

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 and 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 or 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.
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;

- (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 Services¹

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. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, 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) interconnect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;

¹ 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 any public telecommunications service within its territory.

- (c) perform switching, signaling, and processing functions; and
- (d) use operating protocols of their choice.

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-corporate 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) protect the non-public information of users of public telecommunications transport services provided 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 that they are not entitled to supply pursuant to 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 and licensing.

Article 1003: Conduct of Major Suppliers

Treatment by Major Suppliers²

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications transport services of the other Party treatment no less favourable than such major suppliers accord to their subsidiaries, their 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.

Competitive Safeguards

2. (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

² This provision shall only apply to public telecommunications transport services that are subject to tariff regulation under domestic law.

- (iii) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information, that is necessary for them to provide public telecommunications transport services.

Resale

3. Each Party has the authority to identify the public telecommunications transport networks or services available 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.

Interconnection

4. (a) General Terms and Conditions

Subject to a Party's Reservations under Annexes I and 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 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 terms, conditions, and where possible, rates 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) the negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require major suppliers in its territory to make publicly available its interconnection agreements, reference interconnection offers, or other standard interconnection offers containing the terms, conditions, and where specified, rates that the major suppliers offer generally to suppliers of public telecommunications transport services.

(d) Public Availability of Procedures for Interconnection Negotiations

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

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

Each Party shall ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory are made publicly available.

Article 1004: Regulatory Body

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 value-added services.

2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.

Article 1005: Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to 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: Procedures for 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 license, concession, permit, registration, or other type of authorization is required to supply public telecommunications transport networks or services, the decision on the application for a license, concession, permit, registration, or other type of authorization will be made within a reasonable period of time once the application has been considered complete, and in the event of a denial, the reasons will be made known to the applicant upon request.

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. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 906 (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 that 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.
4. 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 and authority 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

Recourse to Regulatory Bodies

1. Further to Article 1903 (Transparency - Administrative Proceedings) and 1904 (Transparency - Review and Appeal), each Party shall ensure the following:

- (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body or other relevant 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 such bodies; and

- (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 a regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with such major supplier, to the extent that these have not been established previously.

*Reconsideration*³

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services that is aggrieved or whose interests are adversely affected by the determination or decision of a regulatory body may petition that body for reconsideration of that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the regulatory body unless an appropriate authority stays such determination or decision.

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 ensure that:

- (a) 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;

³ With respect to Canada, reconsideration shall not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies. With respect to Peru, suppliers of public telecommunication transport networks or services may not petition for reconsideration of administrative rulings of general application, as defined in Article 1906 (Definitions - Transparency), unless provided for under its laws and regulations.

- (b) 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; and
- (c) its measures relating to public telecommunications transport network or services and, where applicable, to value-added services, are made publicly available, including measures relating to:
 - (i) tariffs and other terms and conditions of service,
 - (ii) procedures relating to judicial and other adjudicatory proceedings,
 - (iii) specifications of technical interfaces,
 - (iv) conditions for attaching terminal or other equipment to the public telecommunications transport network,
 - (v) notification, permit, registration, or licensing requirements, if any, and
- (d) information on bodies responsible for preparing, amending and adopting standards related measures is made publicly available.

Article 1011: 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 and services.

Article 1012: 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 1013: 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 1014: 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 105 (Initial Provisions and General Definitions - Definitions of General Application) and includes a branch of an enterprise;

enterprise of the other Party means both an enterprise constituted or organized under the law of the other Party and an enterprise 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-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party. "Intra-corporate communications" excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers;

major supplier⁴ 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 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 of like public telecommunications transport networks or services in like circumstances;

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

public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

⁴ With respect to Peru, rural telephone companies that have at least 80% of their total fixed subscriber lines in operation in rural areas shall not be considered as major suppliers. This reference is without prejudice to any rights or obligations that a Party may have under the GATS.

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*, telephone, and data transmission;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a regulatory body that is sufficiently detailed to enable a supplier of public telecommunications 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 the body or bodies 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 public telecommunications transport 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, including by photonic means; and

user means a subscriber for public telecommunications transport services or a service supplier.