

CHAPTER 8
TELECOMMUNICATIONS

Article 8.1
Definitions

For purposes of this Chapter:

“broadcasting” means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;

“cost-oriented” means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

“end-user” means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

“enterprise” means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

“essential facilities” means facilities of a public telecommunications 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 supply a service;

“interconnection” means linking with suppliers providing public telecommunications services or networks in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

“international mobile roaming service” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user’s home public telecommunications network is located;

“leased circuits” means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user and supplied by a supplier of fixed telecommunications services;

“licence” means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including concessions, permits, or registrations;

“major supplier” means a supplier of public telecommunications 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 services as a result of:

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

“network element” means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

“non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

“number portability” means the ability of end-users of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

“physical co-location” means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

“public telecommunications network” means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

“public telecommunications service” means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer’s information;

“reference interconnection offer” means an interconnection offer extended by a major supplier and filed with, approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

“service supplier” means a person of a Party that seeks to supply or supplies a service;

“telecommunications” means the transmission and reception of signals by any electromagnetic means, including by photonic means;

“telecommunications regulatory body” means a body or bodies responsible for the regulation of telecommunications;

“user” means a service consumer or a service supplier; and

“virtual co-location” means an arrangement whereby a requesting supplier seeking co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to such premises and allows the major supplier to install, maintain, and repair such equipment.

Article 8.2
Scope and Coverage

1. This Chapter shall apply to measures affecting trade in telecommunications services.
2. This Chapter shall not apply to any measure affecting broadcasting.
3. Nothing in this Chapter shall be construed to require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally.

Article 8.3
Access to and Use²¹ of Public Telecommunications Services

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.
2. Each Party shall ensure that service suppliers of the other Party are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with, a public telecommunications network;
 - (b) provide services to individual or multiple end-users over leased or owned circuits;
 - (c) connect owned or leased circuits with public telecommunications networks or services, or with circuits leased or owned by another enterprise;
 - (d) perform switching, signalling, processing, or conversion functions; and
 - (e) use operating protocols of their choice.

²¹ For greater certainty, this Article does not prohibit a Party from requiring a service supplier to obtain a licence to supply any public telecommunications service within its territory.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases 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 ensure the security and confidentiality of messages and protect the privacy of personal data of end-users of public telecommunications networks or services, provided that such measures are not applied in a manner that 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 networks or services, other than as necessary to:
 - (a) safeguard the public service responsibilities of suppliers of public telecommunications 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 networks or services.
6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks or services may include:
 - (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (b) requirements, where necessary, for the inter-operability of such networks or services;
 - (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and
 - (d) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's domestic laws and regulations.

Article 8.4

Competitive Safeguards on Major Suppliers

1. Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. Such anti-competitive practices shall include in particular:

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

Article 8.5
Interconnection

1. Each Party shall ensure that any service supplier authorised to provide public telecommunications networks or services has the right and obligation to negotiate interconnection with other suppliers of public telecommunications networks or services. Interconnection should be agreed on the basis of commercial negotiations between the parties concerned²².
2. The telecommunications regulatory body shall ensure that any supplier authorised to provide public telecommunications networks or services that acquire information from another supplier of public telecommunications networks or services during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

Article 8.6
Interconnection with a Major Supplier

1. Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party at any technically feasible point in the major supplier's 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 like services of its subsidiaries or other affiliates;

²² For further clarity, service suppliers authorised to provide public telecommunications networks or services shall freely determine the terms, conditions and rates that will be included in their interconnection agreements by negotiating among themselves. Each Party shall ensure that if such negotiations fail, any one of the parties may have recourse to the telecommunications regulatory body for resolution of disputes regarding appropriate terms, conditions and rates for interconnection. The telecommunications regulatory body shall conduct the dispute settlement procedure within the scope of relevant domestic legislation and resolve the dispute within a reasonable period of time.

- (b) in a timely fashion, on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - (c) 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 ensure that the procedures applicable for interconnection with a major supplier in its territory are made publicly available.
- 3. Each Party shall provide a means for suppliers of public telecommunications networks or services of the other Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring:
 - (a) the public availability of interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications networks or services in its territory;
 - (b) the public availability of rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body; or
 - (c) the public availability of a reference interconnection offer.
- 4. Further to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through the following options:
 - (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or
 - (b) the terms and conditions of an interconnection agreement in effect.
- 5. In addition to the options provided in paragraph 4, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.

Article 8.7
Co-Location by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications networks or services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and based on a generally available offer.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution such as facilitating virtual co-location on a timely basis and on terms and conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and based on a generally available offer.
3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. When making this determination, the Party shall take into account factors such as the state of competition in the market in which co-location is required, whether such premises can feasibly be economically or technically substituted in order to provide a competing service, or other specified public interest factors.

Article 8.8

Access to Poles, Ducts, Conduits, and Rights-of-way Owned or Controlled by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and rights-of-way or any other structures as determined by the Party, owned or controlled by the major supplier to suppliers of public telecommunications networks or services of the other Party in the Party's territory on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent and subject to technical feasibility.
2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access under paragraph 1. When making this determination, the Party shall take into account factors such as the competitive effect of lack of such access, whether such structures can feasibly be economically or technically substituted in order to provide a competing service or other specified public interest factors.

Article 8.9

Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall ensure the public availability of:
 - (a) all the licensing criteria and procedures it applies;

- (b) the period it normally requires to reach a decision concerning an application for a licence; and
 - (c) the terms and conditions of all licences in effect.
2. A Party shall ensure that, on request, an applicant receives the reasons for the:
- (a) denial of a licence;
 - (b) imposition of supplier-specific conditions on a licence;
 - (c) revocation of a licence; or
 - (d) refusal to renew a licence.

Article 8.10

Allocation and Use of Scarce Resources

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. Number of rights of use of scarce resources shall only be limited in case it is necessary for the resources to be used by limited number of operators and for the purpose of providing efficient use of resources. For telecommunications services to be provided and/or infrastructure and networks to be installed and operated by limited number of operators, the rights of use of scarce resources shall be allocated by mechanisms such as the tendering process.
2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered as inconsistent with Article 7.4 (Market Access) of Chapter 7 (Cross Border Trade in Services) or Article 12.7 (Performance Requirements) of Chapter 12 (Investment). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting the number of suppliers of a public telecommunications network or service, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account present and future needs, and spectrum availability.

Article 8.11

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Such obligations shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by each Party.
3. Where applicable, any fund that has been set up by a Party for the purposes of universal services shall be used in accordance with the relevant legislation of the Party.

Article 8.12
Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability on reasonable terms and conditions and without impairment to quality and reliability of the service or convenience to the end-users.

Article 8.13
International Submarine Cable Systems

Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to such landing stations, consistent with the provisions of paragraph 1 of Article 8.6 (Interconnection with a Major Supplier), Article 8.7 (Co-Location by Major Suppliers), and Article 8.8 (Access to Poles, Ducts, Conduits, and Rights-of-way Owned or Controlled by Major Suppliers) to suppliers of public telecommunications networks or services of the other Party.

Article 8.14
Independent Regulators

1. The telecommunications regulatory body shall be an independent body, legally distinct from and functionally independent of any person providing public telecommunications networks, equipment and/or services.
2. The telecommunications regulatory body shall be empowered to regulate the telecommunications services sector and shall have adequate financial and human resources to carry out its tasks. The tasks to be undertaken by a telecommunications regulatory body shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The telecommunications regulatory body shall exercise its powers transparently and in a timely manner. The decisions of, and the procedures used by, the telecommunications regulatory body shall be impartial with respect to all market participants.

Article 8.15
International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.
2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
 - (a) ensuring that information regarding retail rates is easily accessible to consumers; and
 - (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

Article 8.16 **Resolution of Telecommunications Disputes**

1. Each Party shall ensure that:

Recourse

- (a) service suppliers authorised by the telecommunications regulatory body of a Party to provide public telecommunications networks or services in its territory may have recourse to the telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 8.3 (Access to and Use of Public Telecommunications Services) to 8.15 (International Mobile Roaming);
- (b) if the telecommunications regulatory body or other relevant body of the Party declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;
- (c) suppliers of public telecommunications networks or services requesting interconnection with a major supplier in its territory will have recourse, either:
 - (i) at any time; or
 - (ii) after a reasonable period of time which has been made publicly knownto an independent domestic body, which may be a telecommunications regulatory body as referred to in Article 8.14 (Independent Regulators), to resolve disputes regarding appropriate terms, conditions and rates for

interconnection within a reasonable period of time, to the extent that these have not been established previously.

[1] *Reconsideration*

- (d) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the telecommunications regulatory body or other relevant body to reconsider that determination or decision. No Party may permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the telecommunications regulatory body or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which an application for reconsideration is available, in accordance with its laws and regulations.

Judicial Review

- 2. No Party may permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

Article 8.17
Transparency

- 1. When the telecommunications regulatory body of a Party intends to take measures related to the provisions of this Chapter, it shall give interested parties the opportunity to comment on the draft measure within a reasonable period of time in accordance with the domestic law of the Party. The telecommunications regulatory body shall make publicly available its consultation procedures for such draft measures.
- 2. A Party shall ensure that its measures relating to public telecommunications networks or services are made publicly available, including:
 - (a) tariffs and other terms and conditions of service;
 - (b) specifications of technical interfaces;
 - (c) conditions for attaching terminal or other equipment to the public telecommunications network;
 - (d) notification, permit, registration, or licensing requirements, if any;

- (e) general procedures relating to resolution of telecommunications disputes provided for in Article 8.16 (Resolution of Telecommunications Disputes); and
- (f) any measures of the telecommunications regulatory body through which the responsibility for preparing, amending, and adopting standards-related measures affecting access and use are delegated to other bodies.

Article 8.18

Flexibility in the Choice of Technology

No Party may prevent suppliers of public telecommunications networks or services from choosing the technologies they wish to use to supply their services subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting such measures shall do so consistent with Article 8.17 (Transparency).

Article 8.19

Relationship to Other Chapters

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