

## **CHAPTER ELEVEN**

### **TELECOMMUNICATIONS**

#### **Article 11.1: Scope and Coverage**

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party affecting access to and use of public telecommunications transport networks and services;
  - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks and services;
  - (c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services; and
  - (d) measures adopted or maintained by a Party relating to the supply of value-added services.
2. This Chapter does not apply to measures adopted or maintained by a Party affecting the transmission by any means of telecommunications, including broadcast or cable distribution, of radio or television programming intended for reception by the public.
3. This Chapter is not to be construed to:
  - (a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as specifically provided in this Agreement; or
  - (b) require a Party, or require a Party to oblige any service supplier under its jurisdiction, to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services not offered to the public generally.

## **Article 11.2: Access to and Use of Public Telecommunications Transport Networks and Services**

1. Subject to a Party's right to restrict the supply of a service in accordance with the reservations in its Schedule to Annex I or II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such enterprises are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport networks and services;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;
- (c) use operating protocols of their choice; and
- (d) perform switching, signalling, and processing functions.

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

4. Further to Article 22.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take measures necessary to ensure the security and confidentiality of messages or to protect the privacy of users of public telecommunications transport services. These measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that a condition is not imposed on access to and use of public telecommunications transport networks or services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks and services; or
- (c) ensure that service suppliers of the other Party do not supply services limited by the Party's reservations under Annex I or II.

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

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (c) requirements, where necessary, for the inter-operability of such services;
- (d) 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;
- (e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and
- (f) notification, registration, and licensing.

### **Article 11.3: Licensing Procedure**

1. If a license is required to supply public telecommunications transport networks or services, each Party shall make publicly available:

- (a) all the licensing criteria, and the amount of time normally required to reach a decision concerning an application for a license; and
- (b) the terms and conditions for individual licenses.

2. The decision on the application for a license will be made within a reasonable period of time, and in the event of a denial of a license, the reasons will be made known to the applicant upon request.

### **Article 11.4: Conduct of Major Suppliers**

#### *Competitive Safeguards*

1. Each Party shall maintain appropriate measures to prevent 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 above must 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 service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information that is necessary for those suppliers to provide services.

#### *Interconnection*

3. Each Party shall ensure that a major supplier provides interconnection:

- (a) at any technically feasible point in the network;
- (b) under non-discriminatory terms, conditions, including technical standards and specifications, and rates;

- (c) of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
  - (d) 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 need not pay for network components or facilities that it does not require for the services 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.
4. Each Party shall make the procedure applicable for interconnection to a major supplier publicly available.
5. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer.

#### **Article 11.5: Universal Service**

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligation is not anti-competitive *per se*, provided that it is administered in a transparent, non-discriminatory, and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party.

#### **Article 11.6: 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 manner.

2. Each Party shall make the current state of allocated frequency bands publicly available but shall not be required to provide detailed identification of frequencies allocated for specific government use.
3. Notwithstanding Article 9.4 (Market Access), each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands based on present and future needs.

#### **Article 11.7: Regulatory Body**

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, a supplier of public telecommunications transport networks or services and value-added services.
2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.

#### **Article 11.8: Enforcement**

Each Party shall maintain appropriate procedures and authority to enforce domestic measures relating to the obligations under this Chapter. Those procedures and authority must include the ability to impose appropriate sanctions, which may include financial penalties, corrective orders, or the modification, suspension, or revocation of licences.

## **Article 11.9: Resolution of Domestic Telecommunication Disputes**

### *Recourse*

1. Further to Article 19.3 (Administrative Proceedings), each Party shall ensure that:
  - (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding domestic measures relating to matters covered in Articles 11.2 and 11.4 excluding interconnection; and
  - (b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have, within a reasonable and publicly specified amount of time, recourse to a regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with that major supplier.

### *Reconsideration*

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services or value added services that is aggrieved by the determination or decision of a regulatory body may petition that body to reconsider that determination or decision. This petition shall not constitute grounds for non-compliance with the determination or decision of the regulatory body.
3. Reconsideration shall not apply to a determination or decision of a regulatory body with respect to:
  - (a) disputes between service suppliers or between service suppliers and users; or
  - (b) the establishment and application of spectrum and frequency management policies.

### *Judicial Review*

4. Each Party shall ensure that any supplier of public telecommunications transport networks or services that is aggrieved by the determination or decision of a regulatory body has the opportunity to appeal that determination or decision to an independent judicial or administrative authority. This obligation does not add to the obligations set out in Article 19.4 (Review and Appeal).

### **Article 11.10: Transparency**

In addition to the other provisions in this Chapter relating to transparency, each Party shall make publicly available:

- (a) its measures relating to public telecommunications transport networks or services and value added services, including:
  - (i) tariffs and other terms and conditions of service;
  - (ii) specifications of technical interfaces;
  - (iii) conditions applying to attachment of terminal or other equipment to public telecommunications transport networks; and
  - (iv) notification, permit, registration, or licensing requirements, if any; and
- (b) information on bodies responsible for preparing, amending, and adopting standards related measures.

### **Article 11.11: Forbearance**

The Parties recognise the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, and to the extent provided in its domestic law, each Party may refrain from applying a regulation to a service when:

- (a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of the regulation is not necessary to protect consumers; and



- (c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks and services.

#### **Article 11.12: Conditions for the Provision of Value-Added Services**

1. A Party shall not require a person that provides value-added services to:
  - (a) supply those services to the public generally;
  - (b) cost-justify its rates;
  - (c) file a tariff;
  - (d) connect its networks with a particular customer or network; or
  - (e) conform with a particular standard or technical regulation for connecting to another network, other than a public telecommunications transport network.
2. Notwithstanding paragraph 1, a Party may take the actions listed in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its domestic law, or to otherwise promote competition or safeguard the interests of consumers.

#### **Article 11.13: Relation to Other Chapters**

In the event of an inconsistency between this Chapter and another Chapter, this Chapter prevails to the extent of the inconsistency.

#### **Article 11.14: Relation to International Organisations and Agreements**

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

## Article 11.15: Definitions

For the purposes of this Chapter:

**enterprise** means an “enterprise” as defined in Article 1.8 (Definitions of General Application) and a branch of an enterprise;

**essential facilities** means facilities of a public telecommunications transport 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 suppliers providing public telecommunications transport services to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**intra-corporate communications** means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to a Party’s domestic law, affiliates, but does not include commercial or non-commercial services that are provided to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers. For the purposes of this definition, subsidiaries, branches and, where applicable, affiliates are as defined by each Party in its domestic law;

**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 transport networks or services as a result of:

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

**network termination points** means the final demarcation of the public telecommunications transport network at the user's premises;

**non-discriminatory** means terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances;

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

**public telecommunications transport service** means a telecommunications transport 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, *inter alia*, telegraph, telephone, telex, and data transmission;

**regulatory body** means the body responsible for the regulation of telecommunications;

**service supplier** means a person of a Party that is seeking to supply or supplies a service, including a supplier of telecommunications networks or services;

**supply of a service** means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) in the territory of a Party by a covered investment as defined in Chapter Eight (Investment), in that territory; or
- (d) by a national of a Party in the territory of the other Party;

**telecommunication** means the transmission and reception of signals by any electromagnetic means;

**user** means a service consumer or a service supplier; and

**value-added services** mean services that add value to the customer's information by enhancing its form or content, or by providing for its storage and retrieval.