

## CHAPTER TWELVE

### TELECOMMUNICATIONS

#### Article 12.1: Definitions

For the purposes of this Chapter:

**commercial mobile services** means a public telecommunications service provided through mobile wireless means;

**cost-oriented** means based on cost, 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 provider other than a provider of a public telecommunications service;

**enterprise** means an “enterprise” as defined in Article 2.1 (General Definitions – Definitions of General Application) and a branch of an enterprise;

**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 providers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

**interconnection** means linking suppliers providing a public telecommunications service to allow the users of one supplier to communicate with users of another supplier and to access a service 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 a Party's domestic law, affiliates, but does not include a commercial or non-commercial service that is provided to a company that is not a related subsidiary, branch or affiliate, or that is offered to a customer or potential customer; for the purposes of this definition, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party in its domestic law;

**leased circuits** means telecommunications facilities between 2 or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choice;

**major provider** means a provider of a public telecommunications network or service that has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for a public telecommunications network or service 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 network at the user's premises;

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

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

**public telecommunications service** means a telecommunications 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 2 or more points without an end-to-end change in the form or content of the customer's information; this service may include, among other things, telephone and data transmission;

**reference interconnection offer** means an interconnection offer extended by a major provider and filed with or approved by a telecommunications regulatory body, that is sufficiently detailed to enable a provider of a public telecommunications service that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major provider;

**service provider** means a person of a Party who is seeking to provide or who provides a service, including a provider of a telecommunications network or service;

**provision of a service** means providing 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 provider 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, including by photonic means;

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

**user** means an end-user or a provider of a public telecommunications service.

## Article 12.2: Scope and Coverage

1. This Chapter applies to:
  - (a) a measure adopted or maintained by a Party relating to access and use of a public telecommunications network or service;
  - (b) a measure adopted or maintained by a Party relating to an obligation of a provider of a public telecommunications network or service; and
  - (c) any other measure adopted or maintained by a Party relating to a public telecommunications network or service.
  
2. This Chapter does not apply to a measure of a Party affecting the transmission by any means of telecommunications, including broadcast or cable distribution, of radio or television programming intended for direct reception by the public.
  
3. This Chapter does not:
  - (a) require a Party (or require a Party to compel a service provider) to establish, construct, acquire, lease, operate, or provide a telecommunications network or service where that network or service is not offered to the public generally;
  - (b) prevent a Party from prohibiting a service provider operating a private network from using that service provider's network to provide a public telecommunications network or service to a third party; or
  - (c) require a Party to authorize a service provider of the other Party to establish, construct, acquire, lease, operate, or provide a telecommunications network or service, other than as specifically provided in this Agreement.

### **Article 12.3: Access to and Use of a Public Telecommunications Network or Service**

1. Subject to a Party's right to restrict the provision of a service in accordance with the reservations in its Schedule to Annex I or II, a Party shall ensure that an enterprise of the other Party has access to and use of a public telecommunications network or 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 7.

2. Each Party shall ensure that an enterprise 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 a service to individual or multiple end-users over leased or owned circuits;
- (c) connect owned or leased circuits with a public telecommunications network and service in the territory, or across the borders, of that Party or with circuits leased or owned by another enterprise;
- (d) perform a switching, signalling, processing, or conversion function; and
- (e) use an operating protocol of its choice.

3. Each Party shall ensure that an enterprise of the other Party may use a public telecommunications network and service for the movement of information in its territory or across its borders, including for intra-corporate communications of this enterprise, and for access to information contained in a database or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 22.2 (Exceptions – General Exceptions), and notwithstanding paragraph 3, a Party may take a measure necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of non-public personal data of users of a public telecommunications service.

5. A measure taken under paragraph 4 may not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

6. Each Party shall ensure that a condition is not imposed on access to and use of a public telecommunications network or service other than as necessary to:

- (a) safeguard the public service responsibilities of providers of a public telecommunications network or service, in particular their ability to make their network or service available to the public generally;
- (b) protect the technical integrity of a public telecommunications network or service; or
- (c) ensure that a service provider of the other Party does not provide a service limited by a Party's reservations in its Schedule to Annex I or II.

7. Provided that they satisfy the criteria in paragraph 6, conditions for access to and use of a public telecommunications network or service may include:

- (a) a requirement to use a specified technical interface, including an interface protocol, for connection with that network or service;

- (b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed in accordance with a Party's domestic law;
- (c) a restriction on resale or shared use of that service;
- (d) a requirement, where necessary, for the inter-operability of that service;
- (e) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to the network; and
- (f) a restriction on connection of leased or owned circuits with that network or service or with circuits leased or owned by another enterprise.

**Article 12.4: Obligations relating to Major Providers of Public Telecommunications Services**

1. With respect to Honduras, this Article is subject to Annex 12.4 and does not apply to commercial mobile services. For greater certainty, nothing in this Article precludes a Party from imposing the requirements set out in this Article on providers of commercial mobile services.

**Competitive Safeguards**

2. Each Party shall maintain appropriate measures to prevent providers who, alone or together, are a major provider in its territory, from engaging in or continuing anti-competitive practices.

3. The anti-competitive practices referred to in paragraph 2 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 to another service provider, on a timely basis, technical information about essential facilities and commercially relevant information that is necessary for that service provider to provide a public telecommunications service.

## **Interconnection**

### 4. (a) General Terms and Conditions

Subject to a Party's reservations in its Schedule to Annex I or II, each Party shall ensure that a major provider in its territory provides interconnection for the facilities and equipment of a provider of a public telecommunications service of the other Party:

- (i) at any technically feasible point in the major provider's network,
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates,
- (iii) of a quality no less favourable than that provided by that major provider to its own like services, for like services of non-affiliated service providers, or for its subsidiaries or other affiliates,
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent and reasonable, having regard to economic feasibility, and sufficiently unbundled so that a provider need not pay for network components or facilities that it does not require for the service to be provided, and

- (v) 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.

(b) Options for Interconnecting with Major Providers

Each Party shall ensure that a provider of a public telecommunications service of the other Party may interconnect its facilities and equipment with those of a major provider in its territory through:

- (i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major provider offers generally to providers of a public telecommunications service,
- (ii) the terms and conditions of an interconnection agreement in force, or
- (iii) negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require a major provider in its territory to make publicly available its reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major provider offers generally to providers of a public telecommunications service.

(d) Public Availability of the Procedures for Interconnection Negotiations

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

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

- (i) Each Party may require a major provider in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body or other relevant body.
- (ii) Each Party shall make publicly available the interconnection agreements in force between a major provider in its territory and other providers of a public telecommunications service in its territory.

**Article 12.5: Independent Regulatory Bodies**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, a provider of a public telecommunications network or service.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to interested persons.

**Article 12.6: Universal Service**

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

## **Article 12.7: Licenses and Other Authorizations**

1. If a Party requires a provider of a public telecommunications network or service to have a license, concession, permit, registration, or other type of authorization, that Party shall make publicly available:

- (a) all applicable licensing or authorization criteria and procedures it applies;
- (b) the amount of time that is normally required 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, concessions, permits, registrations, or other types of authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant is advised of the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

## **Article 12.8: 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 a specific government use.

3. Notwithstanding Article 11.6 (Cross-Border Trade in Services – Market Access), a Party may adopt or maintain a measure that allocates and assigns spectrum and that manages frequencies. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of providers of a public telecommunications service, provided that the Party does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands based on existing and future needs.

#### **Article 12.9: Enforcement**

Each Party shall adopt or maintain appropriate procedures and authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 12.3 and 12.4. Those procedures must include the ability to impose sanctions, which may include financial penalties, corrective orders, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licenses, concessions, permits, registrations, or other types of authorizations.

#### **Article 12.10: Resolution of Domestic Telecommunications Disputes**

##### **Recourse to Telecommunications Regulatory Bodies**

1. Further to Article 20.5 (Transparency – Administrative Proceedings) and Article 20.6 (Transparency – Review and Appeal) each Party shall ensure that:
  - (a) an enterprise of the other Party has, within a reasonable period of time, recourse to a telecommunications regulatory body or other relevant body to resolve disputes regarding a measure that relates to matters covered in Articles 12.3 and 12.4 and that, under the domestic law of the Party, are within the body's jurisdiction; and

- (b) a provider of a public telecommunications network or service of the other Party requesting interconnection with a major provider in the Party's territory has recourse, within a reasonable and publicly specified period of time after the provider requests interconnection, to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with that major provider.
2. Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a Party's telecommunications regulatory body may request the body to reconsider that determination or decision.
3. With respect to Canada, reconsideration shall not apply to a determination or decision related to the establishment and application of spectrum and frequency management policies.

#### **Article 12.11: Transparency**

Further to Article 20.3 (Transparency – Publication) and Article 20.4 (Transparency – Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall ensure that:

- (a) regulations, including the basis for those regulations, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any regulation that its telecommunications regulatory body proposes;

- (c) its measures relating to a public telecommunications network or service are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service,
  - (ii) procedures relating to judicial and other adjudicatory proceedings,
  - (iii) specifications of technical interfaces,
  - (iv) conditions for attaching terminal or other equipment to a public telecommunications network, and
  - (v) notification, licensing, concession, permit, registration, or other types of authorization. requirements, if any; and
- (d) information on bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use is made publicly available.

**Article 12.12: Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the provision of telecommunications services. To this end, each Party may refrain from applying a regulation to a public telecommunications service, if its telecommunications regulatory body determines that:

- (a) enforcement of that regulation is not necessary to prevent an unreasonable or discriminatory practice;

- (b) enforcement of that regulation is not necessary to protect consumers; or
- (c) it is consistent with the public interest, including promoting and enhancing competition between providers of a public telecommunications network or service.

#### **Article 12.13: Relationship to Other Chapters**

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

#### **Article 12.14: International Standards and Organizations**

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

## **Annex 12.4**

### **Rural Telephone Suppliers**

1. Honduras may designate and exempt a rural telephone company in its territory from Article 12.4, provided that the rural telephone company provides public telecommunications services to fewer than 2% of the subscriber lines installed in the territory of Honduras. The number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company, its owners, its subsidiaries, and its affiliates.

2. This Annex does not preclude Honduras from imposing the requirements set out in Article 12.4 on rural telephone companies.