

CHAPTER 10

TELECOMMUNICATIONS SERVICES

Article 10.1: 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;

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;

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 provide a service;

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;

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, particular users;

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;

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:

- (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 user of like public telecommunications networks or services in like circumstances;

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;

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;

public telecommunications network means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;

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 telephone 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, and excludes value-added services;

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

telecommunications regulatory body means any body or bodies responsible under a Party's laws and regulations for the regulation of telecommunications; and

user means an end user or a supplier of public telecommunications networks or services.

Article 10.2: Scope

1. This Chapter shall apply to measures by a Party 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 regarding suppliers of public telecommunications networks or services; and
- (c) other measures relating to public telecommunications networks or services.

2. This Chapter shall not apply to measures affecting the cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.

3. Nothing in this Chapter shall be construed to require a Party to compel:

- (a) any enterprise to establish, construct, acquire, lease, operate or provide telecommunications networks or services not offered to the public generally; or
- (b) 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.

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

Article 10.3: 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 a timely basis and 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 owned or leased circuits;
- (c) connect owned or leased circuits with public telecommunications networks or services in the territory or across the borders of that Party, or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, 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 networks or services for the movement of information in its territory or across its borders in accordance with its laws and regulations, 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 that are necessary to:

- (a) ensure the security and confidentiality of messages; and
- (b) protect personal information of end-users of public telecommunications networks or services,

provided that such measures are not applied in a manner that 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 or services, other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications networks or 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 or services 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 or services; and
- (c) 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.

Section B: Suppliers of Public Telecommunications Services

Article 10.4: Obligations Relating to Suppliers of Public Telecommunications Services

Interconnection

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. In carrying out paragraph 1, 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 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. Each Party shall ensure that a supplier of public telecommunications services in its territory provides number portability for mobile services and any other services as designated by that Party, to the extent technically feasible, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

Access to Telephone Numbers

4. Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

Section C: Additional Obligations Relating to Major Suppliers¹

Article 10.5: 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 10.6: 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) anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anticompetitive 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

¹ Articles 10.5, 10.8, and Articles 10.10 through 10.12 do not apply to Korea with respect to suppliers of commercial mobile services.

commercially relevant information which are necessary for them to provide services.

Article 10.7: Resale

Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end users. Where a Party has determined that a service must be offered for resale by a major supplier, that Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

Article 10.8: Unbundling of Network Elements

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

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

Article 10.9: Interconnection

1. 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;
- (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 suppliers of public telecommunications networks or services of the other Party need not pay for network components or facilities that they do 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.

2. 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 approved by the Party's telecommunications regulatory body 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.

3. Each Party shall ensure that the procedures applicable for interconnection negotiations with a major supplier are made publicly available.

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

Article 10.10: Provisioning and Pricing of Leased Circuit Services²

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

Article 10.11: 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 and non-discriminatory.
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 and non-discriminatory.
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 10.12: Access to Poles, Ducts, Conduits and Rights-of-Way

1. Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, rights of way and any other structures deemed necessary by the Party, owned or controlled by major suppliers to suppliers of public telecommunications networks or 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 This Article shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

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 10.13: 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. 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 equity³ or maintain an operating or management role in any such supplier.

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 10.14: 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 10.15: 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;

³ For greater certainty, this Article 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.

- (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.

Article 10.16: 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 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 8.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 8.2.3 (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 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 Chapter 8 (Cross-Border Trade in Services). 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.

Article 10.17: Transparency

1. Each Party shall endeavour to ensure that when its telecommunications regulatory body seeks input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services of the other Party operating in its territory with an opportunity to comment.

2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks or services is 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 and adoption of standards affecting such access and use;
- (d) conditions for attaching terminal or other equipment; and
- (e) requirements for notification or licensing, if any.

Article 10.18: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability 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 10.19: 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 10.20: 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 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) 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.

Article 10.21: 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 by an impartial and independent judicial authority of the Party 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.

Article 10.22: 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. 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 10.23: Enforcement

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Articles 10.3 through 10.12. 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 10.24: Relation to other Chapters

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