

APPENDIX 2

NEW CHAPTER 18

TELECOMMUNICATIONS SERVICES

Article 1

Definitions

For the purposes of this Chapter:

- (a) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (b) **end user** means a subscriber to or a final consumer of public telecommunications networks or services, including a service supplier other than a supplier of public telecommunications networks or services;
- (c) **essential facilities** means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (d) **interconnection** means linking with suppliers providing public telecommunications 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;
- (e) **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;
- (f) **leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users, regardless of the technology used to establish the said telecommunications facilities;

- (g) **licence** means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for such a person to offer a telecommunications network or service, including concessions, permits, or registrations;
- (h) **major supplier** means a supplier of public telecommunications networks or 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 networks or services as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (i) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;
- (j) **number portability** means the ability of an end user of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (k) **physical co-location** means access to space in order to install, maintain, or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications services;
- (l) **public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;
- (m) **public telecommunications service** means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;
- (n) **reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates and conditions for interconnection so 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 major supplier concerned;
- (o) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (p) **telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications;
- (q) **user** means an end user or a supplier of public telecommunications networks or services; and

- (r) **virtual co-location** means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

Article 2

Scope

1. This Chapter shall apply to measures by a Party affecting trade in public telecommunications services, including:

- (a) measures relating to access to and use of public telecommunications networks or services; and
- (b) measures relating to obligations regarding suppliers of public telecommunications networks or services.

2. This Chapter shall not apply to any measure affecting broadcast or cable distribution of radio or television programming, except that paragraph 1 of Article 4 (Access and Use) shall apply with respect to a cable or broadcast service supplier's access to and use of public telecommunications services.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorise a service supplier of another Party to establish, construct, acquire, lease, operate, or supply telecommunications networks or services, other than the former Party's commitments under Chapter 8 (Cross-Border Trade in Services); or
- (b) require a Party, or require a Party to oblige a service supplier under its jurisdiction, to establish, construct, acquire, lease, operate, or supply telecommunications networks or services not offered to the public generally.

Article 3

Approaches to Regulation

1. The Parties recognise 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 or if a service is new to a market. Accordingly, the Parties recognise 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 recognise 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 4

Access and Use¹

1. Each Party shall ensure that any service supplier of the other Party has access to and use of any public telecommunications networks and services, including leased circuits, offered in its territory or across its borders on a timely basis, and on terms and conditions that are reasonable, non-discriminatory and transparent, *inter alia*, through paragraphs 2 through 6.
2. Subject to paragraphs 5 and 6, each Party shall ensure that service suppliers of the other Party are permitted to:
 - (a) purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network and which is necessary to supply their services;
 - (b) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and
 - (c) use operating protocols of their choice.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

¹ For greater certainty, this Article does not prohibit any Party from requiring a service supplier to obtain a licence to supply a public telecommunications network or service in its territory.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the personal information of end users of public telecommunications networks or services, provided 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 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 they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for connection with public telecommunications networks and services;
- (b) a requirement, where necessary, for the inter-operability of public telecommunications networks and services and to encourage the achievement of the goals set out in Article 17 (Relation to International Organisations);
- (c) type approval of terminal or other equipment which interfaces with public telecommunications networks and technical requirements relating to the attachment of such equipment to public telecommunications networks;
- (d) a restriction on connection of leased or owned circuits with public telecommunications networks or services or with circuits leased or owned by other service suppliers; or
- (e) a requirement for notification and licensing.

Article 5

Number Portability

Each Party shall ensure that a supplier of public telecommunications services in its territory provides number portability for mobile services, to the extent technically and economically feasible, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

Article 6

Competitive Safeguards

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 7

Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that such major supplier accords in like circumstances to its subsidiaries and 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 8

Resale

1. Neither Party shall prohibit the resale of public telecommunications services.
2. Each Party shall ensure that a major supplier in its territory:

- (a) offers for resale, at reasonable rates,² to suppliers of public telecommunications services of another Party, public telecommunications services that the major supplier provides at retail to end users; and
- (b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.³

3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier pursuant to paragraph 2, based on the need to promote competition or to benefit the long-term interests of end users.

4. If a Party does not require that a major supplier offer a specific public telecommunications service for resale, it nonetheless shall allow service suppliers to request that the service be offered for resale consistent with paragraph 2, without prejudice to the Party's decision on the request.

Article 9

Interconnection⁴

Obligations relating to suppliers of public telecommunications networks or services

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory provides interconnection with the suppliers of public telecommunications networks or services of the other Party.

2. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive or confidential

² For the purposes of this Article, each Party may determine reasonable rates through any methodology it considers appropriate.

³ Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

⁴ For greater certainty, the term "interconnection", as used in this Chapter, does not include access to unbundled network elements.

information of, or relating to, users acquired as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Obligations relating to major suppliers

3. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks and services of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;⁵
- (b) of a quality no less favourable 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;
- (c) on a timely basis, 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 supplier of public telecommunications networks or services of the other Party 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 suppliers of public telecommunications networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

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

- (a) a reference interconnection offer or any other interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services;
- (b) the terms and conditions of an interconnection agreement that is in effect; or
- (c) a new interconnection agreement through commercial negotiation.

⁵ For greater certainty, interconnection rates may be commercially negotiated between suppliers of public telecommunications networks or services.

5. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

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

Article 10

Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party with leased circuit services that are public telecommunications services, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent.

Article 11

Co-location

1. Each Party shall ensure that a major supplier which has control over essential facilities in its territory provides suppliers of public telecommunications networks or services of the other Party physical co-location of their equipment necessary for interconnection on a timely basis, and on terms and conditions (including technical feasibility and space availability where applicable) and at rates that are reasonable, non-discriminatory and transparent.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavour to ensure that a major supplier in its territory provides an alternative solution such as facilitating virtual co-location, based on a generally available offer, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent.
3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.
4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on such a request.

Article 12

Independent Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.
2. Each Party shall ensure that the regulatory decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.
3. No Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

Article 13

Universal Service

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

Article 14

Licensing

1. Where a licence is required for the supply of public telecommunications networks or services, the Party shall ensure the public availability of:

- (a) all the licensing criteria and procedures that it applies;⁶
- (b) the period of time normally required to reach a decision concerning an application for a licence; and
- (c) the general terms and conditions of a licence.

2. The Party shall notify an applicant of the outcome of its application without undue delay after a decision has been taken.

3. The Party shall ensure that, upon request, an applicant or a licensee is provided with the reasons for the:

- (a) denial of a licence;
- (b) imposition of supplier-specific conditions on a licence;
- (c) refusal to renew a licence; or
- (d) revocation of a licence.

⁶ For greater certainty, this sub-paragraph includes any fee for applying for or obtaining a licence.

Article 15

Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.

Spectrum

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 allocated for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 3 (Market Access) of Chapter 8 (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications networks or services, provided that the Party does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services, if appropriate. In this regard, each Party may use mechanisms such as auctions, administrative incentive pricing, or unlicensed use, if appropriate, to assign spectrum for commercial use.

Numbers

5. Each Party shall ensure that a supplier of public telecommunications networks or services of the other Party established in the territory of the former Party is afforded access to telephone numbers in a non-discriminatory manner.

Article 16

Transparency

1. Each Party shall endeavour to ensure that when its telecommunications regulatory body seeks input⁷ on a proposal for a law or regulation, that body will:

- (a) make the proposal public or otherwise available to any interested persons;
- (b) include an explanation of the purpose of and reasons for the proposal;
- (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment; and
- (d) to the extent practicable, make publicly available all relevant comments filed with it.

2. Each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks and services;
- (c) information on bodies responsible for the preparation, amendment, and adoption of standards affecting such access and use;
- (d) conditions for attaching terminal or other equipment to the public telecommunications network;
- (e) requirements for notification or licensing if any; and
- (f) general procedures relating to resolution of telecommunications disputes provided for in Article 24 (Resolution of Telecommunications Disputes).

Article 17

Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility

⁷ For greater certainty, seeking input does not include internal governmental deliberations.

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 18

International Submarine Cable Systems

Where a Party has authorised a supplier of public telecommunications networks or services in its territory to operate an international submarine cable system as a public telecommunications network or service, that Party shall ensure that such supplier accords the suppliers of public telecommunications networks or services of the other Party reasonable and non-discriminatory treatment for access to the international submarine cable system.^{8, 9}

Article 19

Unbundling of Network Elements

Each Party shall endeavour to ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions 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.¹⁰

⁸ For greater certainty, a Party may determine the point at which access to the international submarine cable system is to be provided.

⁹ For greater certainty, this Article does not prohibit a Party from requiring a supplier of public telecommunications networks or services to comply with relevant measures including licensing requirements, provided that such measures are not used as a means of avoiding the Party's obligations under this Article.

¹⁰ For greater certainty, consistent with Article 3 (Approaches to Regulation), a Party may determine the manner in which it implements its obligations under this Article.

Article 20

Access to Poles, Ducts, and Conduits

1. Each Party shall endeavour to ensure that a major supplier in its territory provides access to poles, ducts, conduits, or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of the other Party in the Party's territory, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent, subject to technical feasibility.
2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competitive service, or other specified public interest factors.

Article 21

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 22

International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among 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) minimising 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.

3. The Parties recognise that a Party, where it has the authority to do so, may choose to promote competition with respect to international mobile roaming rates including through commercial arrangements, or to adopt or maintain measures affecting rates for wholesale or retail international roaming services with a view to ensuring that the rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with other Parties to facilitate the implementation of those measures, including by entering into arrangements with those Parties.

4. If a Party (hereinafter referred to as “the first Party” in this paragraph) chooses to regulate rates or conditions for wholesale or retail international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (hereinafter referred to as “the second Party” in this paragraph) has access to the regulated rates or conditions for wholesale or retail international mobile roaming services for its customers roaming in the territory of the first Party if the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale or retail international mobile roaming services for suppliers of the two Parties.¹¹ The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale or retail international mobile roaming services in accordance with paragraph 4, shall be deemed to be in compliance with Article

¹¹ For greater certainty:

(a) no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale or retail international mobile roaming services that is provided under this Article.

(b) access to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if the regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement. The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable. For the purposes of this footnote, “rates or conditions that are reasonably comparable” means rates or conditions agreed to be such by the relevant suppliers or, in the case of a disagreement, determined to be such by the telecommunications regulatory body of the first Party.

5 (Most-Favoured-Nation Treatment) of Chapter 8 (Cross-Border Trade in Services), Article 4 (Access and Use), and Article 7 (Treatment by Major Suppliers), with respect to international mobile roaming services.

6. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 23

Cooperation

1. The Parties may agree to cooperate by:
 - (a) sharing information, experiences, and best practices on addressing challenges relating to the development of the telecommunications industry, taking into account, among other things, key advancements in emerging technologies and industry trends; and
 - (b) promoting collaboration between a Party and companies and businesses of the other Party, including their small and medium enterprises, as well as among the Parties' respective companies and businesses, including their small and medium enterprises, to support innovation and the development of their respective telecommunications industries.
2. The Parties will endeavour to cooperate in ways that build on, but do not duplicate, existing cooperation initiatives already being pursued by the Parties bilaterally or in international fora. Such cooperation may include, in particular, measures to facilitate industry participation by enterprises of one Party in pilot projects initiated by the other Party, with the objective of driving digital transformation and innovation in the telecommunications sector.

Article 24

Resolution of Telecommunications Disputes

1. Each Party shall ensure that a supplier of public telecommunications networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes arising under this Chapter in accordance with its laws and regulations.
2. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain a review of such determination or decision in accordance with its laws and regulations.

3. No Party shall permit the making of an application for review to constitute grounds for non-compliance with the determination or decision of its telecommunications regulatory body, unless its relevant body determines otherwise.