

CHAPTER 10 TELECOMMUNICATIONS

Article 10.1: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in telecommunications services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks or services, this Chapter shall not apply to any measure 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 compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or
 - (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.
4. Nothing in this Chapter shall be interpreted as creating additional commitments other than those under Annex 8-A (Schedule of Specific Commitments) of Chapter 8 (Trade in Services).

Article 10.2: Relation 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.

Section A: Access to and Use of Public Telecommunications Networks or Services

Article 10.3: Access and Use

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders on a timely basis, and on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.
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 owned or leased circuits;
- (c) connect owned or leased circuits with public telecommunications networks or services in the territory, or across the borders, of that Party, or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, processing, and conversion functions; and
- (e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders in accordance with the laws and regulations of the Party, 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 or any non-Party which is a party to the WTO Agreement.

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

- (a) ensure the security and confidentiality of messages; and
- (b) protect 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 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; and

- (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.

Section B: Obligations Relating to Interconnection Provided by Suppliers of Public Telecommunications Networks or Services

Article 10.4: Interconnection

1.
 - (a) Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party. The rates, terms and conditions of such interconnection will generally be determined through commercial negotiation between the service suppliers concerned, in accordance with the laws and regulations of the Party.
 - (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications networks or 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 networks or services and only use such information for the purpose of providing these services.
2. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party:
 - (a) at any technically feasible point in the major supplier's network;
 - (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
 - (c) 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;
 - (d) in a timely fashion, 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 suppliers seeking interconnection need not pay for network components or facilities that they do not require for the service to be provided; and
 - (e) on 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.

3. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory in accordance with at least one of 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;
- (b) the terms and conditions of an existing interconnection agreement; or
- (c) a negotiation of a new interconnection agreement.

4. Each Party shall ensure that applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

5. Each Party shall ensure that major suppliers in its territory may be required to file interconnection agreements with the Party's telecommunications regulatory body.

6. Each Party shall ensure, where interconnection is provided under paragraph 3(a), that the rates, terms and conditions are made publicly available.

Article 10.5: Submarine Cable Systems

Where a supplier of telecommunications networks or services operates a submarine cable system to provide public telecommunications networks or services, the Party in whose territory the supplier is located shall ensure that such supplier accords the suppliers of public telecommunication networks or services of the other Party reasonable and non-discriminatory treatment with respect to access¹ to that submarine cable system (including landing facilities) in its territory, in accordance with the laws and regulations of the Party.

Section C: Additional Obligations Relating to Major Suppliers of Public Telecommunications Networks or Services

Article 10.6: Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purposes of preventing suppliers of public telecommunications networks or services that, alone or together, are a

¹ For greater certainty: 1) access to submarine cable landing facilities is subject to capacity; and 2) with respect to access for suppliers of public telecommunications networks or services of the other Party that do not own facilities in the territory of the Party, a Party may comply with this provision by ensuring access to submarine cable systems through facilities leased from, or public telecommunications services provided by, a supplier of public telecommunications networks or services licensed in its territory.

major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include, in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from competitors with anti-competitive results;
 - (c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services; and
 - (d) pricing services in a manner that is likely to unreasonably restrict competition, including predatory pricing.

Section D: Other Measures

Article 10.7: Independent Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from and functionally independent of any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory body does not own equity² or maintain an operating or management role in any such supplier.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants³ and shall be made and implemented on a timely basis.

Article 10.8: 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 10.9: Licensing Process

² For greater certainty, this paragraph shall not prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of telecommunications services.

³ For greater certainty, the term “market participants” includes service suppliers seeking to participate in the telecommunications market.

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall make publicly available:
 - (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. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a licence.

Article 10.10: Allocation and Use of Scarce Telecommunications Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands related to telecommunication service (especially public telecommunication service), but shall not be required to provide detailed identification of frequencies allocated or assigned for specific government uses.
3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Chapters 8 (Trade in Services) and 12 (Investment). Accordingly, each Party shall retain 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 it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs.
4. Each Party shall endeavour to allocate and assign spectrum for non-government telecommunications services in a transparent manner that considers the overall public interest, including the encouragement of the economically efficient use of the spectrum and competition among suppliers of telecommunications services, recognising that a Party may encourage such activities through a variety of means, including through administrative incentive pricing, auctions, unlicensed use, or inviting for bidding, etc.

Article 10.11: Enforcement

1. Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations in Articles 10.3 through 10.6.
2. Such authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, or revocation of

licences, etc.

Article 10.12: Resolution of Telecommunications Disputes

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure that:

Recourse

- (a) (i) suppliers of public telecommunications networks or services may have recourse to a telecommunications regulatory body or other relevant body of the Party in its territory to resolve disputes between suppliers of public telecommunications networks or services on a timely basis regarding measures relating to matters in Articles 10.3 through 10.6;
- (ii) suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party, that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to a telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

Judicial Review

- (b) any service supplier whose legally-protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party according to the laws of the Party. Neither Party shall 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 otherwise determines.

Article 10.13: Transparency

Further to Article 18.1 (Publication), each Party shall ensure that:

- (a) regulatory decisions, including the basis for such decisions, of its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
- (b) its measures relating to public telecommunications networks or services are made publicly available, including:

- (i) tariffs and other terms and conditions of service;
 - (ii) specifications of technical interfaces;
 - (iii) conditions for attaching terminal or other equipment to public telecommunications networks;
 - (iv) licensing requirements and other related measures, if any;
 - (v) the amendment and adoption of measures concerning technologies or standards affecting access and use; and
 - (vi) procedures relating to judicial or administrative review; and
- (c) each Party shall ensure that its telecommunications regulatory body or other relevant body provides, on the request by a supplier of public telecommunications networks or services of the other Party, a written explanation of reasons for any decision that denies access of the kind specified in Article 10.4.

Article 10.14: Measures Concerning Technologies and Standards⁴

1. Neither Party shall prevent suppliers of public telecommunications networks or services or value-added services from having the flexibility to choose the technologies that they use to supply their services.
2. Notwithstanding paragraph 1, a Party may apply a measure that limits the technologies or standards that a supplier of public telecommunications networks or services or value-added services may use to supply its services, provided that the measure is designed to satisfy a legitimate public policy objective and is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade.⁵

Article 10.15: Consultation with Industry

Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards.

⁴ For greater certainty, except for paragraph 1, this Article shall not apply to measures adopted before the date of entry into force of this Agreement.

⁵ For greater certainty: 1) a Party retains the right to define its own legitimate public policy objectives; and 2) whenever such a measure is based on relevant international standards, it shall be rebuttably presumed not to create unnecessary obstacles to trade.

Article 10.16: International Roaming Rates

The Parties shall encourage their respective telecommunications service suppliers to reduce the wholesale rates for international mobile roaming between the Parties, with a view to reducing international mobile roaming rates.

Article 10.17: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International Telecommunication Union and the International Organization for Standardization.

Section E: Definitions

Article 10.18: Definitions

For the purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

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;

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 provide a service;

interconnection means linking with suppliers providing public telecommunications 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;

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 or users;

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;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

personal information means any information transmitted by electromagnetic means that identifies a natural person or is related to personal privacy;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications networks or services means public telecommunications networks, or public telecommunications services, or public telecommunications networks and services;

public telecommunications service means any telecommunications service that is offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies a service, including a supplier of public telecommunications networks or services;

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

telecommunications regulatory body means any body or bodies at the central level of government responsible for the regulation of telecommunications;

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

value-added services means services that add value to telecommunications services through enhanced functionality. For Korea, these are services as defined in Article 2.12 of the *Telecommunications Business Act*. For China, these are services as defined in Article 8 of the *Telecommunications Regulation of the People's Republic of China, and Catalogue of Telecommunications Business*.