

CHAPTER ELEVEN TELECOMMUNICATIONS

ARTICLE 11.1: SCOPE AND COVERAGE

1. This Chapter shall apply to:
 - (a) measures related to access to and use of public telecommunications transport networks and services;
 - (b) measures related to obligations of suppliers of public telecommunications transport networks and services;
 - (c) other measures related to public telecommunications transport networks and services; and
 - (d) measures related to the supply of value-added services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, as set out in Article 11.2, this Chapter shall not apply to any measure related to broadcast or cable distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks and services not offered to the public generally;
 - (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 transport network;
 - (c) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications networks or services, other than as specifically provided in this Agreement; or
 - (d) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications transport networks and services to third persons.

SECTION A: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES

ARTICLE 11.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES¹

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services, including leased circuits, offered in its territory or across its borders, 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 are permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications transport network;
- (b) provide services to individual or multiple end-users over any leased or owned circuits;
- (c) connect owned or leased circuits with public telecommunications transport networks and services in the territory of that Party or with circuits leased or owned by another enterprise;
- (d) perform switching, signaling, and processing functions; and
- (e) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

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 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, 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 transport networks and services, other than as necessary to:

¹ For greater certainty, Article 11.2 shall not prohibit a Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications transport network or service within its territory. For purposes of Article 11.2, the term “enterprise” shall be interpreted as “service supplier” for Korea.

- (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; or
 - (b) protect the technical integrity of public telecommunications transport networks and services.
6. Provided that conditions for access to and use of public telecommunications transport networks and services satisfy the criteria set out in paragraph 5, such conditions may include:
- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
 - (b) requirements, where necessary, for the inter-operability of such networks and services;
 - (c) type approval of terminal or other equipment which interfaces with the network and technical requirements related to the attachment of that equipment to such networks; or
 - (d) notification, registration, and licensing.

SECTION B: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES

ARTICLE 11.3: TREATMENT BY MAJOR SUPPLIERS

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

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

ARTICLE 11.4: COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport networks and services that, alone or together, are a 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-subsidization²;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications transport networks and services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

ARTICLE 11.5: INTERCONNECTION

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory is required to provide interconnection at any technically feasible point in the 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 favorable 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;
- (c) 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
- (d) 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.

Public Availability of the Procedures for Interconnection Negotiations

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

Transparency of Interconnection Arrangements

² For Colombia, the term “anticompetitive cross-subsidization” shall be interpreted as including margin squeeze.

3. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or a reference interconnection offer.

ARTICLE 11.6: RESALE

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport networks and services³.

ARTICLE 11.7: UNBUNDLING OF NETWORK ELEMENTS

1. Each Party shall provide its telecommunications regulatory body or other relevant body with the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications transport networks and services.

2. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its laws or regulations.

SECTION C: OTHER MEASURES

ARTICLE 11.8: CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party shall require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the enterprise does not own to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for those services;
- (c) file a tariff for those services;
- (d) connect its networks with any particular customer for the supply of those services; or
- (e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1

³ Each Party will implement this obligation in accordance with its laws and regulations.

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 laws or regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 11.9: INDEPENDENT REGULATORY BODIES

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

ARTICLE 11.10: UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.
2. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral⁴ 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 11.11: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:
 - (a) all the licensing or authorization criteria and procedures it applies;
 - (b) the period of time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and
 - (c) the terms and conditions of all licenses or authorizations.
2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

ARTICLE 11.12: ALLOCATION AND USE OF SCARCE RESOURCES

⁴ For Colombia, the term “competitively neutral” includes both competitively and technologically neutral.

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 but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 9.4 (Market Access), as it applies to either Chapters 8 (Investment) or 9 (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport networks and services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

ARTICLE 11.13: RESOLUTION OF TELECOMMUNICATIONS DISPUTES⁵

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

Recourse

- (a) (i) enterprises of the other Party may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures related to matters set out in Articles 11.2 through 11.5; and
- (ii) suppliers of public telecommunications transport networks and services as well as suppliers of value-added services⁶ of the other 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 its telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

*Reconsideration*⁷

⁵ The Parties understand that for purposes of Article 11.13, the term "enterprise" shall apply only to natural persons or juridical persons organized under the laws of each Party.

⁶ Regarding value-added services, each Party will implement this obligation in accordance with its relevant laws or regulations.

⁷ For Korea, subparagraph (b) does not apply to a determination or decision of the telecommunications regulatory body with respect to disputes between telecommunications service suppliers or between telecommunications service suppliers and users.

- (b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision⁸. Neither Party shall permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision⁹; and

Judicial Review

- (c) any enterprise 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. Neither Party shall permit 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 stays such determination or decision.

ARTICLE 11.14: TRANSPARENCY

Further to Articles 18.1 (Publication) and 18.2 (Notification and Provision of Information), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures related to public telecommunications transport networks and services or value-added services¹⁰ are made publicly available, including measures related to:
 - (i) tariffs and other terms and conditions of service;
 - (ii) procedures related to judicial and other adjudicatory proceedings;
 - (iii) specifications of technical interfaces;

⁸ For Colombia, as to subparagraph (b), enterprises may not petition for reconsideration of rulings of general application, as defined in Article 11.17, unless otherwise provided under its laws and regulations.

⁹ Notwithstanding this subparagraph, for Colombia, if a petition for reconsideration is filed, the determination or decision of the telecommunications regulatory body will not become effective, while the outcome of the reconsideration is pending. Petitions for reconsideration shall be ruled upon promptly.

¹⁰ Regarding value-added services, each Party will implement this obligation in accordance with its relevant laws or regulations.

- (iv) information on bodies responsible for preparing, amending, and adopting standard-related measures;
- (v) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network and services; and
- (vi) notification, permit, registration, or licensing requirements, if any.

ARTICLE 11.15: 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.

ARTICLE 11.16: TECHNICAL COOPERATION

To encourage the access to and use of technologies related to public telecommunications transport networks and services as well as value-added services, the Parties shall promote collaboration between the private sectors of the Parties and cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall establish a Committee on Telecommunications Cooperation and give special emphasis to existing exchange and technical cooperation programs.

ARTICLE 11.17: DEFINITIONS

For 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 transport network and service, including a service supplier other than a supplier of public telecommunications transport networks and services;

enterprise means an “enterprise” as defined in Article 1.3 (Definitions) and includes its branch;

enterprise of the other Party means both an enterprise constituted or organized under the laws of the other Party and an enterprise owned or controlled by a person of the other Party;

essential facilities means facilities of a public telecommunications transport network and 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 transport networks and 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;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

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;

major supplier means a supplier of public telecommunications transport networks and services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks and 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 favorable than that accorded to any other similar user of public telecommunications transport networks and services in like circumstances;

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

public telecommunications transport 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 points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications transport networks and services that is willing to accept it may obtain interconnection with the major supplier on that basis;

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 transport networks and services;

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

telecommunications regulatory body means a national body responsible for the regulation of telecommunications;

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

value-added services means those services that add value to telecommunications services through enhanced functionality, and specifically means those services as respectively defined in the relevant laws or regulations of each Party. Each Party may classify which services in its territory are value-added services.