

10 TELECOMMUNICATIONS SERVICES

ARTICLE 1

Purpose and Definitions

1. The purpose of this Chapter is to provide for commitments additional to Chapters 7 (Trade in Services) and 8 (Investment) in relation to telecommunication services.
2. For the purpose of this Chapter:
 - (a) “end user” means a person (including a service consumer and a service supplier) to whom a public telecommunications network or service is supplied, other than for use in the further supply of a public telecommunications network or service;
 - (b) “essential facilities” means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
 - (c) “facilities-based suppliers” means suppliers of public telecommunications networks or services that are:
 - (i) licensed carriers in Australia; or
 - (ii) facilities-based operators in Singapore;
 - (d) “leased circuits” means telecommunications facilities between two or more designated points which are set aside for the dedicated use of or availability to a particular user;
 - (e) a “major supplier” is a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market¹ for public telecommunications networks or services as a result of:

¹ For the avoidance of doubt, “relevant market” may refer to a market for the supply of public telecommunications networks or services (or parts thereof) provided by any supplier of public telecommunications networks or services, that give this supplier the ability to materially affect the terms of participation in the market (having regard to price and supply).

- (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (f) “network element” means facilities or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facilities or equipment, which may include local loops, sub-loops and line sharing;
- (g) “number portability” means the ability of service consumers of public telecommunications networks or services to retain existing telephone numbers when switching between suppliers of like public telecommunications networks or services;
- (h) “public telecommunications service” means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally;²
- (i) “public telecommunications network” means the telecommunications infrastructure authorised by a Party to be used to provide public telecommunications services between defined network termination points;
- (j) “regulator” means any person authorised or designated to have responsibility for the regulation of telecommunications;
- (k) “regulatory decisions” means decisions by regulators made pursuant to authority conferred under domestic law in relation to:
- (i) the making of rules for the telecommunications industry excluding legislation and statutory rules;
 - (ii) the approval of terms and conditions, standards and codes to apply in the telecommunications industry;
 - (iii) the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and
 - (iv) licensing;
- (l) a “supplier of public telecommunications networks or services” means a supplier of public telecommunications networks and/or public telecommunications services to users;
- (m) “telecommunications” means the transmission and reception of signals by any electromagnetic means; and
- (n) “user” means an end-user or a supplier of public telecommunications network or services.

² “Public telecommunications service” includes Internet routing and connectivity services.

ARTICLE 2

Scope

1. This Chapter shall apply to measures by a Party affecting trade in telecommunications services.
2. This Chapter shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic law and regulations.

ARTICLE 3

*Access to and Use of Public Telecommunications Networks or Services*³

1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders in a timely fashion, on reasonable, transparent, and non-discriminatory terms and conditions, including as set out in Article 3.2 to Article 3.6.⁴
2. Each Party shall ensure that such service suppliers are permitted to:
 - (a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications network and which is necessary to supply a supplier's services;
 - (b) provide services to individual or multiple service consumers over any leased or owned circuits;
 - (c) interconnect leased or owned circuits with public telecommunications networks or services in the territory or across the borders of that Party or with circuits leased or owned by another service supplier;
 - (d) perform switching, signalling, processing and conversion functions;
and
 - (e) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

³ For avoidance of doubt, access to unbundled network elements is addressed in Article 9.3.

⁴ For avoidance of doubt, each Party may fulfil the obligations in this Article by any measure it considers necessary or appropriate, within the context of domestic law and regulation.

3. Each Party shall ensure that all service suppliers of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders and for access to information contained in the databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of personal data of end users of public telecommunications networks or services

subject to the requirement that such measures are 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:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or
- (b) to protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in Article 3.5, conditions for access to and use of public telecommunications networks or services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
- (b) requirements, where necessary, for the inter-operability of such services;
- (c) 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; or
- (d) notification, registration and licensing.

ARTICLE 4

Transparency

1. The Parties shall apply the measures referred to in Article 2.1 in a transparent manner, which:

- (a) provides suppliers of public telecommunications networks or services of the other Party who are likely to be affected by regulatory decisions with a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on proposed regulatory decisions and to provide these views to regulators;
 - (b) requires regulators to take into account views provided by such suppliers pursuant to Article 4.1(a); and
 - (c) ensures that regulators make available to such suppliers their regulatory decisions and an explanation of their reasons for those regulatory decisions.
2. At the request of a supplier of public telecommunications networks or services who is likely to be affected by regulatory decisions, regulators may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in Article 4.1(a) and Article 4.1(c) provided that such limitations:
- (a) are applied only to the extent necessary to protect such commercial interests; and
 - (b) do not deprive suppliers of public telecommunications networks or services of the other Party of their right under Article 4.1(a) to provide their views to regulators.
3. Where a licence is required, the following shall be made publicly available:
- (a) all the licensing criteria, any terms and conditions of the licence, and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of individual licences.
4. The reasons for the denial of a licence shall be made known to the applicant upon request.

ARTICLE 5

Independent Regulators

1. Regulators shall be independent of any supplier of public telecommunications networks or services.
2. The decisions of, and the procedures used by, regulators shall be fair and impartial and shall be made and implemented without undue delay.

ARTICLE 6

Dispute Settlement and Appeal

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to a regulator to consider and, to the extent provided for in domestic law, to resolve disputes regarding compliance with domestic measures relating to the obligations contained in this Chapter.

2. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party aggrieved by a regulatory decision has the opportunity to appeal such regulatory decision to an independent judicial or administrative authority. Such an appeal shall not constitute grounds for non-compliance by that supplier with the regulatory decision unless an appropriate authority stays such decision.

3. Each Party shall ensure that, in the hearing of appeals by an administrative authority referred to in Article 6.2:⁵

(a) suppliers of public telecommunications networks or services of the other Party which are party to the appeal have a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on the issues to be determined in the appeal and to provide these views to the administrative authority;

(b) the administrative authority takes into account views provided by such suppliers pursuant to Article 6.3(a); and

(c) the administrative authority makes available to such suppliers its decision and an explanation of the reasons for its decision.

4. At the request of a supplier of public telecommunications networks or services which is a party to an appeal referred to in Article 6.3, an administrative authority may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in Article 6.3(a) and Article 6.3(c) provided that such limitations:

(a) are applied only to the extent necessary to protect such commercial interests; and

(b) do not deprive suppliers of public telecommunications networks or services of the other Party which are party to an appeal referred to in Article 6.3 of their right under Article 6.3(a) to provide their views to the administrative authority.

⁵ For the avoidance of doubt, this paragraph does not apply to judicial authorities of either Party.

ARTICLE 7

General Competitive Safeguards

1. Each Party shall maintain appropriate measures⁶ for the purpose of preventing suppliers of public telecommunications networks or services in its territory from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in Article 7.1 shall be defined in each Party's sectoral or generic competition regime, as the case may be, and shall include:
 - (a) anti-competitive horizontal arrangements;
 - (b) misuse of market power;
 - (c) anti-competitive vertical arrangements; and
 - (d) anti-competitive mergers and acquisitions.

ARTICLE 8

Interconnection between Suppliers of Public Telecommunications Networks

Each Party shall maintain appropriate measures to achieve connectivity between public telecommunications networks in order to ensure that end-users of telecommunications services can communicate with each other including, where that Party considers it necessary, by requiring facilities-based suppliers to interconnect with one another.

ARTICLE 9

Additional Obligations Relating to Major Suppliers⁷

1. Non-discrimination
 - (a) Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated supplier of public telecommunications networks or services regarding:

⁶ The maintenance of appropriate measures includes the effective enforcement of such measures.

⁷ For the avoidance of doubt, the obligations imposed under this Article only apply with respect to those public telecommunications networks or services, or parts thereof, that result in a supplier of public telecommunications networks or services being a major supplier.

(i) availability, provisioning, rates,⁸ or quality of like public telecommunications networks or services; and

(ii) availability of technical interfaces

where such suppliers of public telecommunications networks or services and subsidiaries, affiliates and non-affiliates of the major supplier are in like circumstances.

2. Competitive Safeguards

(a) Each Party shall maintain appropriate measures⁹ for the purpose of preventing major suppliers in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in Article 9.2(a) shall include:

(i) engaging in anti-competitive cross-subsidisation;

(ii) using information obtained from competitors with anti-competitive results;

(iii) not making available, on a timely basis, to suppliers of public telecommunications networks or services of the other Party, technical information about essential facilities and commercially relevant information which is necessary for them to provide services; and

(iv) pricing services in a manner that is likely to unreasonably restrict competition, such as predatory pricing.

3. Unbundled Network Elements

(a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party access to network elements for the provision of public telecommunications services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory

⁸ The costs incurred by a major supplier in supplying public telecommunications networks or services to itself may be determined in accordance with any cost-oriented costing methodology considered appropriate by a Party. Treatment that is no less favourable regarding rates for like public telecommunications networks or services may take into account the legitimate transaction costs which the major supplier incurs in supplying such public telecommunications networks or services to suppliers of public telecommunications networks or services of the other Party.

⁹ The maintenance of appropriate measures includes the effective enforcement of such measures.

to provide access to in accordance with Article 9.3(a) on the basis of the technical feasibility of unbundling and the state of competition in the relevant market.

4. Co-Location

(a) Each Party shall ensure that major suppliers in its territory provide to facilities-based suppliers of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Where physical co-location under Article 9.4(a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers co-operate with facilities-based suppliers to find and implement the most feasible alternative solution in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory. Such solutions may include:

- (i) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
- (ii) conditioning additional equipment space;
- (iii) optimizing the use of existing space; or
- (iv) finding adjacent space.

(c) Each Party may determine in accordance with its domestic laws and regulations the locations at which it requires major suppliers in its territory to provide co-location under Article 9.4(a) on the basis of the state of competition in the relevant market.

5. Resale

(a) Each Party shall ensure that major suppliers in its territory:

- (i) allow suppliers of public telecommunications networks or services of the other Party to purchase at reasonable rates, for the purpose of resale, specific public telecommunications services supplied by the major suppliers at retail that are designated by the first Party; and
- (ii) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.

6. Rights of Way

(a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers to facilities-based suppliers of the other Party:

- (i) in a timely fashion; and
- (ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Each Party may determine in accordance with its domestic laws and regulations the poles, ducts, conduits or other structures to which it requires major suppliers in its territory to provide access under Article 9.6(a) on the basis of the state of competition in the relevant market.

7. Interconnection with a Major Supplier

(a) Each Party shall ensure that major suppliers in its territory provide interconnection to facilities-based suppliers of the other Party:

- (i) at any technically feasible point in the major supplier's network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (ii) of a quality no less favourable than that provided by such major supplier for its own like services or for like services of non-affiliated service suppliers 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, 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
- (v) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory pursuant to at least one of the following options:

- (i) a publicly available reference interconnection offer;

(ii) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services;

(iii) an individualised agreement between the major supplier and the supplier of public telecommunications networks or services that seeks to interconnect with it; or

(iv) binding arbitration.

(c) Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

(d) Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

8. Resolution of Interconnection Disputes

(a) When facilities-based suppliers are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the regulator, which shall aim to resolve the disputes within 180 days of the referral to it, provided that the resolution of complex disputes may take longer than 180 days.

(b) Where the regulator is unable to resolve the disputes referred to in Article 9.8(a) within 180 days, each Party shall ensure that the regulator endeavours to provide interim determinations on the disputes where necessary to ensure that facilities-based suppliers of the other Party are able to interconnect with a major supplier.

ARTICLE 10

Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, for those services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

ARTICLE 11

Access to Buildings¹⁰

¹⁰ To the extent of any inconsistency between this Article and Article 9, the latter shall prevail.

Each Party shall ensure that facilities-based suppliers may install, maintain and have access to their equipment in buildings or on land that the Party considers is necessary to enable public telecommunications services to be supplied to end users who are customers of the facilities-based supplier.

ARTICLE 12

Allocation and Use of Scarce Resources¹¹

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government use shall not be required.

ARTICLE 13

Industry Participation

1. Each Party shall, through any forum or other mechanism it considers appropriate:

- (a) facilitate the involvement of suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of industry standards and, where it considers appropriate, in the regulation of the telecommunications industry; and
- (b) encourage suppliers of public telecommunications networks or services of the other Party operating in its territory to provide feedback to regulators on the regulation of the telecommunications industry.

ARTICLE 14

Enforcement

Each Party shall adopt or maintain timely, proportionate and effective sanctions for the purpose of enforcing domestic measures relating to the obligations contained in this Chapter. Such sanctions may include financial penalties,

¹¹ Decisions on the allocation and assignment of spectrum and frequency management are not measures that are per se inconsistent with Article 3 (Market Access) of Chapter 7 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

injunctions, orders to cease and desist (on an interim or final basis), and/or the ability to suspend, modify or revoke licences.

ARTICLE 15

Exceptions

For the avoidance of doubt, this Chapter shall be subject to the general and security exceptions listed in Articles 18 and 19 of Chapter 7 (Trade in Services) and Articles 19 and 20 of Chapter 8 (Investment).

