

## **CHAPTER 11**

### **TELECOMMUNICATIONS**

#### **ARTICLE 11.1 : DEFINITIONS**

For the purposes of this Chapter:

**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 but excluding a supplier of public telecommunications transport network or 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;

**facilities-based suppliers** means suppliers of public telecommunications transport networks or services that are:

- (a) for Korea, telecommunications carriers provided for in Article 5 of the Telecommunications Business Act; and
- (b) for Singapore, Facilities-Based Operators;

**major supplier** means a supplier of basic 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 transport network or 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 the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment;

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

**number portability** means the ability of end-users of public telecommunications transport network or services to retain existing telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications transport network or services;

**public telecommunications transport network** means public telecommunications infrastructure that permits telecommunications between defined network termination points;

**public telecommunications transport network or services** means public telecommunications transport network and/or public telecommunications transport services;

**public telecommunications transport service** means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

**service supplier** means any person that supplies a service;

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

**user** means service consumers and service suppliers.

## **ARTICLE 11.2 : SCOPE AND COVERAGE<sup>11-1</sup>**

1. This Chapter shall apply to measures adopted or maintained by a Party that affect access to and use of, and the regulation of public telecommunications transport networks and services.
2. This Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. 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 provide telecommunications transport networks or services; or
  - (b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or provide telecommunications transport networks or services not offered to the public generally.

## **ARTICLE 11.3 : ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES**

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network and service, including private leased circuits, offered in its territory or across its borders on reasonable, non-discriminatory, timely and transparent terms and conditions, including as those set out in paragraphs 2, 3, 4, 5 and 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 the public telecommunications transport network;
  - (b) interconnect leased or owned circuits with public telecommunications

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<sup>11-1</sup> The obligations of a Party in this Chapter shall be applied in a non-discriminatory manner to suppliers of public telecommunications transport network or services of both Parties.

- transport networks and services in the territory, of that Party, or with circuits leased or owned by another service supplier;
- (c) perform switching, signaling and processing functions;
  - (d) use operating protocols of their choice, 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 not inconsistent with each Party's domestic 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 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 the other Party.

4. Notwithstanding the preceding paragraph, 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 that necessary to:

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

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and 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 services;
- (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; or
- (d) notification, registration and licensing.

#### **ARTICLE 11.4 : CONDUCT OF MAJOR SUPPLIERS**

##### ***Treatment by Major Suppliers***

1. Each Party shall ensure that any major supplier in its territory accords facilities-based suppliers, licensed in its territory, of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated service supplier, provided they are facilities-based suppliers, regarding:

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

When necessary, a Party shall assess such treatment on the basis of whether such suppliers of public telecommunications transport network or services, subsidiaries, affiliates, and non-affiliated service suppliers are in like circumstances.

##### ***Competitive Safeguards***

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport network or services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) For the purposes of paragraph (a), anti-competitive practices include:
- (i) engaging in anti-competitive cross-subsidisation;
  - (ii) using information obtained from competitors with anti-competitive results;
  - (iii) not making available, on a timely basis, to suppliers of public telecommunications transport network or services, technical

- information about essential facilities and commercially relevant information that is necessary for them to provide public telecommunications transport network or services; and
- (iv) pricing services in a manner that gives rise to unfair competition.

### ***Unbundling of Network Elements***

3. (a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers, licensed in its territory, of the other Party access to network elements for the provision of public telecommunications transport network or services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory to provide access to in accordance with paragraph (a) on the basis of the technical feasibility of unbundling and the state of competition in the relevant market.

### ***Co-Location***

4. (a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers, licensed in its territory, of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Where physical co-location under paragraph (a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers co-operate with facilities-based suppliers to find alternatives, which could include site inspections of co-location premises, in accordance with each Party's domestic laws and regulations.
- (c) Each Party may determine, in accordance with its domestic laws and regulations, which premises in its territory shall be subject to paragraphs (a)

and (b).

### ***Resale***

5. (a) Each Party shall ensure that major suppliers in its territory do not impose unreasonable or discriminatory conditions, limitations or rates on the resale of public telecommunications transport network or services that the major supplier provides at retail to end-users.
- (b) Each Party may determine, in accordance with its domestic laws and regulations, the type and scope of resale in its territory.

### ***Poles, Ducts, and Conduits***

6. (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers to facilities-based suppliers, licensed in its territory, of the other Party:
  - (i) in a timely fashion; and
  - (ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine, in accordance with its domestic laws and regulations, the poles, ducts, conduits or other structures to which it requires major suppliers in its territory to provide access under paragraph (a) on the basis of the state of competition in the relevant market.

### ***Number Portability***

7. Each Party shall ensure that major suppliers in its territory provide number portability, for those services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

### ***Interconnection***

8. (a) *General Terms and Conditions*

*Interconnection to be Ensured*

Each Party shall ensure interconnection between a facilities-based supplier and any other facilities-based supplier or a services-based supplier to the extent provided for in its laws and regulations.

*Interconnection with Major Suppliers*

Each Party shall ensure that a major supplier is required to provide interconnection at any technically feasible point in the network. Such interconnection is provided:

- (i) under non-discriminatory terms, conditions (including technical standards and specifications) and rates 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;
- (ii) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and
- (iii) upon 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.

(b) *Transparency of interconnection arrangements*

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

(c) *Public Availability of the Procedures for Interconnection Negotiations*

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

(d) *Public Availability of Interconnection Agreements Concluded with Major Suppliers*

- (i) Each Party shall require major suppliers in its territory to file all their interconnection agreements with its telecommunications regulatory body.
- (ii) Each Party shall make available to suppliers of public telecommunications transport network or services which are seeking interconnection, interconnection agreements between a major supplier in its territory and any other supplier of public telecommunications transport network or services in such territory.

(e) *Resolution of Interconnection Disputes*

Each Party shall ensure that suppliers of public telecommunications transport network or services of the other Party, that have requested interconnection with a major supplier in the Party's territory have recourse to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection within a reasonable and publicly available period of time.

***Provisioning and Pricing of Leased Circuits Services<sup>11-2</sup>***

9. Each Party shall ensure that major suppliers of leased circuits services in its territory provide service suppliers of the other Party leased circuits services that are public telecommunications transport network or services, on terms and conditions, and at rates that are reasonable, non-discriminatory, timely, and transparent.

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<sup>11-2</sup> The obligation under this article is not an obligation to provide leased circuits as an unbundled network element.

## **ARTICLE 11.5 : INDEPENDENT REGULATORS**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and, not accountable to, any supplier of public telecommunications transport network or services.
2. Each Party shall ensure that the decisions of, and procedures used by its telecommunications regulatory body are impartial with respect to all market participants.

## **ARTICLE 11.6 : UNIVERSAL SERVICE**

Each Party shall administer any universal service obligation that it maintains in a transparent, nondiscriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

## **ARTICLE 11.7 : LICENSING PROCESS**

1. When a Party requires a supplier of public telecommunications transport network or services to have a licence, the Party shall make publicly available:
  - (a) all the licensing criteria and procedures it applies;
  - (b) the period of time normally required to reach a decision concerning an application for a licence; and
  - (c) the terms and conditions of all licences.
2. Each Party shall ensure that an applicant receives, upon request, the reasons for the denial of a licence.

## **ARTICLE 11.8 : ALLOCATION AND USE OF SCARCE RESOURCES<sup>11-3</sup>**

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<sup>11-3</sup> The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are *per se* inconsistent with Article 9.5 and Article 10.7. Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect

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

#### **ARTICLE 11.9 : ENFORCEMENT**

Each Party shall ensure that its telecommunications regulatory body maintains appropriate procedures and authority to enforce domestic measures relating to the obligations under this Chapter. Such procedures and authority shall include the ability to impose effective sanctions, which may include financial penalties, corrective orders, or modification, suspension, and revocation of licences.

#### **ARTICLE 11.10 : RESOLUTION OF DOMESTIC TELECOMMUNICATIONS DISPUTES**

##### ***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 addressing a matter set out in this Chapter.

##### ***Reconsideration***

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

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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.

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 11.11 : TRANSPARENCY**

Each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body are published or otherwise made available to interested persons in 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 body<sup>11-4</sup>; and
- (c) its measures relating to public telecommunications transport network 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;
  - (iv) notification, permit, registration, or licensing requirements, if any; and
  - (v) information on bodies responsible for preparing, amending, and adopting standards- related measures is made publicly available.

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<sup>11-4</sup> The obligations under paragraph (b) will be applied in accordance with each Party's domestic laws and regulations.

#### **ARTICLE 11.12 : RELATION TO OTHER CHAPTERS**

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

#### **ARTICLE 11.13 : RELATION TO INTERNATIONAL ORGANISATIONS AND AGREEMENTS**

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.