

- (iii) a provincial, territorial or regional government, as set out by that Party in its Schedule to Annex I; or
 - (iv) a local government;
 - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 14.3.
2. Article 14.3 does not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

CHAPTER FIFTEEN

Telecommunications

Article 15.1

Definitions

For the purposes of this Chapter:

contribution link means a link for the transmission of sound or television broadcasting signals to a programme production centre;

cost-oriented means based on cost and may involve different cost methodologies for different facilities or services;

enterprise means an 'enterprise' as defined in Article 8.1 (Definitions);

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

- (a) are exclusively or predominantly supplied 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 the users of another supplier and to access services supplied by another supplier;

intra-corporate communications means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party's law, affiliates, but does not include 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. For the purposes of this definition, 'subsidiaries', 'branches' and, where applicable, 'affiliates' are as defined by each Party;

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 customer's choice;

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

network termination point means the physical point at which a user is provided with access to a public telecommunications transport network;

number portability means the ability of end-users of public telecommunications transport services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between suppliers of like public telecommunications transport services;

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

public telecommunications transport service means a telecommunications transport service that a Party requires, explicitly or in effect, to be offered to the public generally that involves 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. This service may include, among other things, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems;

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

telecommunications services means all services consisting of the transmission and reception of signals by any electromagnetic means but does not include the economic activity consisting of the provision of content by means of telecommunications; and

user means an enterprise or natural person using or requesting a publicly available telecommunications service.

Article 15.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party relating to telecommunications networks or services, subject to a Party's right to restrict the supply of a service in accordance with its reservations as set out in its Schedule to Annex I or II.
2. This Chapter does not apply to a 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. For greater certainty, this Chapter applies to a contribution link.
3. This Chapter does not:
 - (a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services, other than as specifically provided in this Agreement; or
 - (b) require a Party, or require a Party to compel a service supplier, to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally.

Article 15.3

Access to and use of public telecommunications transport networks or services

1. A Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions, including with respect to quality, technical standards and specifications ⁽¹⁾. The Parties shall apply this obligation, among other things, as set out in 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 network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that these enterprises are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment which interfaces with the public telecommunications transport network;
 - (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;

⁽¹⁾ **non-discriminatory** means treatment no less favourable than that accorded to any other enterprise when using like public telecommunications transport networks or services in like situations.

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

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 these enterprises, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 28.3 (General exceptions), and notwithstanding paragraph 3, a Party shall take appropriate measures to protect:

- (a) the security and confidentiality of public telecommunications transport services; and
- (b) the privacy of users of public telecommunications transport services,

subject to the requirement that these measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

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 or 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 or services; or
- (c) ensure that service suppliers of the other Party do not supply services limited by the Party's reservations as set out in its Schedule to Annex I or II.

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

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

Article 15.4

Competitive safeguards on major suppliers

1. Each Party shall maintain appropriate measures to prevent suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) 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 supply services.

*Article 15.5***Access to essential facilities**

1. Each Party shall ensure that a major supplier in its territory makes available its essential facilities, which may include, among other things, network elements, operational support systems or support structures, to suppliers of telecommunications services of the other Party on reasonable and non-discriminatory terms and conditions and cost-oriented rates.
2. Each Party may determine, in accordance with its laws, those essential facilities required to be made available in its territory.

*Article 15.6***Interconnection**

1. Each Party shall ensure that a major supplier in its territory provides interconnection:
 - (a) at any technically feasible point in the network;
 - (b) under non-discriminatory terms, conditions, including technical standards and specifications, and rates;
 - (c) of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
 - (d) 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 a supplier need not pay for network components or facilities that it does not require for the services to be supplied; and
 - (e) 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. A supplier that is authorised to supply telecommunications services has the right to negotiate a new interconnection agreement with other suppliers of public telecommunications transport networks and services. Each Party shall ensure that major suppliers are required to establish a reference interconnection offer or negotiate interconnection agreements with other suppliers of telecommunications networks and services.
3. Each Party shall ensure that suppliers of public telecommunications transport services that acquire information from another such supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier shall be made publicly available.
5. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer if it is appropriate.

*Article 15.7***Authorisation to supply telecommunications services**

Each Party should ensure that the authorisation to supply telecommunications services, wherever possible, is based upon a simple notification procedure.

*Article 15.8***Universal service**

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Each Party shall ensure that any measure on universal service that it adopts or maintains is administered in a transparent, objective, non-discriminatory and competitively neutral manner. Each Party shall also ensure that any universal service obligation it imposes is not more burdensome than necessary for the kind of universal service that the Party has defined.
3. All suppliers should be eligible to ensure universal service. If a supplier is to be designated as the supplier of a universal service, a Party shall ensure that the selection is made through an efficient, transparent and non-discriminatory mechanism.

*Article 15.9***Scarce resources**

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.
2. Notwithstanding Articles 8.4 (Market access) and 9.6 (Market access), a Party may adopt or maintain a measure that allocates and assigns spectrum and that manages frequencies. 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.
3. Each Party shall make the current state of allocated frequency bands publicly available but shall not be required to provide detailed identification of frequencies allocated for specific government use.

*Article 15.10***Number portability**

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability on reasonable terms and conditions.

*Article 15.11***Regulatory authority**

1. Each Party shall ensure that its regulatory authority is legally distinct and functionally independent from any supplier of telecommunications transport networks, services or equipment, including if a Party retains ownership or control of a supplier of telecommunications transport networks or services.
2. Each Party shall ensure that its regulatory authority's decisions and procedures are impartial with respect to all market participants and are administered in a transparent and timely manner.
3. Each Party shall ensure that its regulatory authority is sufficiently empowered to regulate the sector, including by ensuring that it has the power to:
 - (a) require suppliers of telecommunications transport networks or services to submit any information the regulatory authority considers necessary for the administration of its responsibilities; and

- (b) enforce its decisions relating to the obligations set out in Articles 15.3 through 15.6 through appropriate sanctions that may include financial penalties, corrective orders or the suspension or revocation of licences.

Article 15.12

Resolution of telecommunication disputes

Recourse to regulatory authorities

1. Further to Articles 27.3 (Administrative proceedings) and 27.4 (Review and appeal), each Party shall ensure that:
 - (a) enterprises have timely recourse to its regulatory authority to resolve disputes with suppliers of public telecommunications transport networks or services regarding the matters covered in Articles 15.3 through 15.6 and that, under the law of the Party, are within the regulatory authority's jurisdiction. As appropriate, the regulatory authority shall issue a binding decision to resolve the dispute within a reasonable period of time; and
 - (b) suppliers of telecommunications networks or services of the other Party requesting access to essential facilities or interconnection with a major supplier in the Party's territory have, within a reasonable and publicly specified period of time, recourse to a regulatory authority to resolve disputes regarding the appropriate terms, conditions and rates for interconnection or access with that major supplier.

Appeal and review of regulatory authority determinations or decisions

2. Each Party shall ensure that an enterprise whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the law of the Party. The judicial, quasi-judicial or administrative authority shall provide the enterprise with written reasons supporting its determination or decision. Each Party shall ensure that these determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.
3. An application for judicial review does not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays this determination or decision.

Article 15.13

Transparency

1. Further to Articles 27.1 (Publication) and 27.2 (Provision of information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall make publicly available:
 - (a) the responsibilities of a regulatory authority in an easily accessible and clear form, in particular where those responsibilities are given to more than one body;
 - (b) its measures relating to public telecommunications transport networks or services, including:
 - (i) regulations of its regulatory authority, together with the basis for these regulations;
 - (ii) tariffs and other terms and conditions of services;
 - (iii) specifications of technical interfaces;
 - (iv) conditions for attaching terminal or other equipment to the public telecommunications transport networks;
 - (v) notification, permit, registration, or licensing requirements, if any; and
 - (c) information on bodies responsible for preparing, amending and adopting standards-related measures.

*Article 15.14***Forbearance**

The Parties recognise the importance of a competitive market to achieve legitimate public policy objectives for telecommunications services. To this end, and to the extent provided in its law, each Party may refrain from applying a regulation to a telecommunications service when, following analysis of the market, it is determined that effective competition is achieved.

*Article 15.15***Relation to other chapters**

If there is any inconsistency between this Chapter and another Chapter, this Chapter prevails to the extent of the inconsistency.

*CHAPTER SIXTEEN****Electronic commerce****Article 16.1***Definitions**

For the purposes of this Chapter:

delivery means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

*Article 16.2***Objective and scope**

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of the WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter.

2. This Chapter does not impose an obligation on a Party to allow a delivery transmitted by electronic means except in accordance with the Party's obligations under another provision of this Agreement.

*Article 16.3***Customs duties on electronic deliveries**

1. A Party shall not impose a customs duty, fee, or charge on a delivery transmitted by electronic means.

2. For greater certainty, paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge on a delivery transmitted by electronic means, provided that the tax or charge is imposed in a manner consistent with this Agreement.