

CHAPTER 10
TELECOMMUNICATIONS SERVICES

Article 10.1
Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to telecommunications services.
2. This Chapter shall apply to measures adopted or maintained by a Party affecting telecommunications services.
3. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter shall not apply to measures that a Party adopts or maintains relating to broadcasting services, including distribution of radio and television programming. This Chapter shall not apply to measures by Japan affecting telegraph services.

Note 1: For the purposes of this paragraph, the term "broadcasting services" shall include radio and television services and radio and television transmission services under the Services Sectoral Classification List (GATT Document MTN.GNS/W/120, dated 10 July 1991).

Note 2: For the purposes of this paragraph, for Japan, the term "telegraph services" means telegraph services referred to in Supplementary Provisions of Telecommunications Business Law (Law No. 86 of 1984).

4. Nothing in this Chapter shall be construed to:
 - (a) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services not offered to the public generally; or

- (b) require a Party to compel any enterprise exclusively engaged in the broadcasting services referred to in paragraph 3 to make available its broadcast or cable facilities as a public telecommunications transport network.

Article 10.2
Definitions

For the purposes of this Chapter:

- (a) the term "carrier pre-subscription function" means a function of enabling end users to use the carrier they have selected by pre-registration without dialling a carrier identification code;
- (b) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) the term "dialling parity" means the ability of an end user to use an equal number of digits including through carrier pre-subscription function to access a like public telecommunications transport service designated by the Party, regardless of the public telecommunications transport service supplier chosen by such end user;
- (d) the term "end user" means a final consumer of or subscriber to public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (e) the term "essential facilities" means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and

- (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (f) the term "interconnection" means linking with suppliers providing public telecommunications transport networks or services in order to allow the end users of one supplier to communicate with the end users of another supplier and to access services provided by another supplier;
- (g) the term "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 user;
- (h) the term "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 basic telecommunications services as a result of:

- (i) control over essential facilities; or
 - (ii) use of its position in the market;

Note: For greater certainty, the term "basic telecommunications services" includes Internet access services.

- (i) the term "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;
- (j) the term "public telecommunications transport network" means the telecommunications infrastructure which is used to provide public telecommunications transport services between and among defined network termination points;

- (k) the term "public telecommunications transport service" means any telecommunications transport service offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (l) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (m) the term "telecommunications regulatory body" means any body or bodies responsible for the regulation of telecommunications; and
- (n) the term "users" means end users or suppliers of public telecommunications transport networks or services.

Article 10.3 Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion, on transparent, 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 service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such suppliers are permitted to:

- (a) purchase or lease, and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's service;

- (b) provide services to individual or multiple users over any leased or owned circuits;
- (c) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, processing, and conversion functions; and
- (e) use operating protocols of the service supplier's choice in the supply of any services, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in either Party or any non-Party which is a party to the WTO Agreement.

4. 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 personal data of end users of public telecommunications transport networks or services, including the privacy of such users,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or 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 and 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; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services 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 and to encourage the achievement of the goals set out in Article 10.23;
- (c) type approval of terminal or other equipment which interfaces with such networks 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; or
- (e) notification, registration and licensing.

Article 10.4 Submarine Cables

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its Area, where a supplier is authorised to operate a submarine cable facility as a public telecommunications transport service.

Article 10.5
Number Portability

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area provide number portability for end users when switching suppliers of mobile services or between other like services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Article 10.6
Dialling Parity

Each Party shall ensure that:

- (a) suppliers of public telecommunications transport networks or services in its Area provide dialling parity within the same category of service to suppliers of public telecommunications transport networks or services of the other Party without unreasonable dialling delays; and
- (b) suppliers of public telecommunications transport networks or services of the other Party are afforded non-discriminatory allocation of telephone numbers.

Article 10.7
Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its Area, from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 shall include, in particular:

- (a) engaging in anticompetitive cross-subsidisation or other anticompetitive pricing practices;
- (b) using information obtained from competitors with anticompetitive 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 provide services.

Article 10.8 Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its Area accord suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or any non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates or quality of like telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

Article 10.9 Resale

Each Party shall ensure that major suppliers of public telecommunications transport networks or services in its Area do not impose unreasonable or discriminatory conditions or limitations which have anticompetitive effects on the resale of such services by suppliers of public telecommunications transport networks or services of the other Party.

Article 10.10 Interconnection

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its Area provide, directly or indirectly, interconnection with the suppliers of public telecommunications transport networks or services of the other Party on commercial terms.

2. Each Party shall ensure that major suppliers in its Area provide interconnection at any technically feasible point in the network. Such interconnection shall be 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, 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 service supplier need not pay for network components or facilities that it does not require for the services to be provided; and
- (c) on 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.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its Area pursuant to at least one of the following options:

- (a) a reference interconnection offer, approved by the Party's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;
- (b) a standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services;

(c) the terms and conditions of an interconnection agreement; or

(d) a binding award or arbitration.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. With respect to any major supplier in its Area, each Party shall ensure that:

(a) a reference interconnection offer or other standard interconnection offer; or

(b) the terms of the major supplier's interconnection agreement,

are published or otherwise made publicly available.

Note: For Australia, this paragraph shall only apply with respect to services deemed or declared a "declared service" by Australia's telecommunications regulatory body in accordance with the laws and regulations of Australia.

6. Each Party shall maintain appropriate measures for the purpose of preventing major suppliers in its Area from using or providing to any other persons information on suppliers of public telecommunications transport networks or services or end users thereof, including commercially sensitive information, which was acquired through interconnection with public telecommunications transport networks of other such suppliers, for purposes other than such interconnection.

Note: For Japan, the major suppliers referred to in paragraphs 2, 3 and 6 are limited to those falling under subparagraph (h) (i) of Article 10.2.

Article 10.11
Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party, with respect to linking between their telecommunications facilities, access to network components or facilities for the provision of public telecommunications transport networks or services on an unbundled basis, in a timely fashion, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h) (i) of Article 10.2.

Article 10.12
Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that major suppliers in its Area provide suppliers of public telecommunications transport networks or services of the other Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h) (i) of Article 10.2.

Article 10.13
Co-Location

1. Subject to paragraph 2, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunications transport networks or services of the other Party to physically locate on the major suppliers' premises the equipment which is essential for interconnection or access to unbundled network components or facilities, where physically feasible and where no practical or viable alternatives exist, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

2. Paragraph 1 applies to the major suppliers' premises determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

Note: For Japan, the major suppliers referred to in this Article are limited to those falling under subparagraph (h) (i) of Article 10.2.

Article 10.14
Access to Facilities

1. Each Party shall ensure, subject to its laws and regulations, reasonable, non-discriminatory and transparent treatment with regard to access to conduits, cable tunnels, poles or other facilities which can be used to establish telecommunications cables and are owned by public utilities including owners of public telecommunications transport networks, to any supplier of public telecommunications transport networks or services of the other Party, when a supplier requests such access.

2. Subject to paragraph 3, each Party shall ensure that major suppliers in its Area allow suppliers of public telecommunication transport networks or services of the other Party to access towers, conduits, cable tunnels, poles and rights of way owned or controlled by such major suppliers, where physically feasible and where no practical or viable alternative exists, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

3. Paragraph 2 applies to the towers, conduits, cable tunnels, poles and rights of way determined by each Party in accordance with its laws and regulations and applies with respect to linking with the essential facilities of the major suppliers.

4. Each Party shall ensure, to the extent provided for in its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party:

- (a) can request negotiations with owners of land or structures fixed thereto (including buildings), for the right to use such land or structures for the purposes of establishing, extending and maintaining a public telecommunications transport network; and
- (b) can obtain the right to use such land or structures for such purposes, on terms that are reasonable and non-discriminatory (including with respect to timeliness), if a negotiated outcome referred to in subparagraph (a) is not reached in a timely manner.

Note: For Japan, the major suppliers referred to in paragraphs 2 and 3 are limited to those falling under subparagraph (h) (i) of Article 10.2.

Article 10.15
Independent Telecommunications Regulatory Body

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of telecommunications services.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all current and prospective market participants and shall endeavour to ensure that the decisions and the procedures are made and implemented without undue delay. To this end, each Party shall ensure that any financial interest that it holds in a supplier of telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

Article 10.16
Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anticompetitive *per se*, provided that 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 Party.

Article 10.17
Licensing Process

1. Where a licence is required, each Party shall make publicly available the following:
 - (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.

2. Each Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for or revoke a licence, each Party shall make known to the applicant, on request, the reasons for the denial or revocation.

Article 10.18 Allocation and Use of Scarce Resources

1. Each Party shall carry out any 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. 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. The Parties recognise that each Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 9.3 (Trade in Services - Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications transport services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current 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.

Article 10.19 Transparency

1. Each Party shall endeavour to ensure that:

- (a) telecommunications service suppliers are provided with adequate advance notice of, and opportunity to comment on, any regulatory decision of general application that its telecommunications regulatory body proposes; and
- (b) suppliers of public telecommunications transport networks or services of the other Party are, on request, provided with a clear and detailed explanation of reasons for any decision to deny access of the kind specified in Articles 10.10, 10.13 and 10.14, where that decision is made, approved, endorsed or authorised by the Party.

2. Each Party shall ensure that its measures relating to public telecommunications transport networks or services are published or otherwise made publicly available, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks and services;
- (c) bodies responsible for the preparation and adoption of standards affecting access to and use of public telecommunications transport networks and services;
- (d) conditions applying to attachment of terminal or other equipment; and
- (e) notifications, registration, or licensing requirements, if any.

Article 10.20
Unsolicited Electronic Messages

1. Each Party shall, in accordance with its laws and regulations, take appropriate and necessary measures to regulate unsolicited electronic messages, with a view to encouraging favourable conditions for the use of electronic messages, and thus contributing to the sound development of an advanced information and communication society. For these purposes, the Parties shall cooperate bilaterally and in international fora.

2. For the purposes of paragraph 1, bilateral cooperation includes, where appropriate, the exchange of information and other assistance concerning the regulation of unsolicited electronic messages, subject to the laws and regulations of each Party.

Article 10.21
Resolution of Telecommunications Disputes

Further to Articles 1.5 (General Provisions - Administrative Proceedings) and 1.6 (General Provisions - Review and Appeal), each Party shall ensure that:

- (a) suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to the obligations set out in Articles 10.3 through 10.14;
- (b) a supplier of public telecommunications transport networks or services of the other Party that has requested interconnection with a major supplier in the Party's Area may have recourse to its telecommunications regulatory body, within a reasonable period after the supplier requests interconnection, concerning disputes regarding the terms, conditions and rates for interconnection with such major supplier; and

- (c) any enterprise that is aggrieved by the determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority. Neither Party shall permit such judicial review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends, repeals or stays such determination or decision.

Article 10.22
Sub-Committee on Telecommunications

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Telecommunications (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
 - (a) reviewing and monitoring the implementation and operation of this Chapter;
 - (b) discussing any issues related to this Chapter and other issues relevant to the telecommunications sectors agreed on by the Parties;
 - (c) as appropriate, reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and
 - (d) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of and co-chaired by representatives of the Governments of the Parties.
4. The Sub-Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

5. The Sub-Committee may invite, by consensus, representatives of relevant entities other than the Governments of the Parties, including from the private sector, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Sub-Committee.

Article 10.23
Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International Telecommunication Union and the International Organization for Standardization.