

Chapter 8
Telecommunications Services

Article 116
Scope of Application

1. This Chapter shall apply 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; and
 - (c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services.
2. Articles 125 and 131 shall also apply to telecommunications services.
3. This Chapter shall not apply to measures by a Party affecting broadcasting services, including cable distribution of radio and television programming, as defined in its laws and regulations.
4. Nothing in this Chapter shall be construed to:
 - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than specifically provided in this Agreement;
 - (b) 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

- (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications transport networks or services to third persons.

Article 117
Definitions

For the purposes of this Chapter:

- (a) 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;
- (b) the term "end user" means a final consumer of or subscriber to a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (c) 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;
- (d) 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, particular users;
- (e) 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 1: For Peru, rural telephone companies that have at least 80 percent of their total fixed subscriber lines in operation in rural areas may not be considered as major suppliers.

Note 2: For the purposes of this Chapter, basic telecommunications services do not include non-public telecommunications services and value added services. Each Party may classify which services in its Area are value-added services.

- (f) the term "non-discriminatory" means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services under like circumstances;
- (g) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (h) the term "public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally, 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. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission;
- (i) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means including by photonic means;
- (j) the term "telecommunications regulatory body" means the body responsible for the regulation of telecommunications; and

- (k) the term "users" means consumers of, subscribers to or suppliers of public telecommunications transport networks or services.

Article 118
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 the provisions of paragraphs 5 and 6, that such suppliers are permitted:

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers;
- (c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and
- (d) to perform switching, signaling and processing functions.

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 in any other member of the WTO.

4. Notwithstanding the provisions of paragraph 3, a Party may take such measures as are necessary:

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

subject to the requirement that such measures are not applied in a manner which 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 and services other than as necessary:

- (a) to 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; or
- (b) to 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 public telecommunications transport networks and services;

- (b) requirements, where necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 131;
- (c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or
- (e) notification, permit, registration and licensing.

Note: For greater certainty, this Article shall not prohibit a Party from requiring any service supplier of the other Party to obtain a license, concession, or other type of authorization to supply public telecommunications transport networks or services in its Area.

Article 119 Number Portability

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

Note: For the purposes of this Article, Peru may take into account the economic feasibility of providing number portability.

Article 120
Competitive Safeguards

1. Each Party shall adopt and maintain appropriate measures for the purpose of preventing suppliers who, 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 shall include, in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other suppliers of public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

Article 121
Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its Area accords to suppliers of public telecommunications transport networks and services of the other Party treatment no less favorable than that such major supplier accords in like circumstances to itself, its subsidiaries and 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.

Note: For Japan, this Article shall be applied only to a major supplier which has control over essential facilities.

Article 122
Resale

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

Article 123
Interconnection

1. Each Party shall ensure that a major supplier in its Area provides interconnection for the facilities and equipments of suppliers of public telecommunications transport networks and services of the other Party 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;
- (b) with a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
- (c) 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 of public telecommunications transport networks or services of the other Party need not pay for network components or facilities that it does not require for the services to be provided; and
- (d) 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. Each Party shall require major suppliers in its Area to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms and conditions that the major suppliers offer generally to suppliers of public telecommunications transport networks or services.

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

- (a) a reference interconnection offer, at a minimum, containing a list and description of the interconnection-related services offered, the terms and conditions for such services, the operational and technical requirements, and the procedures or processes that will be used to order and supply such services;
- (b) another standard interconnection offer containing the terms and conditions, and, where possible, rates that the major suppliers offer generally to suppliers of public telecommunications transport networks or services;
- (c) the terms and conditions of an interconnection agreement in force; or
- (d) the terms and conditions provided through negotiation of a new interconnection agreement.

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

5. Each Party shall ensure that a major supplier in its Area makes publicly available either its interconnection agreements, reference interconnection offer or another standard interconnection offer.

6. Each Party shall ensure that a major supplier does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its interconnection business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.

7. (a) Japan shall apply paragraphs 1 through 3 and 6 only to a major supplier which has control over essential facilities.
- (b) Peru may apply paragraphs 1 through 3 and 6 only to a major supplier which has control over essential facilities.

Article 124

Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that a major supplier in its Area provides suppliers of public telecommunications transport networks and services of the other Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

Note: For Japan, this Article shall be applied only to a major supplier which has control over essential facilities.

Article 125

Independent Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of telecommunications services.

2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article 126
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 anti-competitive *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 127
Public Availability of Licensing Criteria

1. Where a license, concession, permit, registration or other type of authorization is required for the supply of public telecommunications transport networks or services, each Party shall make publicly available:

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

2. The competent authority of a 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 a license, concession, permit, registration or other type of authorization, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

Article 128
Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, 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 frequency are not measures that are *per se* inconsistent with Article 106. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or 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.

Article 129 Transparency

Each Party shall ensure that its measures relating to access to and use of public telecommunications transport networks and services are made publicly available, including measures relating to:

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

Article 130
Settlement of Telecommunications Disputes

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes in accordance with its laws and regulations.

2. Each Party shall ensure, in accordance with its laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party shall permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body unless an appropriate authority suspends or withdraws such determination or decision.

Note: Suppliers of public telecommunications transport networks or services may not petition for reconsideration of administrative rulings, unless it is provided for in a Party's laws and regulations.

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. Neither Party shall permit such review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends or repeals such determination or decision.

Article 131
Relation to International Organizations

The Parties recognize 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 bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 132
Relationship to Other Chapters

In the event of any inconsistency between this Chapter and Chapter 1 except for Articles 10 and 11, Chapter 7 except for Article 8 of Annex 7, Chapter 12 or the BIT, including any of their Annexes, this Chapter shall prevail to the extent of the inconsistency. In the event of any inconsistency between this Chapter and Articles 10 or 11, or Article 8 of Annex 7, such Articles shall prevail to the extent of the inconsistency.