

CHAPTER TEN

TELECOMMUNICATIONS

Article 1001: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services;
 - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks and services;
 - (c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services; and
 - (d) measures adopted or maintained by a Party relating to the supply of value-added services.

2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution of radio or television programming intended for reception by the public.¹

3. Nothing in this Chapter shall be construed to:
 - (a) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement;

¹ For greater certainty, this Chapter applies to measures affecting service suppliers that are engaged in the transmission of radio or television programming intended for reception by the public, but only in respect of the provision of public telecommunications transport networks or services by such service suppliers.

- (b) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally; or
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

Article 1002: Access to and Use of Public Telecommunications Transport Networks and Services²

1. Subject to a Party's right to restrict the supply of a service in accordance with its reservations in Annexes I and II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that such enterprises are permitted to:

- (a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications transport networks;
- (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;
- (c) perform switching, signalling, and processing and conversion functions;
and
- (d) use operating protocols of their choice.

² For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply public telecommunications transport networks or services within its territory.

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

4. Further to Article 2201 (Exceptions – General Exceptions), and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) to protect the non-public information of users of public telecommunications transport services,

subject to the requirement that such 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 transport networks or services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks and services; or
- (c) ensure that service suppliers of the other Party do not supply services limited by the Party's Reservations in Annexes I and II.

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

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and
- (e) notification, registration, permits and licensing.

Article 1003: Conduct of Major Suppliers

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide access to public telecommunications transport networks and services required by the other Party under terms and conditions set out in tariffs approved by the Party's regulatory body, or under market conditions where services are deregulated.

2. With respect to regulated tariffs, each Party shall guarantee reasonable tariffs, as well as tariffs that do not unjustly discriminate or give an undue or unreasonable preference toward any person.

Competitive Safeguards

3. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in subparagraph (a) include:
 - (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available, to other service suppliers on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications transport services.

Regulated Wholesale Supply

4. Each Party may require owners of facilities or suppliers of public telecommunications transport networks or services, which are classified under a Party's domestic regime as essential wholesale facilities or services, to make their facilities or public telecommunications transport networks or services, available on a regulated wholesale basis.

Resale

5. Each Party may identify the public transport telecommunications services or the public telecommunications transport network elements available, and the classes of competitors eligible to access the services and elements, for provision on a mandatory resale basis. For the public telecommunications transport network and services available on mandatory resale basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the resale of such services.

Unbundling

6. Each Party may identify the public telecommunications transport services or the public telecommunications transport network elements available for provision on a mandatory unbundled basis, and the classes of competitors eligible to access the services and elements. For the public telecommunications transport network and services available on an unbundled basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the unbundling of such services.

Interconnection

7. (a) General Terms and Conditions

Except as limited by a Party's reservations in Annexes I or II, each Party shall ensure that major suppliers in its territory provide interconnection:

- (i) at any technically feasible point in the network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (iv) 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
- (v) 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.

(b) Options for Interconnecting with Major Suppliers

Options for suppliers of public telecommunications transport services of a Party to interconnect their facilities and equipment with those of major suppliers in the territory of the other Party may include:

- (i) a reference interconnection offer or another standard interconnection offer containing the terms, rates and conditions that the major suppliers offer generally to suppliers of public telecommunications transport services;
- (ii) the terms and conditions of an interconnection agreement in force;
or
- (iii) negotiation of a new interconnection agreement.

Article 1004: Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services and of value-added services.
2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.
3. No Party may accord more favourable treatment to a supplier of public telecommunications transport services than that accorded to a like supplier of the other Party, on the basis that the supplier receiving more favourable treatment is owned, wholly or in part, by the national government of the Party.

Article 1005: Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain and shall administer those obligations in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligations are not more burdensome than necessary for the kind of universal service defined by the Party.

Article 1006: Licenses and Other Authorizations

1. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make publicly available:

- (a) all applicable licensing or authorization criteria and procedures;
- (b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration or other type of authorization; and
- (c) the terms and conditions of all licenses or authorizations it has issued.

2. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration or other type of authorization, the Party shall make the decision on the application for a license, concession, permit, registration or other type of authorization within a reasonable period of time and, in the event that it denies the application, shall on the request of the applicant, give the reasons for the denial.

Article 1007: 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. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 904 (Cross-Border Trade in Services - Market Access) as it applies to either Chapters Eight (Investment) or Nine (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies which may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.
3. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

Article 1008: Enforcement

Each Party shall maintain appropriate procedures and authority to enforce the Party's measures relating to the obligations set out in Articles 1002 and 1003. Such procedures shall include the ability to impose appropriate sanctions, which may include financial penalties, injunctive relief (on an interim basis), corrective orders or the modification, suspension or revocation of licenses or other authorizations.

Article 1009: Resolution of Domestic Telecommunication Disputes

Further to Articles 1903 (Transparency - Administrative Proceedings) and 1904 (Transparency – Review and Appeal), each Party shall ensure that:

- (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding the Party's measures that relate to matters covered in Articles 1002 and 1003 and that, under the domestic law of the Party, are within the competence of the regulatory body;
- (b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have recourse within a reasonable and publicly specified period after the supplier requests interconnection, to its regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with such major supplier; and
- (c) any supplier of public telecommunications transport networks or services or value-added services aggrieved or whose interests are adversely affected by a determination or decision of its regulatory body may petition that body for reconsideration of that determination or decision.^{3,4}

³ With respect to Canada, paragraph 2 of Article 1009 does not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies.

⁴ With respect to Colombia, suppliers of public telecommunication transport networks or services or value-added services may not petition for reconsideration of rulings of general application, as defined in Article 1906 (Transparency - Definitions), unless provided for under its law and regulation.

- (d) Any supplier of public telecommunications transport networks or services or value-added services that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's regulatory body may obtain judicial, quasi-judicial or administrative review of such determination or decision by an independent authority. It is understood that this obligation does not add to the obligations set out in Article 1904 (Transparency - Review and Appeal).

Article 1010: Transparency

Further to Articles 1901 (Transparency - Publication) and 1902 (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall:

- (a) ensure that:
 - (i) regulations, including the basis for such regulations, of its regulatory body and tariffs filed with its regulatory body are promptly published or otherwise made publicly available, and
 - (ii) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any regulation that its regulatory body proposes.
- (b) make publicly available:
 - (i) information on bodies responsible for preparing, amending, and adopting standards-related measures,
 - (ii) the current state of allocated frequency bands, but is not required to disclose detailed identification of frequencies allocated for specific government use,

- (iii) relevant procedures of its regulatory body, including those related to interconnection and licensing, and
- (iv) its measures relating to public telecommunications transport networks or services and value-added services, including measures relating to:
 - (A) tariffs and other terms and conditions of service,
 - (B) procedures relating to judicial and other adjudicatory proceedings,
 - (C) specifications of technical interfaces,
 - (D) conditions applying to attachment of terminal and other equipment to the public telecommunications transport network, and
 - (E) notification, permit, registration, or licensing requirements, if any;
- (c) require major suppliers in its territory to make publicly available their interconnection agreements, reference interconnection offers, or other standard interconnection offers containing the terms, and conditions, and where specified, rates, that the major suppliers offer generally to suppliers of public telecommunications transport services; and
- (d) ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications transport services in its territory are made publicly available.

Article 1011: Flexibility in the Choice of Technologies

Neither Party may prevent suppliers of public telecommunications transport services from choosing the technologies that they use to supply their services subject to requirements necessary to satisfy legitimate public policy interests, including the use of protocols and interoperability.

Article 1012: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

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

Article 1013: Conditions for the Provision of Value-Added Services

1. No Party may require an enterprise providing value-added services to:

- (a) provide those services to the public generally;
- (b) cost justify its rates;
- (c) file or register a tariff;

- (d) interconnect its networks with any particular customer or network; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnections to a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its domestic law, or to otherwise promote competition or safeguard the interests of consumers.

Article 1014: Relation to Other Chapters

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

Article 1015: International Standards and Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 1016: Definitions

For the purpose of this Chapter:

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

enterprise means an “enterprise” as defined in Article 106 (Initial Provisions and General Definitions - Definitions of General Application) and includes a branch of an enterprise;

enterprise of the other Party means an enterprise constituted or organized under the law of the other Party and owned or controlled by a person of the other Party;

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

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

interconnection means linking 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;

intra-enterprise communications means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party’s domestic law, affiliates. Intra-enterprise communications exclude commercial or non-commercial services that are supplied to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customers choosing;

major supplier means a supplier of public telecommunications transport 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 transport networks or services as a result of:

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

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

network termination points means the final demarcation of the public telecommunications transport network at the user's premises;

non-discriminatory means treatment no less favourable than that accorded to any other user in like circumstances of like public telecommunications transport networks or services;

private network means a telecommunications network that is used exclusively for intra-enterprise communications;

public telecommunications transport network means the public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications transport services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

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

service supplier means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

supply of a service means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or
- (d) by a national of a Party in the territory of the other Party.

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

user means a service consumer or a service supplier;

value-added services means those services that add value to public telecommunications transport services through enhanced functionality by:

- (a) acting on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) providing a customer with additional, different or restructured information; or
- (c) involving customer interaction with stored information.