

Chapter 22: Telecommunications – Text of the 2023 Canada – Ukraine Free Trade Agreement

Article 22.1: Definitions

For the purposes of this Chapter:

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 "enterprise" as defined in Article 1.5 (Definitions of General Application) 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 a 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 networks or services to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

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;

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

major supplier means a supplier that has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for public telecommunications networks or services as a result of:

- (a) control over essential facilities; or
- (b) the 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 networks or services in like circumstances;

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

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

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

public telecommunications service means a telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally that 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. This service may include telephone and data transmission;

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 so 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;

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

telecommunications regulatory body means any body or bodies responsible for the regulation of telecommunications;

user means an end-user or a supplier of public telecommunications networks or services; and

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

Article 22.2: Scope of Application

1. This Chapter applies to measures of a Party affecting trade in public telecommunications services, including:

- (a) a measure adopted or maintained by a Party in relation to access to and use of a public telecommunications service;*
- (b) a measure adopted or maintained by a Party relating to an obligation of a supplier of a public telecommunications service; and*
- (c) any other measure adopted or maintained by a Party relating to a public telecommunications service.*

2. This Chapter shall not apply to measures affecting the cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate, or supply a telecommunications network or service, other than the former Party's commitments under Chapter 18 (Cross-Border Trade in Services); or*

- (b) require a Party, or require a Party to oblige an enterprise under its jurisdiction, to establish, construct, acquire, lease, operate, or supply a telecommunications network or service not provided to the public generally.

Article 22.3: Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

- (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;
- (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by

suppliers of telecommunications services that do not own network facilities; or

- (c) use any other appropriate means that benefit the long-term interest of end-users.*

Article 22.4: Access to and Use of Public Telecommunications Networks or Services

1. Each Party shall ensure that an enterprise of the other Party is accorded access to and use of public telecommunications networks and services, including leased circuits, offered in its territory or across its borders, and on terms and conditions that are reasonable and non-discriminatory, through paragraphs 2 through 6.

2. Subject to paragraphs 5, 6, and 7, each Party shall ensure that enterprises of the other Party are permitted to:

- (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network and that is necessary to supply their services;*
- (b) connect leased or owned circuits with public telecommunications networks and services, or with circuits leased or owned by another service supplier;*

- (c) use operating protocols of their choice; and
- (d) perform switching, signalling, processing and conversion functions.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the personal information 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 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 networks and services, other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and 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. For greater certainty, a Party may impose a condition on access to and use of public telecommunications networks and services pursuant to Article 29.3 (National Security).

7. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for connection with public telecommunications networks and services;*
- (b) a requirement, where necessary, for the inter-operability of public telecommunications networks and services;*
- (c) type approval of terminal or other equipment that interfaces with public telecommunications networks and technical requirements relating to the attachment of such equipment to public telecommunications networks;*

- (d) a restriction on connection of leased or owned circuits with public telecommunications networks or services or with circuits leased or owned by other service suppliers; or
- (e) a requirement for notification and licensing.

Article 22.5: Number Portability

Each Party shall ensure that a supplier of public telecommunications services in its territory provides mobile number portability without impairment to quality and reliability for mobile services, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

Article 22.6: Competitive Safeguards

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers that, 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-subsidisation;

- (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 22.7: Treatment by Major Suppliers

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

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

Article 22.8: Resale

Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end-users. Where a Party has determined that a service must be offered for resale by a major supplier, that Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

Article 22.9: Interconnection: Obligations Relating to Suppliers of Public Telecommunications Services

- 1. Each Party shall ensure that a supplier of public telecommunications services in its territory provides, directly or indirectly, interconnection with the suppliers of public telecommunications networks or services of the other Party.*
- 2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.*
- 3. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable*

steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Article 22.10: Interconnection: Obligations Relating to Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks and 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;*
- (b) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;*

- (c) on a timely basis, and 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 of public telecommunications networks or services of the other Party need not pay for network elements 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 suppliers of public telecommunications networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of the following options:

- (a) a reference interconnection offer or any other interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services;

- (b) the terms and conditions of an interconnection agreement that is in effect; or
- (c) a new interconnection agreement through commercial negotiation.

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

4. Each Party shall provide means for suppliers of the other Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring the public availability of:

- (a) interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory;
- (b) rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or
- (c) a reference interconnection offer.

Services for which those rates, terms, and conditions are made publicly available do not have to include all interconnection-related

services offered by a major supplier, as determined by a Party under its laws and regulations.

Article 22.11: Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory makes available its essential facilities, which may include network elements and associated facilities, to suppliers of public telecommunications services of the other Party on reasonable and non-discriminatory terms and conditions.

2. Each Party shall provide its regulatory body with the authority to determine those essential facilities required to be made available in its territories, in accordance with its laws and regulations.

Article 22.12: Co-location

1. Each Party shall ensure that a major supplier that has control over essential facilities in its territory allows suppliers of public telecommunications services of the other Party physical co-location of their equipment necessary for interconnection or access to unbundled network elements, based on a generally available offer on a timely basis, and on terms and conditions, including technical feasibility and

space availability where applicable, and at rates that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavour to ensure that a major supplier in its territory provides an alternative solution, such as facilitating virtual co-location, based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

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, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.

Article 22.13: International Submarine Cable Systems

Where a Party has authorised a major supplier in its territory to operate an international submarine cable system as a public telecommunications service, that Party shall ensure that the major

supplier accords a supplier of public telecommunications services of the other Party access to the international submarine cable system on reasonable and non-discriminatory terms and conditions.

Article 22.14: Independent

Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications services.

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

Article 22.15: 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 22.16: Licensing

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall ensure the public availability of:

- (a) all the licensing criteria and procedures that it applies;*
- (b) the period that 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. The Party shall notify an applicant of the outcome of its application without undue delay after a decision has been taken.

3. Each Party shall ensure that, upon request, an applicant or a licensee is provided with the reasons for the:

- (a) denial of a licence;*
- (b) imposition of supplier-specific conditions on a licence;*

- (c) refusal to renew a licence; or
- (d) revocation of a licence.

Article 22.17: Allocation and Use of Scarce Resources

1. Each Party shall administer its 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 frequency bands allocated and assigned to specific suppliers, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. For greater certainty, a measure of a Party that allocates or assigns spectrum or manages frequency is not in itself inconsistent with Article 18.5 (Market Access), either as it applies to cross-border trade in services or through the operation of Article 18.2 (Scope) to an investor or covered investment of the other Party. 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 networks or services, provided that the Party does so in a manner that is consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services, if appropriate. To this end, each Party may use mechanisms such as auctions, administrative incentive pricing, or unlicensed use, if appropriate, to assign spectrum for commercial use.

Article 22.18: Transparency

1. Further to Article 15.2(2) (Publication), each Party shall endeavour to ensure that when its telecommunications regulatory body seeks input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services

of the other Party operating in its territory an opportunity to comment. That body shall:

- (a) make the proposal public or otherwise available to any interested persons;
- (b) include an explanation of the purpose of and reasons for the proposal;
- (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;
- (d) to the extent practicable, make publicly available all relevant comments filed with it; and
- (e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.

2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks or services is publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks and services;

- (c) information on bodies responsible for the preparation and adoption of standards affecting such access and use;
- (d) conditions for attaching terminals or other equipment; and
- (e) requirements for notification or licensing, if any.

Article 22.19: Enforcement

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Article 22.4 (Access to and Use of Public Telecommunications Networks or Services), Article 22.5 (Number Portability), Article 22.6 (Competitive Safeguards), Article 22.7 (Treatment by Major Suppliers), Article 22.8 (Resale), Article 22.9 (Interconnection: Obligations Relating to Suppliers of Public Telecommunications Services), Article 22.10 (Interconnection: Obligations Relating to Major Suppliers), Article 22.11 (Access to Essential Facilities), Article 22.12 (Co-Location), and Article 22.13 (International Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

Article 22.20: Resolution of Telecommunications Disputes

1. Each Party shall ensure that an enterprise of the other Party may have timely recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes arising under this Chapter.

2. Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier.

3. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain a review of such determination or decision in accordance with its laws and regulations.

4. A Party shall not permit the making of an application for review to constitute grounds for non-compliance with the determination or

decision of its telecommunications regulatory body, unless its relevant body determines otherwise.

Article 22.21: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services, and undertake to promote such standards through the work of relevant international bodies.

Article 22.22: Relation to Other Chapters

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