

CHAPTER 12

TELECOMMUNICATIONS

ARTICLE 12.1: SCOPE

1. This Chapter shall apply to measures affecting trade in telecommunications services, including:
 - (a) measures relating to access to and use of public telecommunications 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. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:
 - (a) Article 12.2 shall apply with respect to cable or broadcast service suppliers' access to and use of public telecommunications services; and
 - (b) Article 12.20 shall apply to any technical measures to the extent that such measures also affect public telecommunications services.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel any service supplier, to establish, construct, acquire, lease, operate, or supply telecommunications networks or services not offered to the public generally;
 - (b) require a Party to compel any service supplier 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 private networks to supply public telecommunications networks or services to third persons.
4. This Chapter is subject to Annex 12-A.

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

ARTICLE 12.2: 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 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;
 - (c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by the other 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 protect the privacy of personal data of end-users to public telecommunications services, 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 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;
 - (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; or
 - (d) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

Section B: Suppliers of Public Telecommunications Services

ARTICLE 12.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES¹

Interconnection

1. Each Party shall ensure that:
- (a) 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; and
 - (b) in carrying out subparagraph (a), 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

¹ Article 12.3.3 shall not apply to Korea with respect to suppliers of international public telecommunications services.

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

Access to Telephone Numbers

3. Each Party shall ensure that suppliers of public telecommunications services of the other Party in the Party's territory, other than suppliers of international public telecommunications services, are afforded non-discriminatory access to telephone numbers.

Section C: Additional Obligations Relating to Major Suppliers

ARTICLE 12.4: 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 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.

ARTICLE 12.5: 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 12.6: RESALE

1. 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.
2. Where a Party requires a major supplier of public telecommunications services in its territory to offer for resale, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end-users that are not suppliers of public telecommunications services, it shall ensure that such services are offered for resale at reasonable rates.

ARTICLE 12.7: 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.

ARTICLE 12.8: 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 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:
 - (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 in effect; or
 - (c) through negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.
4. Each Party shall provide a means for suppliers of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring:
 - (a) the public availability of interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory; or
 - (b) the public availability of rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body.

ARTICLE 12.9: PROVISIONING AND PRICING OF LEASED CIRCUITS SERVICES²

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

² Article 12.9 shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

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 12.10: CO-LOCATION

1. Subject to paragraphs 2 and 3, 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.
2. Where physical co-location is not required or 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 determine, in accordance with its laws and regulations, which premises in its territory are subject to paragraphs 1 and 2.

ARTICLE 12.11: ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

1. 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.
2. Each Party may determine in accordance with its laws and regulations the poles, ducts, conduits, rights of way or other structures to which it requires major suppliers in its territory to provide access under paragraph 1.

Section D: Other Measures

ARTICLE 12.12: 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 access³ to that submarine cable system (including landing facilities) in its territory.

ARTICLE 12.13: 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 12.14: 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 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 equity⁴ or maintain an operating or management role in any such supplier.

³ For greater certainty:

(a) access to submarine cable landing facilities is subject to capacity; and

(b) 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.

⁴ For greater certainty, Article 12.14 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

2. Each Party shall ensure that its regulatory decisions and procedures, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for non-government public telecommunications services, are impartial with respect to all market participants.

ARTICLE 12.15: 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 12.16: 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, revocation of, refusal to renew, or imposition of conditions on a license.

ARTICLE 12.17: 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 shall not be considered inconsistent with Article 10.4 (Market Access) either as it applies to

cross-border trade in services or through the operation of Article 10.1.3 (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 economically 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 12.18: ENFORCEMENT

Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations set out in Articles 12.2 through 12.12. 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 12.19: RESOLUTION OF TELECOMMUNICATIONS DISPUTES

Further to Articles 16.3 (Administrative Proceedings) and 16.4 (Review and Appeal), each Party shall ensure that:

Recourse

- (a) (i) service supplier may have recourse to a telecommunications regulatory body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 12.2 through 12.12; 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; 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. No Party may 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 the determination or decision.

ARTICLE 12.20: TRANSPARENCY

Further to Article 16.1 (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) where applicable, 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) its telecommunications regulatory body responds in its rulemaking to all significant and relevant issues raised in comments filed with the telecommunications regulatory body; and
- (d) 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.

ARTICLE 12.21: MEASURES CONCERNING TECHNOLOGIES AND STANDARDS⁵

⁵ For greater certainty, except for paragraph 1, this Article shall not apply to measures adopted before the
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1. No 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.⁶

ARTICLE 12.22: RELATION TO OTHER CHAPTERS

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

ARTICLE 12.23: 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;

enterprise means an enterprise as defined in Article 1.7 (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

date of entry into force of this Agreement.

⁶ For greater certainty:

- (a) a Party retains the right to define its own legitimate public policy objectives; and
- (b) whenever such a measure is based on relevant international standards, it shall be presumed not to create unnecessary obstacles to trade.

- (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;

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 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 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;

service supplier of the other Party means, with respect to a Party, a person that is either a covered investment in the territory of the Party or a person of the other Party and that seeks to supply or supplies services in or into the territory of the Party, and includes a supplier of public telecommunications services;

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

telecommunications regulatory body means a body at the central level of government responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

value-added services means services that add value to telecommunications services through enhanced functionality.⁷

⁷ For Korea, this specifically means those services as defined in subparagraph 12 of Article 2 of the *Telecommunications Business Act*.

ANNEX 12-A

Korea

1. Articles 12.7, 12.8.1 (a), 12.8.1 (e), 12.8.2 (c), 12.10 and 12.11 shall not apply to Korea with respect to non-facilities-based suppliers of public telecommunications services.
2. With respect to Articles 12.8.1 (b) through 12.8.1 (d) and 12.9, Korea may permit major suppliers to offer rates, terms, and conditions to non-facilities-based suppliers of public telecommunications services that are less favorable than those offered to facilities-based suppliers of public telecommunications services. For greater certainty, Korea shall ensure that a non-facilities-based supplier of public telecommunications services may have recourse, as provided in Article 12.19, to the telecommunications regulatory body regarding disputes over such rates, terms, and conditions.
3. Consistent with Article 5.3 of the *Telecommunications Business Act*, a **non-facilities-based supplier** is a licensed supplier of public telecommunications services that does not own wire or wireless lines or other transmission facilities, but may own a switch, router, or multiplexer, and supplies its public telecommunications services through transmission facilities of a licensed facilities-based supplier.
4. Articles 12.7 and 12.9 through 12.11 shall not apply to Korea with respect to suppliers of commercial mobile services.

Israel

1. For Israel, **suppliers of public telecommunications services** refers, for the purposes of this chapter, to licensed service suppliers in accordance with Israel's licensing regime.

