

CHAPTER 12

TELECOMMUNICATIONS

Article 12.1: Scope and Coverage

1. This Chapter applies to measures¹ affecting trade in public telecommunications transport network and services.
2. This Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming².
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or telecommunications services where such networks or services are not offered to the public generally; or
 - (b) require a Party to compel any service supplier engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network, unless a Party specifically designates such facilities as such.

Article 12.2: Access to and use of Public Telecommunications Transport Network and Services³

1. A Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network and service, including leased circuits, offered in its territory or across its borders on reasonable, non-discriminatory, timely and transparent terms and conditions, including as set out in paragraphs 2 through 6.
2. Each Party shall ensure that such service suppliers are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

¹ This includes the effective enforcement of such measures.

² For greater certainty, the Parties obligations under this Chapter shall not apply to measures adopted or maintained relating to broadcasting services as defined in the Parties Schedule to Annex II.

³ This Article does not apply to access to unbundled network elements, including access to leased circuits as an unbundled network element.

- (b) provide services to individual or multiple end-users over any leased or owned circuit(s);
- (c) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier subject to paragraph 6 (c);
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice.

3. A Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

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 privacy of customer proprietary network information,
- subject to the requirement 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 that 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 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 or services;

- (b) a licensing, permit, registration, or notification procedure; or
- (c) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another services supplier.

Article 12.3: Interconnection with Suppliers of Public Telecommunications Transport Networks and Services

1. A Party shall ensure that suppliers of public telecommunications transport networks or services in its territory provides interconnection with the facilities and equipment of suppliers of public telecommunications transport networks or services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory take reasonable steps to protect the confidentiality of proprietary information of, or relating to, suppliers and end-users of public telecommunications transport networks or services and only use such information for the purpose of providing public telecommunications transport networks or services.

Article 12.4: Conduct of Major Suppliers⁴

Treatment by Major Suppliers

1. A Party shall ensure that any major supplier in its territory accords suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:

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

A Party shall assess such treatment on the basis of whether such suppliers of public telecommunications transport networks or services, subsidiaries, affiliates, and non-affiliated service suppliers are in like circumstances.

⁴ Articles 12.4.3, 12.4.4, 12.4.5, 12.4.6 (a) and (d), do not apply to suppliers of commercial mobile services. However, nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services if those suppliers are designated by that Party as a major supplier.

Competitive Safeguards

2. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport networks or services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices. For purposes of this paragraph, anti-competitive practices include:

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

Co-Location

3. (a) A Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications transport networks or services of the other Party physical co-location, at premises owned or controlled by the major supplier, of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, timely and transparent.
- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide or facilitate virtual co-location on terms and conditions, and at cost oriented rates, that are reasonable, non-discriminatory, timely and transparent.
- (c) Each Party may determine, in accordance with its national laws and regulations, which premises in its territory shall be subject to sub-paragraphs (a) and (b).

Poles, Ducts, and Conduits

4. (a) A Party shall ensure that major suppliers in its territory provide access to poles, ducts, and conduits, owned or controlled by such major suppliers to suppliers of public telecommunications transport networks or services of the other Party, under terms, conditions, and cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

- (b) Nothing shall prevent a Party from determining, under its domestic law and regulation, which particular structures owned or controlled by the major suppliers in its territory, are required to be made available in accordance with sub-paragraph (a) provided that this is based on a determination that such structures cannot feasibly be economically or technically substituted in order to provide a competing service.

Number Portability

5. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

Interconnection

6. (a) General Terms and Conditions

A Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications transport networks or services of the other Party:

- (i) at any technically feasible point in the major supplier's network;
- (i) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (i i) of a quality no less favourable than that provided by such major supplier for its own like services or for like services of non-affiliated suppliers of public telecommunications transport networks or services 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 of public telecommunications transport networks or services 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 suppliers of public telecommunications transport networks or

services, subject to charges that reflect the cost of construction of necessary additional facilities⁵.

(b) Public Availability of the Procedures for Interconnection Negotiations

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

(c) Public Availability of Interconnection Agreements concluded with Major Suppliers

- (i) each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.
- (i) each Party shall make available for inspection to suppliers of public telecommunications transport networks or services which are seeking interconnection, interconnection agreements in force between a major supplier in its territory and any other supplier of public telecommunications transport networks or services in such territory.

(d) Resolution of Interconnection Disputes

A Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party, that have requested interconnection with a major supplier in the Party's territory, has recourse to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection within a reasonable and publicly available period of time.

Article 12.5: Submarine Cable Landing Stations

A Party shall ensure reasonable and non-discriminatory access to submarine cable capacity, and cross-connect links in and backhaul links from, a submarine cable landing station for suppliers of public telecommunications transport networks or services of the other Party.

Article 12.6: Independent Regulation

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

⁵ These costs may include the cost of physical or virtual co-location referenced in Article 12.4.3.

2. Each Party shall ensure that the decisions of, and procedures used by its telecommunications regulatory body is impartial with respect to all suppliers of public telecommunications transport networks or services.

Article 12.7: Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 12.8: Licensing Process

1. When a Party requires a supplier of public telecommunications transport networks or services to have a license or concession, the Party shall make publicly available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period of time normally required to reach a decision concerning an application for a license or concession; and
- (c) the terms and conditions of all licenses or concessions it has issued.

2. Each Party shall ensure that an applicant receives, upon request, the reasons for the denial of a license or concession.

Article 12.9: Allocation and use of 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 fashion.

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 assigned or allocated for specific government uses.

Article 12.10: Resolution of Domestic Telecommunications Disputes

Recourse to Telecommunications Regulatory Bodies

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party have recourse (within a reasonable period of time) to a telecommunications regulatory body to resolve

disputes arising under domestic measures addressing a matter set out in Articles 12.2 through 12.9.

Reconsideration

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved or whose interests are adversely affected by a determination or decision of the telecommunications regulatory body may petition that body for reconsideration of the determination or decision.

Judicial Review and Appeal

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of the telecommunications regulatory body has the opportunity to appeal, or obtain judicial review of, such determination or decision to an independent judicial or administrative authority⁶.

Article 12.11: Transparency

Further to Chapter 14 (*Transparency*), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested suppliers of public telecommunications transport networks or services;
- (b) interested suppliers of public telecommunications transport networks or services are provided with adequate advance public notice of, and the opportunity comment on, any rulemaking proposed by the telecommunications regulatory body;
- (c) Its measures relating to public telecommunications transport networks or services are made publicly available, including:
 - (i) tariffs and other terms and conditions of service;
 - (i) specifications of technical interfaces;
 - (i i) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and

⁶ For greater certainty, in the case of Panama, only the judicial review process at the Supreme Court shall be applicable.

- (iv) 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 12.12: Relationship to other Chapters

In the event of any inconsistency between this Chapter and any other Chapter, this Chapter shall prevail to the extent of any such inconsistency.

Article 12.13: Definitions

For the purposes of this Chapter:

1. **backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to the Party's public telecommunications transport network;
2. **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
3. **commercial mobile services** means public telecommunications services supplied through mobile wireless means;
4. **cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching and routing equipment of different suppliers of public telecommunications services co-located in that submarine cable landing station;
5. **customer proprietary network information** means information made available to the supplier of public telecommunications transport networks or services by the end-user solely by virtue of the end-user telecommunications service supplier relationship;
6. **end-user** means a final consumer of or subscriber to a public telecommunications transport networks or service, including a service supplier but excluding a supplier of public telecommunications transport networks or services;
7. **essential facilities** means facilities of a public telecommunications transport network or service that:
 - (a) are exclusively or predominantly provided by a single or limited number of suppliers; and

- (b) cannot feasibly be economically or technically substituted in order to provide a service;

8. **interconnection** means linking with 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;

9. **leased circuits** means telecommunications facilities between two or more designated points which are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

10. **major supplier** means a supplier of public telecommunications transport networks or 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) control over essential facilities; or
- (b) use of its position in the market;

11. **network element** means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment;

12. **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;

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

14. **physical co-location** means physical access to and control over space in order to install, maintain, or repair equipment used to provide public telecommunications transport networks or services;

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

16. **public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include *inter alia*, telegraph, telephone, telex and data transmission typically 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;

17. **service supplier** means any person that supplies a service;
18. **submarine cable landing station** means the premises and buildings where international submarine cables arrive and terminate and are connected to backhaul links;
19. **supplier of public telecommunications transport networks and services** means any provider of public telecommunications transport networks or public telecommunications transport services, including those who provide such networks or services to other suppliers of public telecommunications transport networks or services;
20. **telecommunications** means the transmission and reception of signals by any electromagnetic means⁷;
21. **telecommunications regulatory body** means a national body responsible for the regulation of telecommunications; and
22. **user** means an end-user or a supplier of public telecommunications transport networks or services.

⁷ Including by photonic means.