

CHAPTER 8 TELECOMMUNICATIONS

Article 8.1 Definitions

For purposes of this Chapter:

- (a) “**broadcasting**” means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;
- (b) “**cost-oriented**” means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) “**end-user**” means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;
- (d) “**enterprise**” means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;
- (e) “**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 supply a service;
- (f) “**interconnection**” means linking with suppliers providing public telecommunications services or networks in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- (g) “**international mobile roaming service**” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user’s home public telecommunications network is located;
- (h) “**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 user;

- (i) “**licence**” means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including concessions, permits, or registrations;
- (j) “**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:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (k) “**network element**” means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (l) “**non-discriminatory**” means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;
- (m) “**number portability**” means the ability of end-users of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (n) “**physical co-location**” means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;
- (o) “**public telecommunications network**” means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;
- (p) “**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 the real-time transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer’s information;
- (q) “**reference interconnection offer**” means an interconnection offer extended by a major supplier and filed with, approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection, such that a supplier of public telecommunications services that is

- willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;
- (r) “**service supplier**” means a person of a Party that seeks to supply or supplies a service;
 - (s) “**telecommunications**” means the transmission and reception of signals by any electromagnetic means, including by photonic means;
 - (t) “**telecommunications regulatory body**” means a body or bodies responsible for the regulation of telecommunications;
 - (u) “**user**” means a service consumer or a service supplier; and
 - (v) “**virtual co-location**” means an arrangement whereby a requesting supplier seeking co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to such premises and allows the major supplier to install, maintain, and repair such equipment.

Article 8.2 Scope and Coverage

1. This Chapter shall apply to measures affecting trade in telecommunications services.
2. This Chapter shall not apply to any measure affecting broadcasting.
3. Nothing in this Chapter shall be construed to 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.

Article 8.3 Access to and Use¹ of Public Telecommunications Services

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.
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;

¹ For greater certainty, this Article does not prohibit a Party from requiring a service supplier to obtain a licence to supply any public telecommunications service within its territory.

- (b) provide services to individual or multiple end-users over leased or owned circuits;
 - (c) connect owned or leased circuits with public telecommunications networks or services, or with circuits leased or owned by another enterprise;
 - (d) perform switching, signalling, processing or conversion functions; and
 - (e) use operating protocols of their choice.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications 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 of this Article, a Party may take such measures as are necessary to ensure the security and confidentiality of messages and protect the privacy of personal data of end-users of public telecommunications networks or services, 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 or services, other than as necessary to:
- (a) 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) protect the technical integrity of public telecommunications networks or services.
6. Provided that they satisfy the criteria set out in paragraph 5 of this Article, conditions for access to and use of public telecommunications networks or services may include:
- (a) requirements 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 or 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; and
 - (d) licensing, permit, registration or notification procedures which, if adopted or

maintained, are transparent and provide for the processing of applications filed thereunder in accordance with the Party's domestic laws and regulations.

Article 8.4 Competitive Safeguards on Major Suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. Such anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation, price squeeze or predatory pricing;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 8.5 Interconnection

1. Each Party shall ensure that any service supplier authorised to provide public telecommunications networks or services has the right and obligation to negotiate interconnection with other suppliers of public telecommunications networks or services. Interconnection should be agreed on the basis of commercial negotiations² between the parties concerned.³
2. The telecommunications regulatory body of each Party shall ensure that any supplier authorised to provide public telecommunications networks or services that acquires information from another supplier of public telecommunications networks or services during the process of negotiating interconnection arrangements, uses that information solely for the purpose for which it was supplied and respects, at all times, the confidentiality of information transmitted or stored.

² For further clarity, service suppliers authorised to provide public telecommunications networks or services shall freely determine the terms, conditions and rates that will be included in their interconnection agreements by negotiating among themselves. Each Party shall ensure that if such negotiations fail, any one of the parties may have recourse to the telecommunications regulatory body for resolution of disputes regarding appropriate terms, conditions and rates for interconnection. The telecommunications regulatory body shall conduct the dispute settlement procedure within the scope of relevant domestic legislation and resolve the dispute within a reasonable period of time.

³ For Sri Lanka, all interconnection agreements will need to be approved by the telecommunications regulatory body of Sri Lanka.

Article 8.6
Interconnection with a Major Supplier

1. Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable 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 fashion, 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.
2. Each Party shall ensure that the procedures applicable for interconnection with a major supplier in its territory are made publicly available.
3. Each Party shall provide a means for suppliers of public telecommunications networks or services of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring the public availability of:
 - (a) interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications networks or services in its territory;
 - (b) rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body; or
 - (c) a reference interconnection offer.
4. Further to paragraphs 2 and 3 of this Article, each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through the following options:

- (a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or
 - (b) the terms and conditions of an interconnection agreement in effect.
5. In addition to the options provided in paragraph 4 of this Article, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.

Article 8.7 Co-Location by Major Suppliers

1. Each Party shall endeavour to ensure that a major supplier in its territory provides, to suppliers of public telecommunications networks or services of the other Party in the Party's territory, physical co-location of equipment necessary for interconnection, or access to unbundled network elements on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and based on a generally available offer.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution such as facilitating virtual co-location on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and based on a generally available offer.
3. Each Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2 of this Article. When making this determination, the Party shall take into account factors such as the state of competition in the market in which co-location is required, whether such premises can feasibly be economically or technically substituted in order to provide a competing service, or other specified public interest factors.
4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location consistent with paragraph 1 of this Article, without prejudice to the Party's decision on such a request.

Article 8.8

Access to Poles, Ducts, Conduits and Rights-of-Way Owned or Controlled by Major Suppliers

1. Each Party shall endeavour to ensure that a major supplier in its territory provides, to suppliers of public telecommunications networks or services of the other Party in the first Party's territory, access to poles, ducts, conduits, and rights-of-way, or any other structures as determined by the Party, owned or controlled by the major supplier on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent and subject to technical feasibility.
2. Each Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access under paragraph 1 of this Article. When making this determination, the Party shall take into account factors such as the competitive effect of lack of such access, whether such structures can feasibly be economically or technically substituted in order to provide a competing service, or other specified public interest factors.

Article 8.9

Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall ensure the public availability of the following information:
 - (a) all the licensing criteria and procedures it applies;
 - (b) the period it normally requires to reach a decision concerning an application for a licence; and
 - (c) the terms and conditions of all licences in effect.
2. Each Party shall ensure that, on request, an applicant receives the reasons for the:
 - (a) denial of a licence;
 - (b) imposition of supplier-specific conditions on a licence;
 - (c) revocation of a licence; or
 - (d) refusal to renew a licence.

Article 8.10
Allocation and Use of Scarce Resources

1. 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.
2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered as inconsistent with Article 7.3 (Market Access) of Chapter 7 (Trade in Services) or Article 10.7 (Performance Requirements) of Chapter 10 (Investment). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting the number of suppliers of a public telecommunications network or service, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account present and future needs, and spectrum availability.
4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use appropriate mechanisms, including auctions, to assign spectrum for commercial use.

Article 8.11
Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by each Party.
3. Where applicable, any fund that has been set up by a Party for the purposes of universal services shall be used in accordance with the relevant legislation of the Party.

Article 8.12
Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, in accordance with its laws and regulations, on reasonable terms and conditions, and without impairment to quality and reliability of the service or convenience to the end-users.

Article 8.13
International Submarine Cable Systems

1. Where under national law and regulation, a Party has authorised a supplier of public telecommunications services in its territory to operate a submarine cable system (including the landing facilities and services) as a public telecommunications service, that Party shall ensure that such supplier provides that public telecommunications service to suppliers of public telecommunications services of the other Party on reasonable terms, conditions, and rates that are no less favourable than such supplier offers to any other supplier of public telecommunications services in like circumstances.
2. Where submarine cable landing facilities and services cannot be economically or technically substituted, and a major supplier of public international telecommunication services that controls such cable landing facilities and services has the ability to materially affect the price and supply for those facilities and services for the provision of public telecommunications services in a Party's territory, that Party shall ensure that such major supplier:
 - (a) permits suppliers of public telecommunications services of the other Party to:
 - (i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and
 - (ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the submarine cable landing station at terms, conditions, and cost-oriented rates, that are reasonable and non-discriminatory; and
 - (b) provides suppliers of telecommunications of the other Party submarine cable capacity, backhaul links and cross-connect links in the submarine cable landing station at terms, conditions and rates that are reasonable and non-discriminatory.

Article 8.14
Independent Regulators

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest⁴ or maintain an operating or management role in any supplier of public telecommunications services.
2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body or other competent authority related to provisions contained in this Chapter are impartial with respect to all market participants.
3. A Party shall not accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of that Party.

Article 8.15
International Mobile Roaming

1. The Parties shall endeavour to co-operate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.
2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
 - (a) ensuring that information regarding retail rates is easily accessible to consumers; and
 - (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the devices of their choice, including mobile devices.
3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it

⁴ This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

appropriate, it may co-operate and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with the other Party.

4. If a Party (“the first Party”) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (“the second Party”) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which:⁵
 - (a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of both Parties;⁶ or
 - (b) in the absence of an arrangement of the type referred to in sub-paragraph (a) above, the supplier of public telecommunications services of the second Party, of its own accord:
 - (i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions⁷; and
 - (ii) meets any additional requirements⁸ that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 of this Article shall be deemed to be in compliance with its obligations under Article 8.3 (Access to and Use of Public Telecommunications Services) and Article 8.6 (Interconnection with a Major Supplier) with respect to international mobile roaming services.

⁵ For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

⁶ For greater certainty, access under this sub-paragraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

⁷ For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

⁸ For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

6. Each Party shall endeavour to ensure that:
 - (a) suppliers of public telecommunications services in its territory; or
 - (b) its telecommunications regulatory body,make publicly available retail rates for international mobile roaming services.
7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 8.16
Resolution of Telecommunications Disputes

1. Each Party shall ensure that:

Recourse

- (a) service suppliers authorised by the telecommunications regulatory body of a Party to provide public telecommunications networks or services in its territory may have recourse to the telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 8.3 to 8.15 of this Chapter;
- (b) if the telecommunications regulatory body or other relevant body of the Party declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;
- (c) suppliers of public telecommunications networks or services requesting interconnection with a major supplier in its territory will have recourse, either:
 - (i) at any time; or
 - (ii) after a reasonable or specified period of time which has been made publicly known,

to an independent domestic body, which may be a telecommunications regulatory body as referred to in Article 8.14 (Independent Regulators), to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Reconsideration

- (d) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the telecommunications regulatory body, or other relevant body, including judicial body, in accordance with its laws and regulations, to reconsider that determination or decision. No Party may permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the telecommunications regulatory body or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which an application for reconsideration is available, in accordance with its laws and regulations.

Judicial Review

- 2. No Party may permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

Article 8.17
Transparency

- 1. Each Party shall ensure that when its telecommunications regulatory body seeks input for a proposal for a regulation, that body shall:
 - (a) make the proposal public or otherwise available to any interested persons;
 - (b) include an explanation of the purpose of and reasons for the proposal;
 - (c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;
 - (d) to the extent practicable, make publicly available all relevant comments filed with it; and
 - (e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.
- 2. A Party shall ensure that its measures relating to public telecommunications networks or services are made publicly available, including those pertaining to:
 - (a) tariffs and other terms and conditions of service;
 - (b) specifications of technical interfaces;

- (c) conditions for attaching terminal or other equipment to the public telecommunications network;
- (d) notification, permit, registration or licensing requirements, if any;
- (e) general procedures relating to resolution of telecommunications disputes provided for in Article 8.16 (Resolution of Telecommunications Disputes); and
- (f) any measures of the telecommunications regulatory body through which the responsibility for preparing, amending and adopting standards-related measures affecting access and use are delegated to other bodies.

Article 8.18
Flexibility in the Choice of Technology

No Party may prevent suppliers of public telecommunications networks or services from choosing the technologies they wish to use to supply their services, subject to its national laws and regulations or requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting such measures shall do so consistent with Article 8.17 (Transparency).

Article 8.19
Relationship 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.