

[X]. New Chapter Seven-E (Telecommunications) is hereby added as follows:

“CHAPTER SEVEN-E
TELECOMMUNICATIONS

ARTICLE 7E.1

Scope

1. This Chapter applies to a measure of a Party affecting trade in telecommunications services.
2. This Chapter does not apply to:
 - (a) a measure affecting a service providing, or exercising editorial control over, content transmitted using telecommunications networks or services; or
 - (b) a measure relating to broadcast or cable distribution of radio or television programming, except a measure to ensure that a service supplier operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel an enterprise, to establish, construct, acquire, lease, operate, or provide a telecommunications network or service not offered to the public generally;
 - (b) require a Party to compel an 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;
 - (c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to a third person.

ARTICLE 7E.2

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 other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 7A.2 (Definitions);

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 suppliers providing public telecommunications networks or services in order to allow the user of one supplier to communicate with the user of another supplier and to access a service provided by another supplier;

international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data, or messaging services in the territory of the other Party;

leased circuit means a telecommunications service or facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user;

licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications network or service, including a concession, permit, or registration;

major supplier means a supplier of public telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

measure of a Party means a measure adopted or maintained by a Party as defined in Article 7A.2 (Definitions);

network element means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

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

number portability means the ability of an end-user of a public telecommunications service who so requests to retain the same telephone number when switching between suppliers of public telecommunications services;

public telecommunications network means any telecommunications infrastructure used to provide a public telecommunications service between defined network termination points;

public telecommunications service means any telecommunications service that is offered to the public generally;

reference interconnection offer means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

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

telecommunications network means transmission systems and, if applicable, switching or routing equipment and other resources, including a network element which is not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

telecommunications regulatory authority means a body responsible for the regulation of telecommunications networks and services;

telecommunications service means a service which consists wholly or mainly in the transmission and reception of signals over a telecommunications network;

universal service means services that must be made available to all users in the territory of a Party, the scope of which is defined by that Party; and

user means a service consumer or service supplier using a public telecommunications network or service.

ARTICLE 7E.3

Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of public telecommunications networks or services and to enhance consumer welfare, and that economic 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;
- (b) rely on the role of market forces, particularly with respect to a market segment that is, or is likely to be, competitive or that has low barriers to entry, such as a service provided by a supplier of telecommunications services that does not own a network facility; or

- (c) use any other appropriate means that benefit the long-term interests of end-users.

3. Further to paragraph 2, and to the extent provided for in its law, a Party may refrain from applying a regulation to a telecommunications service or network if, following an analysis of the market, its telecommunications regulatory authority determines that effective competition is achieved.

ARTICLE 7E.4

Access and Use

1. Each Party shall ensure that a service supplier of the other Party has 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, transparent, and non-discriminatory terms and conditions. Each Party shall apply this obligation, among other things, through paragraphs 2 through 6.

2. Each Party shall ensure that a service supplier of the other Party is 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) interconnect a leased or owned circuit with public telecommunications networks or services or with a circuit leased or owned by another service supplier;
- (d) use an operating protocol of their choice; and
- (e) perform switching, signalling, processing, and conversion functions.

3. Each Party shall ensure that a service supplier of the other Party may use public telecommunications networks or 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 a database or otherwise stored in machine-readable form in the territory of a Party.

4. Notwithstanding paragraph 3, a Party may take any measure as is necessary to:

- (a) ensure the security and confidentiality of communications; or
- (b) protect the privacy of personal data of an end-user of public telecommunications networks or services,

subject to the requirement that such a measure is 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 a supplier of public telecommunications networks or services, in particular its ability to make its networks or services available to the public generally; or
- (b) protect the technical integrity of a public telecommunications network or service.

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 an interface protocol, for interconnection with those networks or services;
- (b) a requirement, if necessary, for the interoperability of those networks or services;
- (c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and
- (d) notification, registration, and licensing.

ARTICLE 7E.5

Access to Essential Facilities and Unbundled Network Elements

1. Subject to paragraph 2, each Party shall ensure that a major supplier in its territory provides to a supplier of public telecommunications networks or services of the other Party access to:

- (a) essential facilities;¹ and
- (b) network elements on an unbundled basis,

for the purpose of providing public telecommunications networks or services, on terms and conditions, including rates, which are reasonable, cost-oriented, non-discriminatory, and transparent. Subject to technical feasibility, access shall be provided on a timely basis.

¹ For greater certainty, the major supplier's essential facilities may include leased circuit services, poles, ducts, conduits, and rights-of-way.

2. Each Party shall provide its telecommunications regulatory authority with the power to determine:

- (a) the essential facility to which a major supplier must provide access; and
- (b) the network element to which a major supplier must provide access on an unbundled basis.

3. Each Party shall ensure that its telecommunications regulatory authority, if it makes a determination under paragraph 2, takes into account matters including effective competition, and the long-term interests of end-users.

ARTICLE 7E.6

Resale

1. A Party shall not prohibit the resale of a public telecommunications service.
2. A Party may determine, in accordance with its law, which public telecommunication service must be offered for resale by a major supplier, taking into account the need to promote competition or a benefit to the long-term interests of end-users.
3. If a Party has determined that a public telecommunications service must be offered for resale by a major supplier, that Party shall ensure that any major supplier in its territory does not impose an unreasonable or discriminatory condition or limitation on the resale of that public telecommunications service.

ARTICLE 7E.7

Interconnection

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory enters into a negotiation for interconnection with a supplier of public telecommunications networks or services of the other Party that is within the same territory, if requested to do so by that supplier.
2. Each Party shall require that a supplier of public telecommunications networks or services in its territory which enters into the negotiation for interconnection referred to in paragraph 1 takes reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, a supplier or end-user of public telecommunications services obtained as a result of an interconnection arrangement and that that supplier of public telecommunications networks or services only uses that information for the purpose of supplying those services.

ARTICLE 7E.8

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of a supplier of public telecommunications networks or services of the other Party:

- (a) at any technically feasible point in the major supplier's network;
- (b) under non-discriminatory terms and conditions (including rates, technical standards, and specifications), and of a quality no less favourable than that provided by the major supplier for its own like services, for like services of a non-affiliated supplier, or for its subsidiary or other affiliate;
- (c) on a timely basis, and 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 of public telecommunications networks or services need not pay for a network component or facility that it does not require for the service to be supplied; and
- (d) on request, at a point in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of a necessary additional facility.

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

- (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or
- (b) the terms and conditions of an interconnection agreement in effect.

3. In addition to the options provided for in paragraph 2, each Party shall ensure that a supplier of public telecommunications networks or services of the other Party has the opportunity to interconnect its facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

4. Each Party shall ensure that the applicable procedure for an interconnection negotiation with a major supplier in its territory is made publicly available.

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

ARTICLE 7E.9

Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing an anti-competitive practice.
2. An anti-competitive practice referred to in paragraph 1 includes:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from a competitor with an anti-competitive result; and
 - (c) not making available, on a timely basis, to another supplier of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that is necessary for it to provide a service.

ARTICLE 7E.10

Treatment by a Major Supplier

Each Party shall ensure that a major supplier in its territory accords a supplier of public telecommunications networks or services of the other Party treatment no less favourable than that major supplier accords, in like circumstances, to itself, its subsidiary, its affiliate, or any non-affiliated supplier of public telecommunications networks or services regarding the:

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

ARTICLE 7E.11

Number Portability

Each Party shall ensure that a supplier of a public telecommunications service in its territory provides number portability for mobile services on a timely basis, without impairment to quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

ARTICLE 7E.12

International Mobile Roaming Services

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 rates and technological alternatives to roaming services, which may include:
 - (a) ensuring that information regarding retail rates is easily accessible to an end-user; and
 - (b) minimising impediments to the use of international mobile roaming services and technological alternatives, including an impediment to an end-user's ability to access a telecommunications service using the device of their choice when visiting the territory of a Party from the territory of the other Party.

ARTICLE 7E.13

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. 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. Universal service obligations defined according to those principles shall not be regarded, in themselves, as anti-competitive.
3. If a Party decides to compensate a universal service supplier of public telecommunications networks or services, it shall ensure that the compensation does not exceed the needs directly attributable to the universal service obligation, as determined through a competitive process or a determination of net costs.

ARTICLE 7E.14

Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including radio spectrum, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory manner, and in pursuit of general interest objectives, including the promotion of competition. A procedure, condition, or obligation attached to rights of use must be based on objective, transparent, and non-discriminatory criteria.

2. Each Party shall make publicly available the current state of allocated frequency bands, but is not required to provide detailed identification of radio spectrum that is allocated or assigned for specific government uses.

3. A Party may rely on market-based approaches, such as auctions, to assign radio spectrum for commercial use.

4. Each Party retains the right to establish and apply a radio spectrum and frequency management measure which may affect the number of suppliers of public telecommunications services, including by allocating a frequency band in light of current and future needs, and of spectrum availability, provided that the Party does so in a manner that is consistent with this Agreement.

ARTICLE 7E.15

Flexibility in the Choice of Technology

1. A Party shall not prevent a supplier of public telecommunications networks or services from choosing the technologies it wishes to use to supply its services.

2. Notwithstanding paragraph 1, a Party may take a measure to protect a legitimate public policy interest, provided that any measure is not adopted or applied in a manner that creates an unnecessary obstacle to trade.

ARTICLE 7E.16

Licensing and Authorisation

1. A Party may, but is not required to, permit a supplier of telecommunications networks or services to provide their networks or services without a licence, or following a simplified licensing procedure.

2. If a Party requires a supplier of telecommunications networks or services to obtain a licence, the Party shall make publicly available:

- (a) information on any type of network or service requiring a licence;
- (b) any licensing criterion and procedure that it applies;
- (c) the terms and conditions of any individual licence; and
- (d) the period of time normally required to obtain a decision.

3. Each Party shall endeavour to ensure that a decision regarding a supplier's application for a licence is taken within the period of time referred to in paragraph 2(d).

4. Each Party shall ensure that any licensing criteria or applicable procedure, obligation, or condition imposed on, or associated with, a licence is objective, transparent, and not more burdensome than necessary for the kind of service or network provided.

5. Each Party shall ensure that an applicant receives in writing, which may include in electronic form, the reasons for the:

- (a) denial of a licence;
- (b) imposition of any supplier-specific condition;
- (c) revocation of a licence; or
- (d) refusal to renew a licence,

in which cases the Party shall ensure that an applicant has a right of appeal before an appeal body.

6. Each Party shall ensure that any administrative fee imposed on a supplier of telecommunications networks or services is objective, transparent, non-discriminatory, and commensurate with the administrative costs reasonably incurred in the management, control, and enforcement of the obligations set out in this Chapter.²

ARTICLE 7E.17

Regulatory Principles

1. Each Party shall ensure that its telecommunications regulatory authority:

- (a) is legally distinct from, and functionally independent of, a supplier of telecommunications networks or services, or a supplier of telecommunications equipment; and
- (b) does not hold a financial interest, or maintain an operating or management role, in any supplier of public telecommunications networks or services, or in any supplier of telecommunications equipment,

including if the Party retains ownership or control of a supplier of telecommunications networks or services, or of a supplier of telecommunications equipment.

2. A Party that retains ownership or control of a supplier of public telecommunications networks or services, or of a supplier of telecommunications equipment, shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

² An administrative fee does not include a payment for a right to use scarce resources and a mandated contribution to universal service provision.

3. The decisions of, and the procedures used by, the regulatory authority shall be impartial with respect to all market participants.

4. Each Party shall ensure that its telecommunications regulatory authority is sufficiently empowered to regulate the sector, including ensuring that it has the power to:

- (a) require a supplier of telecommunications networks or services to submit promptly, on request, any information, including financial information, that the telecommunications regulatory authority considers necessary for the administration of its responsibilities. Information requested shall be treated in accordance with the Party's law relating to confidentiality; and
- (b) enforce its decisions through appropriate sanctions that may include a financial penalty, corrective order, or the suspension or revocation of a licence.

5. Each Party shall ensure that a supplier of telecommunications networks or services whose legally protected interests are adversely affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision³ to an appeal body that is independent of the telecommunications regulatory authority and of the supplier of telecommunications networks or services affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless an interim measure is granted in accordance with the Party's law.

6. In the hearing of the appeal referred to in paragraph 5, each Party shall ensure that:

- (a) the supplier has a reasonable opportunity to obtain sufficient information to provide an informed view to the appeal body on the issue to be determined in the appeal;
- (b) the appeal body takes into account views provided by the supplier; and
- (c) the appeal body makes available to the supplier its decision and the reason on which the decision is based.

7. Each Party shall ensure that its telecommunications regulatory authority makes publicly available:

- (a) its analysis on the state of the telecommunications market;
- (b) information on the decisions it issues; and
- (c) information on its future plans.

³ For Korea, paragraphs 5 through 7 do not apply to a determination or decision of the telecommunications regulatory authority with respect to a dispute arising between suppliers of telecommunications networks or services.

ARTICLE 7E.18

Enforcement

Each Party shall provide its telecommunications regulatory authority with the power to enforce a Party's measure relating to the obligations in Articles 7E.4 through 7E.11 and 7E.20.

ARTICLE 7E.19

Transparency

1. Each Party shall ensure that:
 - (a) a supplier of public telecommunications networks or services is provided with adequate advance notice of, and opportunity to comment on, a regulatory decision of general application that the Party's telecommunications regulatory authority proposes; and
 - (b) a supplier of public telecommunications networks or services of another Party is, on request, provided with a clear and detailed explanation of the reason for any decision to deny access of the kind specified in Articles 7E.5 and 7E.8 if that decision is made, approved, endorsed, or authorised by the Party.
2. To the extent not already provided for in this Agreement, each Party shall make publicly available, in an easily accessible and clear form:
 - (a) the responsibilities of its telecommunications regulatory authority, including any responsibilities that are given to more than one body and the body to which they are given;
 - (b) its measures relating to public telecommunications networks or services, including:
 - (i) regulations of its telecommunications regulatory authority, together with the basis for these regulations;
 - (ii) tariffs and other terms and conditions of services;
 - (iii) specifications of technical interfaces;
 - (iv) conditions for attaching terminal or other equipment to the public telecommunications networks;
 - (v) notification, permit, registration, or licensing requirements, if any;
 - (vi) general procedures relating to the resolution of telecommunications disputes provided for in Article 7E.21; and

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

ARTICLE 7E.20

Confidentiality

1. Each Party shall require that a supplier of public telecommunications networks or services that acquires information from another supplier of public telecommunications networks or services in the process of negotiating arrangements pursuant to Articles 7E.4, 7E.5, 7E.7, and 7E.8 uses that information solely for the purpose for which it was supplied and respects, at all times, the confidentiality of information transmitted or stored.
2. Each Party shall adopt or maintain measures to provide for the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that a measure is not applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services.

ARTICLE 7E.21

Dispute Resolution

1. Each Party shall ensure that a supplier of telecommunications networks or services supplying those networks or services in the territory of that Party, and involved in a dispute arising between suppliers of telecommunications networks or services in connection with the rights and obligations in this Chapter, has timely recourse to its telecommunications regulatory authority. The telecommunications regulatory authority shall:
 - (a) consider the dispute without undue delay; and
 - (b) at the request of a supplier involved, issue a decision without undue delay and within a timeframe that is stipulated in the Party's law.
2. Notwithstanding paragraph 1(b), each Party shall ensure that, if its telecommunications regulatory authority declines to initiate any action on a request to resolve a dispute, the telecommunications regulatory authority shall, on request, provide a written explanation of its decision within a reasonable period of time.
3. Each Party may determine whether a decision issued by its telecommunications regulatory authority is made publicly available, having regard to the Party's law relating to confidentiality.
4. Each Party shall ensure that a supplier involved in the dispute is given a statement of the reason on which the decision is based.

5. The procedure referred to in paragraphs 1 and 2 does not preclude a supplier of telecommunications networks or services involved in a dispute from bringing an action before a court, another judicial authority, or a tribunal, in accordance with the Party's law.

ARTICLE 7E.22

Cooperation

1. The Parties recognise the transformational impact of telecommunications networks, infrastructure and technology (including new and emerging technology), and the importance of such technology to the Parties' respective economies and societies. Accordingly, the Parties shall endeavour to:

- (a) exchange information on the opportunities and challenges associated with telecommunications networks, infrastructure and technology; and
- (b) work together in international fora to promote a shared approach to these opportunities and challenges.

2. The Parties further recognise the importance of promoting diversified and secure telecommunications markets. To this end, the Parties shall cooperate, as appropriate, to:

- (a) encourage a diverse and competitive market for public telecommunications services and networks in their respective territories; and
- (b) protect the security and integrity of their respective telecommunications infrastructures.

3. The Parties recognise the importance of international standards for global compatibility and interoperability of public telecommunications networks and services, and shall promote those standards bilaterally and through the work of relevant international organisations.”