

CHAPTER ELEVEN TELECOMMUNICATIONS

Article 11.1: Scope

1. This Chapter applies to measures affecting trade in telecommunications services, including:

- (a) measures relating to access to and use of public telecommunications networks or services;
- (b) measures relating to obligations of suppliers of public telecommunications services;
- (c) other measures relating to public telecommunications networks or services; and
- (d) measures relating to the supply of value-added services.

2. Except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications services in accordance with Section A, this Chapter does 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, 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;
- (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; or
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third parties.

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

Article 11.2: Access and Use¹

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 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 leased or owned circuits;²
- (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice.

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, or to protect the privacy of personal data of end-users, provided that such measures are not

¹ For greater certainty, this Article does not prohibit a Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications network or service within its territory.

² For greater certainty, subparagraph (b) shall not be construed to prohibit a Party from requiring a service supplier to obtain a license to supply specific services.

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 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. Provided that conditions for access to and use of public telecommunications 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 or services;
- (b) requirements, where necessary, for the inter-operability of such networks and services; and
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to such networks.

Section B: Suppliers of Public Telecommunications Services

Article 11.3: Obligations Relating to Suppliers of Public Telecommunications Services

Interconnection

- 1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates.

- (b) In carrying out subparagraph (a), 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 only use such information for the purpose of providing these services.

*Number Portability*³

2. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions.

*Dialing Parity and Access to Telephone Numbers*⁴

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity within the same category of service to suppliers of public telecommunications services of the other Party; and suppliers of public telecommunications services of the other Party in the Party's territory are afforded non-discriminatory access to telephone numbers.

Section C: Additional Obligations Relating to Major Suppliers⁵

Article 11.4: Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords to itself, its subsidiaries, its 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.

³ Paragraph 2 does not apply with respect to suppliers of voice over internet protocol services.

⁴ Article 11.3.3 does not apply with respect to suppliers of international public telecommunications services.

⁵ Articles 11.4, 11.7, and Articles 11.9 through 11.11 do not apply to Korea with respect to suppliers of commercial mobile services.

Article 11.5: Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anticompetitive cross-subsidization;
- (b) using information obtained from competitors with anticompetitive results; and
- (c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

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 services.

Article 11.7: Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body the authority to require a major supplier 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 services. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

Article 11.8: Interconnection

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other 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 favorable 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 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.

Options for Interconnecting with Major Suppliers

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

- (a) negotiation of a new interconnection agreement; and
- (b) one of the following options:
 - (i) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

- (ii) the terms and conditions of an interconnection agreement in effect.

Public Availability of Interconnection Offers and Agreements

- 3. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.
- 4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.
- 5. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.
- 6. Each Party shall make publicly available interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

Article 11.9: Provisioning and Pricing of Leased Circuits Services⁶

- 1. Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.
- 2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based, cost-oriented prices.

Article 11.10: Co-Location

- 1. Each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications 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 terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

⁶ Article 11.9 shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

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 on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

3. Each Party may limit which premises are subject to paragraphs 1 and 2, provided the Party specifies any such limitation in its laws or regulations.

Article 11.11: Access to Poles, Ducts, Conduits, and Rights-Of-Way

Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party in the Party's territory on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

Section D: Other Measures

Article 11.12: International Mobile Roaming

1. The Parties shall endeavor 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 take steps to enhance transparency and competition with respect to international mobile roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimizing impediments 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 11.13: Submarine Cable Systems

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory to a supplier of public telecommunication services of the other Party, where

such supplier of the other Party is authorized to operate a submarine cable system as a public telecommunications service.

Article 11.14: Conditions for the Supply of Value-Added Services

1. Neither Party may 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 network.

2. Notwithstanding paragraph 1, a Party may take the actions described 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 anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

Article 11.15: Independent Regulatory Bodies

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 own equity⁷ or maintain an operating or management role in any such supplier. Each Party shall ensure that its regulatory decisions and procedures are impartial with respect to all market participants.

⁷ For greater certainty, Article 11.15 shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

Article 11.16: 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 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 11.17: Licensing Process

1. When a Party requires a supplier of public telecommunications services to have a license, 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 license; and
 - (c) the terms and conditions of all licenses in effect.
2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license.

Article 11.18: Allocation and Use of Scarce 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, 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 frequency are not measures that are *per se* inconsistent with Article 8.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 8.1 (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 measures that may have the effect of limiting the number of suppliers of public telecommunications services, provided that it does so in a manner consistent with this Agreement. This

includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. Each Party shall endeavor to allocate and assign spectrum for non-government telecommunications services in a manner that encourages efficient use of the spectrum and competition among suppliers of telecommunications services, recognizing that a Party may encourage this behavior through a variety of means, including through administrative incentive pricing, auctions, or unlicensed use.

Article 11.19: Approaches to Regulation

1. The Parties recognize 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 recognize 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 recognize 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; or
- (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.

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with this Article remains subject to the obligations under this Chapter.

Article 11.20: Relation to International Organizations

The Parties recognize 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 bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 11.21: Enforcement

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Articles 11.2 through 11.13. That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses.

Article 11.22: Resolution of Telecommunications Disputes^{8 9}

Further to Articles 19.3 (Administrative Proceedings) and 19.4 (Review and Appeal), each Party shall ensure that:

Recourse

- (a) (i) enterprises may have recourse to a 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 11.2 through 11.13; and
- (ii) 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 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;

Judicial Review

- (b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the

⁸ For Korea, for purposes of Article 11.22, **enterprise** means a natural person or a juridical person organized under the laws of Korea.

⁹ For Ecuador, for purposes of Article 11.22, **enterprise** means a natural person, a juridical person organized under the laws of Ecuador or a juridical person with residence in Ecuador.

telecommunications regulatory body unless the relevant judicial body stays the determination or decision.

Article 11:23: Transparency

Further to Article 19.1 (Publication), 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 reasonable opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes;
- (c) to the extent practicable, all comments filed with the telecommunications regulatory body in the rulemaking are made publicly available;
- (d) its telecommunications regulatory body responds in its rulemaking to all significant and relevant issues raised in comments filed with the telecommunications regulatory body; and
- (e) its measures relating to public telecommunications services are made publicly available, including:
 - (i) measures relating to
 - (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; and
 - (D) notification, permit, registration, or licensing requirements, if any; and
 - (ii) procedures relating to judicial and other adjudicatory proceedings including resolution of telecommunications disputes provided for in Article 11.22.

Article 11:24: Flexibility in the Choice of Technology

1. A Party shall not prevent suppliers of public telecommunications networks or 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 that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

Article 11.25: 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.

Article 11.26: Definitions

For 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;

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

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 1.4 (Definitions) and includes 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 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 networks or 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;

license means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications service, including concessions, permits, registrations, or other authorizations;

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 favorable 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, at the same location, the same

telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

physical co-location means physical access to 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;

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 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 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 supplier concerned;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies services, 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 a body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications;

user means a service consumer or a service supplier; 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.