end, the assets assigned to the Concession revert automatically to the State, which pays Timor Telecom the book value of the assets not yet depreciated, updated until that date;

The Concession Agreement grants Timor Telecom the exclusive right to establish, manage and operate all telecommunications infrastructure included in the scope of the Concession and to provide telecommunications services under the Concession Agreement;

Under the Concession Agreement, such exclusive right includes the concentration, switching and/or processing nodes assigned to the provision of the fixed telephone service and data transmission service, as well as the infrastructures assigned to the provision of mobile telecommunications services and assigned to the issue, reception and transmission of all inbound and outbound traffic, domestic and international, relating to all telecommunications services, including leased line services and Internet services;

The Concession Agreement grants Timor Telecom the right to access and use, under the terms of the law and in accordance with the appropriate criteria for the pursuit of the object of the Concession, all premises, infrastructure, equipment and any other property and/or right assigned or likely to be assigned to the Concession, as well as priority rights in the assignment of radio spectrum and in the access and installation of any telecommunications infrastructure;

The Concession Agreement establishes that the telecommunications services to be provided in this scope are provided by Timor Telecom in the form of universal access;

In the more than nine years since the beginning of the Concession, many changes have occurred in the national and international panorama, including those indicated in the following recitals;

Internationally, the natural evolution of the telecommunications market has been to privilege competition over exclusive rights, and privately owned telecommunications networks over those owned by the State, in order to stimulate investment in telecommunications networks and the improvement of prices, quality, availability and variety of telecommunications services;

There are few examples worldwide of telecommunications service providers not having ownership of their networks and, generally, such ownership of the network by the service provider does not constitute a barrier to the development of a competitive market or to the use of the network of a provider with an older market presence by other service providers for the purpose of providing public telecommunications services;

In international practice, modern securities regimes for the provision of telecommunications services and telecommunications markets are not normally based on the BOT or other forms of licensing for the provision of telecommunications services, and such contracts have been found to be inflexible and to hinder competition and investment in many countries;

International practice in world telecommunications markets with low prices, high quality, wide variety and widespread availability of services has increasingly involved the licensing of private companies to operate telecommunications networks and to provide telecommunications services using privately owned and competing goods;

The benefits of such liberalization have spread widely around the world, and the Government seeks to ensure that Timor-Leste benefits from a similar opportunity;

Additionally, on the domestic scene, Timor-Leste is much more stable politically, is achieving considerable economic growth, has raised its development expectations and has focused more on attracting investment in infrastructure and services, including telecommunications, from a more diversified base of investors rather than a single provider;

In light of these national and international developments, the Government adopted, through Government Resolution No. 21 of June 24, 2011, the National Telecommunications Policy of Timor-Leste, setting in motion the liberalization of the telecommunications sector, including the passing of new telecommunications legislation, the end of Timor Telecom's exclusive right, the replacement of the

Concession with licenses issued under the new legislation, the introduction of competition through the issuance of new licenses to other service providers and the appropriate regulation of those telecommunications service providers through an impartial regulator;

Under such a policy, new service providers are expected to enter the telecommunications market to invest private capital in their own network assets and provide services that can compete with Timor Telecom's services;

A market between competing private service providers with privately-owned assets is not compatible with the current terms of the Concession, including with Timor Telecom's exclusive right to provide telecommunications services and its reliance on assets in the public domain that are reversible to the State rather than held by Timor Telecom;

Therefore, the maintenance of the Concession is no longer in the public interest, as it does not benefit the collective needs of the Timor-Leste community, as it would in fact be counterproductive to the development of telecommunications in Timor-Leste, the primary objective of such network assets;

Similar network assets benefit the public more in competition with other telecommunications network and facilities providers;

The Government and Timor Telecom have negotiated the terms and conditions for the termination of their exclusive right and the replacement of their Concession by licenses in a framework that allows Timor Telecom to hold all assets and rights related to its business and to continue its activities in the same manner and without interruption, and the Parties have continued this negotiation, each represented by law firms specialized in telecommunications;

The termination of Timor Telecom's exclusive right under the Concession should lead to a decrease in Timor Telecom's financial return during the remaining period of the Concession as compared to what it would obtain if it operated as sole service provider during the same period;

Timor Telecom intends to continue to provide telecommunications services in Timor-Leste beyond the current expiry date of its Concession, which occurs in 2017, and intends to obtain increased security over the assets it uses for the development of its business as well as the appropriate legal title to its investments, being available to accept the waiver of its exclusive right and other rights under the Concession in exchange for rights that provide a basis for the continuity of its business as a provider of telecommunications services in Timor-Leste;

The natural evolution of the telecommunications market and the importance of effective competition to provide a level playing field between Timor Telecom and such new service providers makes it desirable, appropriate and necessary for Timor Telecom to own its own network assets, free from the limitation imposed by its classification as State property;

The Government, therefore, in the Decree-Law on the Regulation of the Telecommunications Sector, already approved by the Council of Ministers, establishes the declassification of the Concession assets as public property of the State, in order to provide Timor Telecom with the continued use of such assets;

It is understood, at this point, that such declassification is possible because, according to the solutions adopted by the Timorese legal system, namely the draft Law on the Special Regime for the Definition of Ownership of Real Estate, only space, and not infrastructure and equipment, through which radio waves can propagate, should be considered an integral part of the State's public domain;

The State and Timor Telecom intend, therefore, to agree, via a Transaction Agreement, that instead of concluding the Concession granted to Timor Telecom in 2017 and Timor Telecom transferring to the State the network assets, customer contracts, employment contracts, sites, facilities and other elements of its business in Timor-Leste (against payment of the book value of tangible assets not yet fully depreciated), Timor Telecom: (i) maintains and has ownership rights over the network assets (which have been declassified as State public domain in order to allow Timor Telecom to acquire ownership over them); (ii) continues to be a party to the contracts entered into under the Concession; (iii) continues to operate under a new registration and new licenses, both of which expire beyond the end date of the Concession; and (iv) has a long-term lease right and other rights to the land and facilities used under the Concession, in each case as further detailed in this Agreement and the Telecommunications Facilities Lease Agreement, as appropriate.

On the other hand, the Government believes that the transfer of the telecommunications network assets to Timor Telecom, to be used at the service of the population, in competition with other service providers, represents not only the natural evolution of the market, but also a future reinvestment project which, due to its economic and social impact, is of great interest to the Country within the framework of the National Development Plan strategy;

In particular, the Government expects a better price quotation, higher quality, wider availability and high variety of telecommunications services to attract greater investment to Timor-Leste, increase the Government's tax revenues, generate economic growth, improve education and the provision of medical assistance, while also offering numerous other benefits to the country, both socially and economically;

Since the State remains the holder of 20.59% of the share capital of Timor Telecom, then holding a share in the financial results of Timor Telecom, its good financial management is also guaranteed;

Timor Telecom is one of the most important investors in Timor-Leste, having made significant investments in infrastructure and created jobs and currently offering telecommunications services that cover approximately the entire population of Timor-Leste;

The present Transaction Agreement between the State and Timor Telecom establishes a single legal regime regarding the transfer to Timor Telecom of network assets, grants certain rights to lease and use land owned by the State and specifically regulates certain telecommunications activities to be pursued by Timor Telecom in the context of the reform of the telecommunications sector, as stipulated in the Timor-Leste National Telecommunications Policy and in the Decree-Law on the Regulation of the Telecommunications Sector, such continuity being of unique importance in the context of the social and economic development of Timor-Leste, and therefore the present Agreement prefigures a special investment agreement, under the terms of article 29 of Law 14/2011, of 28 September, on Private Investment;

The Transaction Agreement negotiated between the State and Timor Telecom is balanced, carefully limits the risks for both sides and offers the State the opportunity to earn profits through fiscal and shareholder growth;

The State and Timor Telecom agree that the consideration reflected in the early termination of Timor Telecom's exclusive right and the termination of the respective Concession Agreement, on the one hand, and the licensing of Timor Telecom for an additional period and the transfer to it of the Concession assets, on the other hand, represent not only a fair transaction but also an opportunity for Timor Telecom to continue its commercial activity, which, given the economic and social impact that such reinvestment project will have, even in an environment of competition with other service providers, motivates the classification of this Transaction Agreement as a special investment agreement.

Thus,

The Government resolves, in accordance with Article 116(e) of the Constitution of the Republic, the following:

To approve the draft Transaction Agreement between the State and Timor Telecom, considered a special investment agreement under the terms of article 29 of Law no. 14/2011, of 28 September, on Private Investment, including the respective Annexes;

Designate the Minister of Infrastructure to sign, on behalf of the Government, the said Agreement, as well as the respective Annexes.

Approved by the Council of Ministers on 26 March 2012.

To be published.

The Prime Minister,

Kay Rala Xanana Gusmão