

## CHAPTER 11

### TELECOMMUNICATIONS

#### Article 11.1: Definitions

For the purposes of this Chapter:

**cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services<sup>1</sup>;

**end-user** means a final consumer of or subscriber to a public telecommunications service, including an enterprise other than a supplier of public telecommunications services;

**enterprise** means an enterprise as defined in Article 1.4 (General Definitions) of Chapter 1 (Initial Provisions and Definitions), and a branch of an enterprise;

**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;

**interconnection** means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**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;

**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;

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<sup>1</sup> For Indonesia, a reasonable profit shall not apply for interconnection rates.

**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 public telecommunications service or to operate a public telecommunications network, including permits or registrations;

**major supplier** means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for the supply of public telecommunications networks or services, or parts thereof, as a result of:

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

**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;

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

**physical co-location** means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a supplier to supply public telecommunications networks or services;

**public telecommunications network** means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

**public telecommunications service** means any telecommunications service offered to the public generally. These services may include telephone and data transmission typically involving 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;

**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 so 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;

**resale** means the supply, by a supplier of public telecommunications services (the first supplier), of public telecommunications services purchased from

another supplier of public telecommunications services (the second supplier) and which the second supplier also provides at retail to end-users, without significant alteration to these services;

**standard interconnection offer** means an interconnection offer extended by a major supplier, which is neither filed with, or approved by a telecommunications regulatory body, but is published and sufficiently details the terms, rates and conditions for interconnection so 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;

**telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;

**telecommunications regulatory body** means a body or bodies responsible for the regulation of telecommunications. For greater certainty, Ministers or the Cabinet of a Party shall not constitute such a body or bodies; and

**user** means an end-user or a supplier of public telecommunications networks or services.

## **Article 11.2: Scope**

1. This Chapter shall apply to:
  - (a) any measure relating to access to and use of public telecommunications networks or services;
  - (b) any measure relating to obligations regarding suppliers of public telecommunications networks or services; and
  - (c) any other measure relating to telecommunications networks or services.
2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:
  - (a) Article 11.4.1 shall apply with respect to access to and use of public telecommunications networks or services by a service supplier of broadcast or cable distribution of radio or television programming; and
  - (b) Article 11.22 shall apply to any measure relating to broadcast or cable distribution of radio or television programming, to the extent that the measure also affects public telecommunications networks or services.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public generally;<sup>2</sup>

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

### **Article 11.3: Approaches to Regulation**

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications networks or services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; or

(c) use any other appropriate means that benefit the long-term interest of end-users.

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<sup>2</sup> For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of the other Party to establish, construct, acquire, lease, operate or supply public telecommunications networks or services.

#### **Article 11.4: Access to and Use of Public Telecommunications Networks and Services**

1. Each Party shall ensure that any enterprise of the other Party is accorded access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any 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 services to individual or multiple end-users over leased or owned circuits;

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

(d) perform switching, signalling, processing and conversion functions; and

(e) use operating protocols of their choice other than as necessary to interface with public telecommunications networks and services.

3. Each Party shall ensure that an enterprise of either 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 or any non-party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those 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 and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services generally available to the public; or

(b) protect the technical integrity of public telecommunications networks or services.

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

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, if necessary, for the interoperability of those networks and services;

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the laws or regulations of a Party.

7. The Parties recognise this Article does not prohibit either Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

## **Article 11.5: Obligations Relating to Suppliers of Public Telecommunications Networks or Services**

### *Interconnection*

1. Each Party shall provide its telecommunications regulatory body with the authority to require that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

### *Access to Numbers*

3. Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

### **Article 11.6: International Mobile Roaming**

1. The Parties shall endeavour to cooperate 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, such as ensuring that information regarding retail rates is easily accessible to consumers.

3. Each Party shall ensure that suppliers of public telecommunications services in its territory or its telecommunications regulatory body make publicly available retail rates for international mobile roaming services, for voice, data and text messages.

4. The Parties recognise that a Party, if 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 such rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with the other Party to facilitate the implementation of such measures, including by entering into arrangements with the other Party.

5. 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 where<sup>3</sup>:

- (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 the Parties;<sup>4</sup> or

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<sup>3</sup> For greater certainty, no Party may, solely on the basis of any obligations owed to it by the regulating 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.

<sup>4</sup> For greater certainty, access under paragraph 5(a) 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 subparagraph (a). The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable.

(b) in the absence of an arrangement of the type referred to in paragraph (a), 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 conditions,<sup>5</sup> and

(ii) meets any additional requirements that the first Party imposes with respect to the availability of the regulated rates or conditions.<sup>6</sup>

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

6. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 5 shall be deemed to be in compliance with its obligations under Article 9.4 (Most-Favoured Nation Treatment) of Chapter 9 (Trade in Services), Article 11.4, and Article 11.7 with respect to international mobile roaming services.

7. For greater certainty, nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

#### **Article 11.7: Treatment by Major Suppliers of Public Telecommunications Networks or Services**

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries, its affiliates or non-affiliated service suppliers regarding:<sup>7</sup>

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

(b) the availability of technical interfaces necessary for interconnection.

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<sup>5</sup> “Reasonably comparable rates or conditions” 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.

<sup>6</sup> 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.

<sup>7</sup> This article shall apply to Indonesia no later than 31 December 2020.



### **Article 11.8: Competitive Safeguards**

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier in its territory, from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 include, but are not limited to:
  - (a) engaging in anti-competitive cross-subsidisation;
  - (b) using information obtained from competitors with anti-competitive results; and
  - (c) not making available, on a timely basis, to other suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.
3. For greater certainty, nothing in this Article shall prevent a Party from maintaining measures for the purpose of preventing anti-competitive practices by suppliers of public telecommunications networks or services who are not major suppliers.

### **Article 11.9: Resale**

1. No Party shall introduce or maintain laws or regulations that prohibit the resale of any public telecommunications service<sup>8</sup>.
2. Each Party shall endeavour to promote resale of public telecommunication services subject to its laws and regulations.
3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by suppliers of public telecommunications services, based on the need to promote competition or to benefit the long-term interests of end-users.
4. Where a Party requires resale in accordance with paragraph 3, each Party shall ensure that any supplier of public telecommunications services in its territory:
  - (a) offers for resale at, reasonable rates that are transparent and non-discriminatory, to suppliers of public telecommunications services of the other

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<sup>8</sup> For greater certainty, paragraph 1 does not limit the right for the Parties to otherwise regulate resale.

Party, public telecommunications services that the supplier provides at retail to end-users; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

#### **Article 11.10: Unbundling of Network Elements**

1. Subject to paragraph 2, each Party shall ensure that suppliers of public telecommunications networks or services in its territory offer to other suppliers of public telecommunications networks or services access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent, for the supply of public telecommunications services.

2. Each Party may determine, in accordance with its laws and regulations, the network elements in its territory to which it requires access under paragraph 1. When a Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such network elements can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

#### **Article 11.11: Interconnection with Major Suppliers**

##### *General Terms and Conditions*

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:

- (a) at any technically feasible point in the major supplier's network;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
- (d) in a timely manner, 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 suppliers are not required to pay for network components or facilities that they do not require for the service to be provided; and

- (e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

#### *Options for Interconnecting with Major Suppliers*

2. Each Party shall ensure that any major supplier in its territory provides suppliers of public telecommunications services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of 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 services;
- (b) the terms and conditions of an interconnection agreement that is in effect;  
or
- (c) the terms and conditions set by a Party's telecommunications regulatory body or other competent body.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

#### *Public Availability of Interconnection Offers*

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

5. Each Party shall provide means for suppliers of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

- (a) the public availability of rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or
- (b) the public availability of a reference interconnection offer.

Services for which those rates, terms and conditions are made publicly available do not have to include all interconnection-related services offered by a major supplier, as determined by a Party under its laws and regulations.

### **Article 11.12: Provisioning and Pricing of Leased Circuits Services by Major Suppliers**

Each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications services) available to suppliers of public telecommunications networks or services of the other Party in a timely manner and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.<sup>9</sup>

### **Article 11.13: Co-Location by Major Suppliers**

1. Subject to paragraphs 2 and 3, each Party shall 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 (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

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 cooperates with suppliers of public telecommunications networks or services of the other Party to find and implement a practical and commercially viable alternative solution.

3. Each Party may determine, in accordance with its laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in paragraphs 1 and 2. When a Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner 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 in accordance with paragraph 1.

### **Article 11.14: Access to Facilities Owned or Controlled by Major Suppliers**

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and towers, or any other structures as determined by the Party,

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<sup>9</sup> This article shall apply to Indonesia no later than 31 December 2020.

and the sites on which these are located, owned or controlled by the major supplier, to suppliers of public telecommunications networks or services of the other Party in that Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, and towers, or any other structures and the sites on which these are located to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

### **Article 11.15: International Submarine Cable Systems**

1. Each Party shall provide its telecommunications regulatory body with the authority to require that, where suppliers of telecommunications networks or services operate submarine cable systems to provide public telecommunications networks or services in a Party's territory, those suppliers provide reasonable and non-discriminatory access to those systems to suppliers of public telecommunications networks or services of the other Party, in accordance with its laws and regulations.

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party can apply to land a submarine cable in its territory and that such applications are administered in a reasonable, objective and impartial manner in accordance with its laws and regulations.

3. The Parties recognise the importance of international submarine cable systems, and the expeditious and efficient installation, maintenance and repair of these systems, to national, regional and global telecommunications connectivity.

4. Each Party shall ensure that, where it requires a permit for a vessel registered in the territory of the other Party or a non-party to undertake installation, maintenance or repairs of submarine cable systems that are operated, owned or controlled by suppliers of public telecommunications networks or services of the other Party:

(a) the circumstances where any such vessel permit is required, the procedure for applying for any such permit and for renewal of a permit, including any relevant application documents, and the criteria for assessing an application are publicly available;

(b) the procedures for applying for any such permit and, if granted, the permit and the procedures for renewal of a permit are administered in a reasonable, objective and impartial manner;

(c) within a reasonable period of time after the submission of an application for any such permit and for renewal of a permit that is considered complete under its laws and regulations, it informs the applicant of the decision concerning the application; and

(d) any fee charged by any of its relevant bodies to obtain, maintain or renew any such permit is reasonable, transparent and is limited in amount to the approximate cost of services rendered by that Party in respect of any such fee.

5. If a Party (the first Party) considers that a measure of the other Party creates a material impediment to the ability of suppliers of public telecommunications networks or services of the first Party to expeditiously and efficiently install, maintain or repair submarine cable systems, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

#### **Article 11.16: Independent Regulatory Bodies and Government Ownership**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications networks or 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 interest<sup>10</sup> or maintain an operating or management role in any supplier of public telecommunications networks or services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants.

3. Neither Party shall 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 the Party.

4. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of the first Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. If such procedures are not independent of the telecommunications

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<sup>10</sup> 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 networks or services.

regulatory body, the first Party shall ensure that the procedures in fact provide for an objective and impartial review.

#### **Article 11.17: Universal Service**

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy provided for under the laws and regulations of each Party, shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Party.

#### **Article 11.18: Licensing Process**

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, if publication is not practicable, otherwise made publicly available, including:

- (a) circumstances in which a licence is required;
- (b) licence application procedures;
- (c) criteria used to assess licence applications;
- (d) standard terms and conditions applicable to licences;
- (e) the period of time normally required to reach a decision concerning a licence application;
- (f) the cost or fees of applying for or obtaining a licence; and
- (g) the period of validity of a licence.

2. Each Party shall ensure that, on request, an applicant or a licensee 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 11.19: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Party shall make publicly available the current state of frequency bands allocated to specific uses but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.
3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Article 9.5 (Market Access) of Chapter 9 (Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current 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 mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

### **Article 11.20: Enforcement**

Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations provided for under Article 11.4, Article 11.5, Article 11.7, Article 11.8, Article 11.9, Article 11.10, Article 11.11, Article 11.12, Article 11.13, Article 11.14 and Article 11.15. That authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

### **Article 11.21: Resolution of Telecommunications Disputes**

1. Further to Article 19.4 (Administrative Proceedings) and Article 19.5 (Review and Appeal) of Chapter 19 (Transparency), each Party shall ensure that:



## *Recourse*

- (a) enterprises, including suppliers of public telecommunications networks or services, have recourse to a telecommunications regulatory body or other relevant body of the Party<sup>11</sup> to resolve disputes with other enterprises, including suppliers of public telecommunications networks or services, regarding the Party's measures relating to matters set out in Article 11.4, Article 11.5, Article 11.6, Article 11.7, Article 11.8, Article 11.9, Article 11.10, Article 11.11, Article 11.12, Article 11.13, Article 11.14 and Article 11.15;
- (b) if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, on request, provide a written explanation for its decision within a reasonable period of time; and
- (c) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable period of time after the supplier requests interconnection, by its telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier.

## *Judicial Review*

2. No Party shall permit the making of an application for judicial review by enterprises, including suppliers of public telecommunications networks or services, to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

## **Article 11.22: Transparency**

1. Further to Article 19.2 (Publication) of Chapter 19 (Transparency), each Party shall ensure that when its telecommunications regulatory body seeks input<sup>12</sup> 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;

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<sup>11</sup> For greater certainty, another relevant body of a Party may include a judicial body.

<sup>12</sup> For greater certainty, seeking input does not include internal governmental deliberations.

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) to the extent practicable, respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.<sup>13</sup>

2. Further to Article 19.2 (Publication) of Chapter 19 (Transparency), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs or tariff formulas and other terms and conditions of service, if these are regulated;

(b) technical standards, including specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network, if applicable;

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

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 11.21; and

(f) measures of bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use that are, to the extent required, endorsed under the laws or regulations of a Party.

3. To the extent possible, each Party shall allow a reasonable period of time between publication of a measure of general application relating to this Chapter, proposed or final in accordance with its legal system, and its effective date.

4. Each Party shall publish the names and addresses of the competent authorities responsible for measures related to the operation of this Chapter.

5. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measures materially affecting the operation of this Chapter.

6. Each Party shall ensure that, where information is required to be published in accordance with this Chapter, such information is published on the internet.

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<sup>13</sup> For greater certainty, a Party may consolidate its responses to the comments received from interested persons.

### **Article 11.23: Flexibility in the Choice of Technology**

1. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so in accordance with Article 11.22.

2. When a Party finances the development of advanced networks, including broadband networks, it may make its financing conditional on the use of technologies that meet its specific public policy interests.

### **Article 11.24: Relation to Other Chapters**

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

### **Article 11.25: Relation to International Organisations**

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.