

Article 11.2: Access to and Use of Public Telecommunications Transport Networks and Services

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reservations in its Schedule to Annex I or II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such enterprises are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport networks and services;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;
- (c) use operating protocols of their choice; and
- (d) perform switching, signalling, and processing functions.

3. Each Party shall ensure that enterprises 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 of such enterprises, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 22.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take measures necessary to ensure the security and confidentiality of messages or to protect the privacy of users of public telecommunications transport services. These 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 a condition is not imposed on access to and use of public telecommunications transport networks or services other than as 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;
- (b) protect the technical integrity of public telecommunications transport networks and services; or
- (c) ensure that service suppliers of the other Party do not supply services

6. Provided that they satisfy the criteria in paragraph 5, conditions for access to and use of public telecommunications transport networks or services may include:

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (c) requirements, where necessary, for the inter-operability of such services;
- (d) 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;
- (e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and
- (f) notification, registration, and licensing.

- (c) of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
 - (d) 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
 - (e) on 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.
4. Each Party shall make the procedure applicable for interconnection to a major supplier publicly available.
5. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer.

Article 11.5: Universal Service

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

Article 11.6: Allocation and Use of Scarce Resources

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 manner.

Article 11.9: Resolution of Domestic Telecommunication Disputes

Recourse

1. Further to Article 19.3 (Administrative Proceedings), each Party shall ensure that:
 - (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding domestic measures relating to matters covered in Articles 11.2 and 11.4 excluding interconnection; and
 - (b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the _____ blicly specified amount of time, recourse to a regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with that major supplier.

Reconsideration

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services or value added services that is aggrieved by the determination or decision of a regulatory body may petition that body to reconsider that determination or decision. This petition shall not constitute grounds for non-compliance with the determination or decision of the regulatory body.

3. Reconsideration shall not apply to a determination or decision of a regulatory body with respect to:
 - (a) disputes between service suppliers or between service suppliers and users; or
 - (b) the establishment and application of spectrum and frequency management policies.

Judicial Review

4. Each Party shall ensure that any supplier of public telecommunications transport networks or services that is aggrieved by the determination or decision of a regulatory body has the opportunity to appeal that determination or decision to an independent judicial or administrative authority. This obligation does not add to the obligations set out in Article 19.4 (Review and Appeal).

Article 11.10: Transparency

In addition to the other provisions in this Chapter relating to transparency, each Party shall make publicly available:

- (a) its measures relating to public telecommunications transport networks or services and value added services, including:
 - (i)

- (c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks and services.

Article 11.12: Conditions for the Provision of Value-Added Services

1. A Party shall not require a person that provides value-added services to:
 - (a) supply those services to the public generally;
 - (b) cost-justify its rates;
 - (c) file a tariff;
 - (d) connect its networks with a particular customer or network; or
 - (e) conform with a particular standard or technical regulation for connecting to another network, other than a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions listed in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its domestic law, or to otherwise promote competition or safeguard the interests of consumers.

Article 11.13: Relation to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter, this Chapter prevails to the extent of the inconsistency.

Article 11.14: Relation to International Organisations and Agreements

The Parties recognise the importance of international standards for global compatibility and interoperability 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.

Article 11.15: Definitions

For the purposes of this Chapter:

enterprise Article 1.8 (Definitions of General Application) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or a limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking suppliers providing public telecommunications transport services 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 an enterprise communicates within the enterprise or with or among its subsidiaries, branches or affiliates, where such communications do not include commercial or non-commercial services that are provided to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers. For the purposes of this definition, subsidiaries, branches and, where applicable, affiliates are as defined by each Party in its domestic law;

major supplier means a supplier 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 networks or services as a result of:

- (a) control over essential facilities; or
- (b) the use of its position in the market;

network termination points means the final demarcation of the public telecommunications transport network at the s premises;

non-discriminatory means terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances;

public telecommunications transport network means the public telecommunications infrastructure that permits telecommunications between and among defined network termination points;

public telecommunications transport service means a telecommunications transport service that a Party requires, explicitly or in effect, to be offered to the public generally that involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the s information. This service may include, *inter alia*, telegraph, telephone, telex, and data transmission;

regulatory body means the body responsible for the regulation of telecommunications;

service supplier means a person of a Party that is seeking to supply or supplies a service, including a supplier of 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) in the territory of a Party by a covered investment as defined in Chapter Eight (Investment), in that territory; or
- (d) by a national of a Party in the territory of the other Party;

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

user means a service consumer or a service supplier; and

value-added services

enhancing its form or content, or by providing for its storage and retrieval.