

CHAPTER SEVEN
TELECOMMUNICATIONS

ARTICLE 7.1: DEFINITIONS

For the purposes of this Chapter:

cost-oriented rates means rates 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 service, including a service supplier but excluding a supplier of public telecommunications transport services;

essential facilities means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

interconnection means linking with suppliers providing public telecommunications transport networks or 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 which are set aside for the dedicated use of, or availability to, a particular customer or other users;

major supplier means a supplier of public telecommunications transport networks or services which 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) use of its position in the market;

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

public telecommunications transport network means telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service¹ 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*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or

¹ With respect to Korea, telecommunications services as defined in Article 4.4 of *Telecommunication Business Act* are not considered public telecommunications transport services for the purposes of this Agreement.

more points without any end-to-end change in the form or content of the customer's information;

supplier of public telecommunications transport services of the other Party means any supplier of public telecommunications transport services owned or controlled by persons of the other Party with commercial presence in the territory of a Party, including those who provide such services to other suppliers of public telecommunications transport services;

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

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

users means a service consumer or a service supplier.

ARTICLE 7.2: SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services.
2. This Chapter shall apply, subject to rules, regulations and licence conditions as applicable within the territory of each Party, under the framework of Chapter Six (Trade in Services).
3. This Chapter does not apply to measures adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
4. Nothing in this Chapter shall 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; or
 - (b) require a Party (or to require a Party to oblige service suppliers in its territory) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

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

ARTICLE 7.3: ACCESS AND USE

1. Each Party shall ensure that service suppliers of the other Party is accorded access to and use of public telecommunications transport networks and services, on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, under paragraphs 2 through 6.
2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport networks and services offered in its territory, through its licenced suppliers of public telecommunications transport networks or services, within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted to:
 - (a) purchase or lease and attach terminal or other equipment which interfaces

with the public telecommunications transport networks and which is necessary to supply a service supplier's services;

- (b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier²;
- (c) perform switching, signalling and processing functions;
- (d) use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and
- (e) provide services to individual or multiple end-users over any leased or owned circuit(s) to the extent that the scope and type of such services are consistent with its laws and regulations.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within its territory or across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of the 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 subject to the requirement that such 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 no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or 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 or services;
- (c) ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in its Schedule; or
- (d) ensure that such access to and use of telecommunications transport networks and services should not become a security or safety hazard and is not in contravention of any statute, rule or regulation and public policy of the Party which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

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

² In India, interconnection of private networks to public telecommunications transport networks is not permitted under its current laws and regulations. However, India will permit interconnection as and when it changes its relevant laws and regulations.

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for the 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; or
- (f) notification, registration and licencing.

7. Notwithstanding the preceding paragraphs, each Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in each Party's Schedule.

Section B: Conduct of Major Suppliers³

ARTICLE 7.4: TREATMENT BY MAJOR SUPPLIERS

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

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

2. A Party shall assess such treatment on the basis of whether such suppliers of public telecommunications transport networks or services, subsidiaries, affiliate, and non-affiliated service suppliers are in like circumstances.

3. Nothing in this Article shall prevent either Party to take such measures as are necessary to protect the security of their networks subject to the requirement that such 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.

ARTICLE 7.5: ACCESS TO MAJOR SUPPLIERS' INFRASTRUCTURE

1. Each Party shall endeavour to require the major suppliers in its territory to provide suppliers of public telecommunications transport networks or services of the other Party:

³ For greater clarity, the obligations imposed under this Section only apply with respect to those public telecommunications transport networks or services that result in a supplier of public telecommunications transport networks or services being a major supplier, in accordance with laws and regulations of the Parties.

- (a) access to the major suppliers' unbundled network elements for interconnection or for the provision of public telecommunications transport networks or services;
- (b) physical co-location of equipment necessary for interconnection or access to unbundled network elements, at premises owned or controlled by the major suppliers; and
- (c) access to poles, ducts, conduits or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers;

on terms, conditions, and at rates that are reasonable, transparent and non-discriminatory, subject to mutually agreed terms and conditions within the overall policy framework of that Party.

2. Implementation of paragraph 1 shall be determined by each Party in accordance with its laws and regulations.

3. Nothing in this Article shall prevent either Party to take such measures as are necessary to protect the security of their networks subject to the requirement that such 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.

ARTICLE 7.6: COMPETITIVE SAFEGUARDS

Prevention of anti-competitive practice in telecommunications

1. Each Party shall, through the relevant authority, maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport networks or services who, alone or together, are a major supplier in its territory, from engaging in or continuing anti-competitive practices.

Safeguards

2. For the purposes of paragraph 1, anti-competitive practices shall include:

- (a) using information obtained from competitors for anti-competitive results; and
- (b) not making available, on a timely basis, to suppliers of public telecommunications transport networks or services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications transport networks or services.

ARTICLE 7.7: INTERCONNECTION

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection at any specified technically feasible point in the network as per mutual agreement subject to regulations by regulatory body. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates⁴ and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
- (b) in a timely manner⁵, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent and reasonable, having regard to economic feasibility, so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications transport networks or services, subject to charges that reflect the cost of construction of necessary additional facilities, technical feasibility and mutually agreed terms and conditions.

Public Availability of Interconnection Offers

2. Each Party shall ensure that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

Public Availability of the Procedures for Interconnection Negotiations

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

Public Availability of Interconnection Agreements Concluded with Major Suppliers

- 4. (a) Each Party shall require major suppliers in its territory to file all their interconnection agreements to which they are a party with its telecommunications regulatory body.
- (b) Each Party shall ensure to make available to suppliers of public telecommunications transport networks or services which are seeking interconnection, interconnection agreements in force between a major supplier and any other supplier of public telecommunications transport networks or services in its territory, subject to any requirements which the telecommunications regulatory body may impose to protect the commercial confidentiality information contained in these interconnection agreements.

Resolution of interconnection disputes

5. Each Party shall ensure that a service supplier of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier will have recourse, either:

- (a) at any time; or

⁴ The Parties understand that interconnection rates are commercially negotiated between suppliers of public telecommunications transport networks or services.

⁵ The Parties understand that timeliness may vary from case to case, depending upon the complexity of each interconnection negotiation, which may be affected by a range of factors. However, interconnection may not be delayed without justifiable reason.

(b) after a reasonable period of time which has been made publicly known;

to an independent domestic body to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Section C: Other Measures

ARTICLE 7.8: INDEPENDENT REGULATORY BODIES

1. Each Party shall ensure that its telecommunications regulatory body or dispute resolution body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.

2. Each Party shall ensure that the decisions of, and the procedures used by its telecommunications regulatory body or dispute resolution body, are impartial with respect to all market participants.

ARTICLE 7.9: 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 7.10: LICENCING CONDITIONS

1. Where a licence is required, the Party shall make publicly available:

- (a) all the licencing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

2. In case of denial of licence, the reasons for denial, on applicants' request, shall normally be given by each Party within a reasonable period of time.

ARTICLE 7.11: ALLOCATION AND USE OF SCARCE TELECOMMUNICATIONS RESOURCES⁶

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 shall not be required to provide detailed identification of frequencies assigned or allocated by each government for specific government uses.

⁶ The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are per se inconsistent with Article 6.4 (Market Access). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

ARTICLE 7.12: RESOLUTION OF TELECOMMUNICATIONS DISPUTE AND APPEAL PROCESS

Recourse

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures.

*Reconsideration*⁷

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by the determination or decision of the telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Appeal

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of the telecommunications regulatory body has the opportunity to appeal such determination or decision to an independent judicial or administrative authority.

ARTICLE 7.13: TRANSPARENCY

Each Party shall ensure that:

- (a) decisions of its telecommunications regulatory body are published or otherwise made available to all interested persons within a reasonable period of time;
- (b) interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by the telecommunications regulatory body⁸; and
- (c) its measures relating to public telecommunications transport networks or services are made publicly available, 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 the public telecommunications transport network or services;
 - (iv) notification, permit, registration or licencing requirements, if any; and

⁷ The Parties understand that reconsideration shall not apply to the determination or decision of a regulatory body with respect to disputes between service suppliers or between service suppliers and users.

⁸ The obligations will be applied in accordance with each Party's laws and regulations.

- (v) information on bodies responsible for preparing, amending, and adopting standards-related measures.

ARTICLE 7.14: RELATIONSHIP TO OTHER CHAPTERS

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