

CHAPTER ELEVEN

TELECOMMUNICATIONS

Article 11.01: Definitions

For purposes of this Chapter:

cost-oriented means based on cost, including 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 transport service, including a service supplier other than a supplier of public telecommunications transport services;

enterprise means an “enterprise” as defined in Article 1.01 (Initial Provisions and General Definitions – 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 a public telecommunications transport 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 supplied to a company that is not a related subsidiary, branch or affiliate or that is offered to a customer or potential customer; for 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 two 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 choosing;

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 point means the final demarcation of the public telecommunications transport network at the user's premises;

non-discriminatory means treatment no less favourable than that accorded to another user of like public telecommunications transport networks or services in 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 required, explicitly or in effect, by a Party to be offered to the public generally that involves the real-time transmission of customer-supplied information between two or more points without an end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission;

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

service supplier means a person of a Party who is seeking to supply or **who** supplies a service, including a supplier of a telecommunications transport network or service;

supply 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 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;

user means an end-user or a supplier of a public telecommunications transport service;
and

value-added service means a service that adds value to public telecommunications transport services through enhanced functionality, by:

- (a) acting on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) providing a customer with additional, different or restructured information; or
- (c) providing a customer interaction with stored information.

Article 11.02: Scope of Application

1. This Chapter applies to:
 - (a) a measure adopted or maintained by a Party in relation to accessing and using a public telecommunications transport network or service;
 - (b) a measure adopted or maintained by a Party relating to an obligation of a supplier of a public telecommunications transport network or service;
 - (c) any other measure adopted or maintained by a Party relating to a public telecommunications transport network or service; and
 - (d) a measure adopted or maintained by a Party relating to the supply of a value-added service.

2. This Chapter does not apply to a measure of a Party affecting the transmission by electromagnetic means, including broadcast and cable distribution, of radio or television programming intended for reception by the public.

3. This Chapter does not:
 - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply a telecommunications transport network or service, other than as specifically provided in this Agreement;
 - (b) require a Party to establish, construct, acquire, lease, operate or supply a telecommunications transport network or service not offered to the public generally; or
 - (c) require a Party to compel a service supplier to establish, construct, acquire, lease, operate or supply a telecommunications transport network or service not offered to the public generally.

Article 11.03: Access to and Use of Public Telecommunications Transport Networks or Services

1. Subject to a Party's right to restrict the supply 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 is accorded access to and use of a public telecommunications transport network or service 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 has access to and use of a public telecommunications transport network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 6 and 7, that the enterprise is permitted to:

- (a) purchase, or lease, and attach terminal or other equipment that interfaces with a public telecommunications transport network;
- (b) interconnect private leased or owned circuits with a public telecommunications transport network and service in the territory, or across the borders, of that Party or with circuits leased or owned by another enterprise;
- (c) use an operating protocol of its choice; and
- (d) perform a switching, signalling or processing function.

3. Each Party shall ensure that an enterprise of the other Party may use a public telecommunications transport network and service 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 a database or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 23.02 (Exceptions - General Exceptions), a Party may take a measure necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of users of public telecommunications transport services.

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.

6. Each Party shall ensure that no condition is imposed on access to and use of a public telecommunications transport network or service other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of a public telecommunications transport network or service, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of a public telecommunications transport network or service; or
- (c) ensure that a service supplier of the other Party does not supply 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 transport network or service may include:

- (a) a restriction on resale or shared use of that service; the Parties understand that in Panama, resale of mobile cellular and personal communications services is at the discretion and prior approval of the licensed provider;

- (b) a requirement to use a specified technical interface, including an interface protocol, for interconnection with that network or service;
- (c) a requirement, where necessary, for the inter-operability of that service;
- (d) 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;
- (e) a restriction on interconnection of private leased or owned circuits with that network or service or with circuits leased or owned by another enterprise; and
- (f) notification, registration and licensing.

Article 11.04: Procedures for Licences or Concessions

Where a Party requires a supplier to have a licence or concession to supply a public telecommunications transport network or service, that Party shall ensure that:

- (a) once the application is considered complete, a decision whether to grant the licence or concession is made within the period required by each Party; and
- (b) the reasons for any denial will be communicated to the applicant, according to each Party's procedures.

Article 11.05: Conduct of Major Suppliers

Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 include:
 - (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 supplier, on a timely basis, technical information about essential facilities and commercially relevant information that is necessary for that service supplier to provide a service.

Interconnection

3. Subject to a Party's reservations in its Schedule to Annex I or II, each Party shall ensure that a major supplier provides interconnection:
 - (a) at any technically feasible point in the network;
 - (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
 - (c) of a quality no less favourable than that provided to its own like services, 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:
 - (i) transparent and reasonable, having regard to economic feasibility, and
 - (ii) 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
- (e) 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.

Article 11.06: Universal Service

1. Each Party has the right to define the universal service obligation it wishes to adopt or maintain.
2. Each Party shall administer any 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 11.07: 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.

2. Notwithstanding Article 10.05 (Cross-Border Trade in Services – Market Access), a Party may adopt or maintain a measure allocating and assigning spectrum and managing frequencies. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of a public telecommunications transport service. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

Article 11.08: Regulatory Body

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, a supplier of a public telecommunications transport network or service or value-added service.

2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to market participants.

Article 11.09: Enforcement

Each Party shall maintain appropriate procedures and authority to enforce compliance with the Party's domestic measures relating to the obligations in Articles 11.03 and 11.05. Those procedures shall include the ability to impose appropriate sanctions, which may include financial penalties, corrective orders or the modification, suspension or revocation of licences.

Article 11.10: Resolution of Domestic Telecommunication Disputes

Recourse to Regulatory Bodies

1. Further to Articles 20.04 (Transparency – Administrative Proceedings) and 20.05 (Transparency – Review and Appeal), each Party shall ensure that:
 - (a) a supplier of a public telecommunications transport network or service or value-added service of the other Party has timely recourse to its regulatory body to resolve disputes regarding a measure that relate to matters covered in Articles 11.03 and 11.05 and that, under the domestic law of the Party, are within the regulatory body’s jurisdiction; and
 - (b) a supplier of a public telecommunications transport network or service of the other Party requesting interconnection with a major supplier in the Party’s territory has recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to its 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 a supplier of public telecommunications transport networks or services or value-added services aggrieved by the determination or decision of a regulatory body may petition that body for reconsideration of that determination or decision.
3. Paragraph 2 does not apply:
 - (a) with respect to Canada, to a determination or decision related to the establishment and application of spectrum and frequency management policies;

- (b) with respect to Panama, to a determination or decision related to the establishment and application of rulings of general application, as defined in Article 20.01 (Transparency – Definitions).

Article 11.11: Transparency

1. Further to Articles 20.02 (Transparency – Publication) and 20.03 (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 make publicly available:

- (a) relevant procedures of its regulatory body, including those related to interconnection and licensing;
- (b) licensing criteria, the terms and conditions for licences, and the period of time normally required to reach a decision concerning an application for a licence;
- (c) the current state of allocated frequency bands, but detailed identification of frequencies allocated for specific government use is not required;
- (d) its measures relating to public telecommunications transport networks or services and, where applicable, value-added services, including:
 - (i) tariffs and other terms and conditions of service,
 - (ii) specifications of technical interfaces,
 - (iii) conditions for attaching terminal or other equipment to a public telecommunications transport network, and

(iv) notification, permit, registration or licensing requirements, if any;
and

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

2. Each Party shall, upon request, make available an interconnection agreement in force between a major supplier in its territory and another supplier of a public telecommunications transport service in its territory to the others suppliers of public telecommunications transport services of each Party.

Article 11.12: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

- (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 suppliers of a public telecommunications transport network or service.

Article 11.13: Relation to Other Chapters

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

Article 11.14: 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.