

CHAPTER THIRTEEN TELECOMMUNICATIONS

ARTICLE 13.1: SCOPE OF APPLICATION

1. This Chapter shall apply to:
 - (a) measures related to access to and use of public telecommunications networks and services;
 - (b) measures related to obligations of suppliers of public telecommunications networks and services;
 - (c) other measures related to public telecommunications networks or services; and
 - (d) measures related to the supply of value-added services¹.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, as set out in Article 13.3, this Chapter shall not apply to any measure related to broadcast or cable distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally;
 - (b) require a Party to compel 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;
 - (c) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications networks or services, other than as specifically provided in this Agreement; or
 - (d) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

ARTICLE 13.2: RELATION TO OTHER CHAPTERS

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

¹ For purposes of this Chapter, each Party may classify which services in its territory are value-added services.

SECTION A: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS NETWORKS AND SERVICES

ARTICLE 13.3: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS NETWORKS AND SERVICES²

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network and service, including leased circuits, offered in its territory or across its borders, 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) interconnect privately leased or owned circuits with public telecommunications networks and services in its territory 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 networks and services to the public generally; and
- (e) provide services to individual or multiple end-users over any leased or owned circuits.

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, 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 as are necessary to ensure the security and confidentiality of messages, or to protect the privacy of personal data of end-users, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or 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:

² For greater certainty, this Article does not prohibit a Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications network or service within its territory.

- (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 conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 5, such conditions 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 and services;
- (c) type approval of terminal or other equipment which interfaces with the network and technical requirements related to the attachment of such equipment to such networks; or
- (d) notification, registration, and licensing.

SECTION B: ADDITIONAL OBLIGATIONS RELATED TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

ARTICLE 13.4: TREATMENT BY MAJOR SUPPLIERS

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

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

ARTICLE 13.5: COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for purposes of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include in particular:

- (a) engaging in anti-competitive cross-subsidization;

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

ARTICLE 13.6: INTERCONNECTION

General Terms and Conditions

1. 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:

- (a) under non-discriminatory terms, conditions, including technical standards and specifications, and rates, and of a quality no less favorable than that provided for its own like services, for like services of non-affiliated service suppliers, or for like services of its subsidiaries or other affiliates;
- (b) in a timely manner, 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 need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) 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.

Public Availability of the Procedures for Interconnection Negotiations

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

Transparency of Interconnection Arrangements

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

SECTION C: OTHER MEASURES

ARTICLE 13.7: INDEPENDENT REGULATORY BODIES

Each Party shall ensure that its telecommunications regulatory body is separate from, and not

accountable to, any supplier of public telecommunications networks or services. Each Party shall ensure that its regulatory decisions and procedures are impartial with respect to all market participants.

ARTICLE 13.8: UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligations that 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.

ARTICLE 13.9: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications networks or services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:
 - (a) all the licensing or authorization criteria and procedures it applies;
 - (b) the period of time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and
 - (c) the terms and conditions of all licenses or authorizations.
2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

ARTICLE 13.10: 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 retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.
3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 10.4 (Market Access), as it applies to either Chapter Nine (Investment) or Ten (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications networks or services. Each

Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

ARTICLE 13.11: RESOLUTION OF TELECOMMUNICATIONS DISPUTES³

Further to Articles 21.3 (Administrative Proceedings) and 21.4 (Review and Appeal), each Party shall ensure the following:

Recourse

- (a) (i) enterprises of the other Party may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures related to matters set out in Articles 13.3 through 13.6; and
- (ii) suppliers of public telecommunications services or networks of the other Party that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to its telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

*Reconsideration*⁴

- (b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party shall permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision; and

Judicial Review

- (c) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party shall permit an application for judicial review to constitute grounds for non-compliance with

³ The Parties understand that for purposes of this Article, the term "enterprise" applies only to natural persons or juridical persons organized under the laws of each Party.

⁴ For Korea, subparagraph (b) shall not apply to a determination or decision of the telecommunications regulatory body with respect to disputes between telecommunications service suppliers or between telecommunications service suppliers and users. For Peru, suppliers of public telecommunication services or networks may not petition for reconsideration of administrative rulings of general application, as defined in Article 21.5 (Definition), unless otherwise provided for under its laws and regulations.

the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays such determination or decision.

ARTICLE 13.12: TRANSPARENCY

Further to Articles 21.1 (Publication) and 21.2 (Notification and Provision of Information), and in addition to the other provisions in this Chapter related to the publication of information, each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any rulemaking proposed by the telecommunications regulatory body; and
- (c) its measures related to public telecommunications networks or services are made publicly available, including measures related to:
 - (i) tariffs and other terms and conditions of service;
 - (ii) specifications of technical interfaces;
 - (iii) conditions for attaching terminal or other equipment to the public telecommunications networks or services;
 - (iv) notification, permit, registration, or licensing requirements, if any;
 - (v) information on bodies responsible for preparing, amending, and adopting standard-related measures; and
 - (vi) procedures related to judicial and other adjudicatory proceedings.

SECTION D: DEFINITIONS

ARTICLE 13.13: DEFINITIONS

For 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 network or service, including a service supplier other than a supplier of public telecommunications networks or services;

enterprise means an enterprise as defined in Article 1.4 (General Definitions), and its branch;

enterprise of the other Party means both an enterprise constituted or organized under the laws of the other Party and an enterprise owned or controlled by a person of the other Party;

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 supply 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;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and subject to laws and regulations of a Party, affiliates. For these purposes, subsidiaries, branches and where applicable, affiliates shall be as defined by each Party. Intra-corporate communications excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

major supplier means a supplier of public 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 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 favorable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may

include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with, or approved by, a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications networks or services that is willing to accept it may obtain interconnection with the major supplier on that basis;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies services, including a supplier of public telecommunications networks or services;

supply of a service means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or
- (d) by a national of a Party in the territory of the other Party;

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

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

user means a consumer or a supplier of public telecommunications networks or services.