

CHAPTER 12

TELECOMMUNICATIONS

Article 12.1: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with the conformity assessment procedures of a Party;

conformity assessment procedures means “conformity assessment procedures” as defined in Article 9.1 and includes the procedures established in Annex 12.1;

enhanced or value-added services means telecommunications services employing computer processing applications that:

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

intracorporate communications means telecommunications through which an enterprise communicates:

- (a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or
 - (b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,
- but does not include telecommunications services provided to persons other than those described herein;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is maintained or designated as the sole provider of a public telecommunication transport network or service;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

non-discriminatory means on terms and conditions no less favorable than those accorded to any other customer, user or potential customer or user of like public telecommunications transport networks or services or enhanced or value added services in like circumstances;

private network means a telecommunications transport network that is used exclusively for intracorporate communications or among pre-defined persons;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling and/or data information;

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

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically 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;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

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

technical regulation means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 12.2: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including access and use by such persons operating private networks;

- (b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and
- (c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.²

2. Except to ensure that persons 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 any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
- (b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or
- (d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 12.3: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as those set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that persons of the other Party are permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including those for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;
- (c) perform switching, signaling and processing functions; and

² For equipment that is not connected to the public telecommunications transport network or not referred to in this Agreement, the Parties shall abide by the standard-related provisions of Chapter 9.

- (d) use operating protocols of their choice.
3. Each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services.
4. Each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of the other Party.
5. Further to Article 20.1, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:
- (a) ensure the security and confidentiality of messages; or
 - (b) protect the privacy of subscribers to public telecommunications transport networks or services.
6. Each Party shall ensure that, further to Article 12.5, no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:
- (a) safeguard the public service responsibilities of providers 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.
7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:
- (a) a restriction on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person; and
 - (d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 12.4: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:
- (a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
 - (b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services

or to assess conformity of the applicant's terminal or other equipment with the applicable standards or technical regulations of the Party.

2. Neither Party may require a person providing enhanced or value-added services to:
 - (a) provide those services to the public generally;
 - (b) cost-justify its rates;
 - (c) file a tariff;
 - (d) interconnect its networks with any particular customer or network; or
 - (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.
3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
 - (a) such a provider to remedy a practice of that provider that the Party has found in a particular case to be anti-competitive under its law; or
 - (b) a monopoly to which Article 12.6 applies.

Article 12.5: Standards-Related Measures

1. Further to the TBT Agreement, each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:
 - (a) prevent technical damage to public telecommunications transport networks;
 - (b) prevent technical interference with, or degradation of, public telecommunications transport services;
 - (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
 - (d) prevent billing equipment malfunction;
 - (e) ensure users' safety and access to public telecommunications transport networks or services;
 - (f) ensure the electrical safety of communication equipment; or
 - (g) facilitate the efficient utilization of radio spectrum resources.
2. A Party may require, before an unauthorized terminal or other equipment may be marketed, an approval for the attachment to the public telecommunications transport network, provided that the criteria for that approval are consistent with paragraph 1.
3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.
4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.
5. Further to the TBT Agreement, each Party shall:

- (a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;
- (b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
- (c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures. For the detailed procedures and methods for mutual recognition of testing laboratories and mutual acceptance of test reports, follows the procedures and methods as prescribed in the "Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (adopted on May 8, 1998)" shall be taken into consideration by the Telecommunication Committee.

7. The Parties hereby establish a Committee on Telecommunications Standards, comprising representatives of each Party.

8. The Committee on Telecommunications Standards shall perform the functions set out in Annex 12.5.8.

Article 12.6: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anti-competitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anti-competitive conduct, each Party shall adopt or maintain, as stated in paragraph 1, effective measures, such as:

- (a) accounting requirements;
- (b) requirements for structural separation;
- (c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; and
- (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 12.7: Transparency

Further to Article 17.3, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with the networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the networks; and
- (e) notification, permit, registration, or licensing or concession requirements.

Article 12.8: 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 12.9: Relation to International Organizations and Agreements

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 12.10: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Annex 12.1

Conformity Assessment Procedures

For Chile:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Undersecretary of Telecommunications, Ministry of Transport and Telecommunications, or its successor.
2. The existing measures are the following:
 - (a) Law 18.168, Official Gazette, October 2, 1982, General Law of Telecommunications ("Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones")
 - (b) Supreme Decree 220 of the Ministry of Transport and Telecommunications, Official Gazette, January 8, 1981
 - (c) Regulation on the Homologation of Telephone Equipment (Decreto 220 de Ministerio de Transportes y Telecomunicaciones, Diario Oficial, enero 8, 1981, "Reglamento de Homologación de Aparatos Telefónicos")

For Korea:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Ministry of Information and Communication, or its successor.
2. The existing measures are the following:
 - (a) Areas of Type Approval
 - Telecommunications Basic Act (Act No. 5454, Dec. 13, 1997)
 - Enforcement Decree of Telecommunications Basic Act (Presidential Decree No. 15282, Feb. 22, 1997)
 - Enforcement Regulations of Telecommunications Basic Act (Ordinance of the Ministry of Information and Communication No. 64, Feb. 26, 1999): definitions of the type approval items, and application and process procedures
 - Regulations on the Technical Standards of Telecommunications Facilities (Ordinance of the Ministry of Information and Communication No. 58, Dec. 1, 1998)
 - Terminal-installment Technical Regulations (Ministry of Information and Communication Announcement No. 1998-18, Feb. 21, 1998): definitions of the technical regulations of terminal-installment equipment
 - (b) Areas of Type Verification and Type Registration of Wireless Equipment
 - Radio Waves Act (Act No. 5637, Jan. 18, 1999)
 - Enforcement Decree of the Radio Waves Act (Presidential Decree No. 16158, March 3, 1999)
 - Enforcement Regulations of the Radio Waves Act (Ordinance of the

- Ministry of Information and Communication No. 53, July 31, 1998)
- Confirmation Regulations on Type Verification, Type Registration and Technical Standard Certification for Wireless Facility (Ordinance of the Ministry of Information and Communication No. 52, July 16, 1998): definitions of the object of verification or registration, and the application and process procedure
 - Regulations on Wireless Facilities (Ordinance of the Ministry of Information and Communication No. 45, Jan. 31, 1998): definitions of the technical regulations

(c) Areas of Electromagnetic Compatibility Registration

- Radio Waves Act (Act No. 5637, Jan.18, 1999)
 - Regulations on Electromagnetic Compatibility Registration (Act No. 39, May 8, 1997): definitions of the registration items, application and process procedures, and relevant technical regulations

Annex 12.5.8
Committee on Telecommunications Standards

1. The Committee on Telecommunications Standards, established under Article 12.5.7, shall comprise representatives of each Party.
2. The Committee shall, within six months of the date of entry into force of this Agreement, develop a work program, including a timetable, for making compatible to the greatest extent possible, the standards-related measures of the Parties for authorized equipment as defined in this Chapter.
3. The Committee may address other appropriate standards-related matters regarding telecommunications equipment or services and such other matters as it considers appropriate.
4. The Committee shall take into account relevant work carried out by the Parties in other fora, and that of non-governmental standardizing bodies.