

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;

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

“essential facilities” means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

“interconnection” means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier of a public telecommunications network or service to communicate with users of another supplier of a public telecommunications network or service, and to access services provided by another supplier of public telecommunications networks or services;

“international mobile roaming service” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data or messaging services in the territory of the other Party;

“intra-corporate communications” means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to the laws and regulations of a Party, affiliates. For these purposes, the terms “subsidiaries”, “branches” and, where applicable, “affiliates” shall be as defined by each Party. In this Chapter, “intra-corporate communications” excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

“leased circuits” means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

“licence” means any formal authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a public telecommunications network or service, including licences, concessions, permits, or registrations;

“major supplier” means a supplier of public telecommunications networks or public telecommunications services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

“Mobile number portability” means the ability of end-users of public telecommunications services who so request to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

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

“public telecommunications network” means any telecommunications infrastructure used for the provision of public telecommunications services between and among defined network termination points, as provided for in the laws and regulations of each Party;

“public telecommunications service”¹ means any telecommunications service that is offered to the public generally;

“reference interconnection offer” means interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

“telecommunications” means the transmission and reception of signals by any electromagnetic means;

“telecommunications dispute resolution authority” means any authority, including, where applicable, the telecommunications regulatory authority pursuant to the Party’s laws and regulations, responsible for the resolution of disputes concerning telecommunications;

“telecommunications network” means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

“telecommunications regulatory authority” means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Chapter;

¹ For greater certainty, in India those services shall be provided by a public telecommunications service supplier licensed in India.

“telecommunications service” means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, and

“user” means a service consumer or a service supplier using a public telecommunications network or service.

Article 11.2

Scope

1. This Chapter shall apply to measures by a Party affecting trade in telecommunications services.
2. For greater certainty, those measures by a Party affecting trade in telecommunications services are subject to the rights and obligations contained in Chapter 8 (Trade in Services), including the Party’s schedules of specific commitments.
3. This Chapter shall apply subject to rules, regulations and licence conditions, as applicable within the territory of each Party, provided that they are not inconsistent with this Agreement.
4. This Chapter shall not apply to:
 - (a) a measure affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services;
 - (b) a measure relating to broadcast or cable distribution of radio or television programming, except a measure to ensure that a cable or broadcast service supplier has continued access to and use of public telecommunications networks and services; or
 - (c) a measure relating to the supply of new services.²
5. 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.

² For the purposes of this Chapter, “new services” for a Party shall not include a telecommunications service that meets any of the following conditions:

- (a) is covered under the *Provisional Central Product Classification*, published by the United Nations in 1991;
- (b) is specified under that Party’s Schedule in Annex 8B (Schedules of Specific Commitments);
- (c) is a service which:
 - (i) for the United Kingdom, already exists at the date of entry into force of this Agreement, including if the character of that existing service is subsequently changed;
 - (ii) for India, is authorised by it at the date of entry into force of this Agreement.

Article 11.3

Access and Use

1. Each Party shall ensure that a service supplier 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 a timely basis and on reasonable, transparent and non-discriminatory terms and conditions. This obligation shall be applied, among other things, through paragraphs 2 through 6.
2. Each Party shall ensure that a service supplier of the other Party is permitted to:
 - (a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network and which is necessary to supply a supplier's services;
 - (b) provide services to individual or multiple end-users over circuits leased or owned by another service supplier to the extent that the scope and type of those services are consistent with the laws and regulations of the Party;
 - (c) interconnect leased or owned circuits with public telecommunications networks or services or with circuits leased or owned by another service supplier; and
 - (d) 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. Each Party shall ensure that a service supplier of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications of that service supplier, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of a Party.
4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications and protect the privacy of personal data of users, 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 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;
 - (b) protect the technical integrity of public telecommunications networks or services; or
 - (c) ensure that such access to and use of public telecommunications networks and services shall not constitute a security and safety hazard

and is not in contravention of any statute, rule or regulation (including those related to public policy of the Party) which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

6. Provided that they satisfy the criteria set out in paragraph 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 those networks and services;
 - (b) restrictions on shared use of those networks and services;
 - (c) a requirement, if necessary, for the interoperability of those networks and services;
 - (d) 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
 - (e) notification, registration, and licensing.

Article 11.4 **Access to Essential Facilities**

1. Subject to paragraph 2, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications networks or services of the other Party access to essential facilities for the purpose of providing public telecommunications networks or services, on a timely basis, on terms and conditions, and at rates, which are reasonable, non-discriminatory and transparent.
2. Each Party shall provide its telecommunications regulatory authority with the power to determine the essential facilities to which a major supplier must provide access.
3. Each Party shall endeavour to ensure that its telecommunications regulatory authority bases any determination under paragraph 2 on matters including achieving effective competition and the long-term interests of end-users.

Article 11.5 **Submarine Cable Systems**

Each Party may provide reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorised to operate a submarine cable facility as a public telecommunications service.

Article 11.6

Co-location

Each Party shall endeavour to ensure that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications networks or services of another Party to locate their equipment at the major supplier's premises on a timely basis and on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, non-discriminatory and transparent.

Article 11.7

Resale

1. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers, taking into account the need to promote competition or benefits to the long-term interests of end-users.
2. Where a Party has determined that a public telecommunications service must be offered for resale by a major supplier, that Party shall ensure that any major supplier of public telecommunications networks or services in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that public telecommunications service.

Article 11.8

Interconnection

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory:
 - (a) enters into negotiations for interconnection with a supplier of public telecommunications networks or services of the other Party who is within the same territory, if requested to do so by that supplier; or
 - (b) provides interconnection with a supplier of public telecommunications networks or services of the other Party, to the extent provided for in its laws and regulations.

Article 11.9

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities of suppliers of public telecommunications networks or services of the other Party:

- (a) at any technically and commercially feasible point in the major supplier's network;
 - (b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications,), and of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated suppliers, or for its subsidiaries or other affiliates;
 - (c) on a timely basis and on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent and reasonable (having regard to economic feasibility); and
 - (d) 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 and mutually agreed terms and conditions.
- 2. Each Party shall ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.
- 3. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or 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;
 - (b) 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
 - (c) the terms and conditions of an interconnection agreement in effect.
- 4. In addition to the options provided in paragraph 3, 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 the negotiation of a new interconnection agreement.
- 5. Each Party shall ensure that the applicable procedures for interconnection with a major supplier in its territory are made publicly available.
- 6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

Article 11.10
Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. For the purposes of paragraph 1, anti-competitive practices shall include:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (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 that is necessary for them to provide services.

Article 11.11
Treatment by Major Suppliers

1. 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 itself, its subsidiaries, its affiliates, or any non-affiliated supplier of public telecommunications networks or services regarding the:
 - (a) availability, provisioning, rates, or quality of like public telecommunications networks or services; and
 - (b) availability of technical interfaces necessary for interconnection.

Article 11.12
Mobile Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide mobile number portability on a timely basis and on reasonable and non-discriminatory terms and conditions.

Article 11.13
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. Each Party shall adopt or maintain measures to enhance transparency and competition with respect to international mobile roaming rates which may include ensuring that information regarding retail rates is easily accessible to consumers.
3. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 11.14 Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. Each Party shall administer any universal service obligation that it defines and maintains in a transparent, non-discriminatory and competitively neutral manner, and shall endeavour to ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to those principles shall not be regarded, in themselves, as anti-competitive.

Article 11.15 Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including radio frequencies, numbers and rights of way in an open, objective, timely, transparent and non-discriminatory manner.
2. When allocating radio spectrum for public telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.
3. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of radio frequencies allocated or assigned for specific government uses.
4. Each Party retains the right to establish and apply spectrum and frequency management policies which may affect the number of suppliers of public telecommunications networks or services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 11.16
Flexibility in the Choice of Technology

1. Neither Party shall prevent a supplier of public telecommunications networks or services from choosing the technologies it wishes to use to supply its services.
2. Notwithstanding paragraph 1, a Party may take measures to protect a legitimate public policy interest, provided that any measure is not applied in a manner that creates unnecessary obstacles to trade.

Article 11.17
Licensing Process

1. Where a licence is required for the supply of a public telecommunications network or service, a Party shall make publicly available:
 - (a) all the licensing criteria and procedures that it applies;
 - (b) the terms and conditions of individual licences and the period of time normally required to obtain a decision concerning an application for a licence. Each Party shall endeavour to ensure that the decision is taken within the stated period of time.
2. Each Party shall ensure that any licensing criteria or applicable procedure, as well as any obligation or condition imposed on or associated with a licence, is objective, transparent, non-discriminatory, and related to and not more burdensome than necessary for the kind of network or service provided.
3. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a licence in writing, which may include in electronic form.

Article 11.18
Independent Regulatory and Dispute Resolution Authority

1. Each Party shall ensure that its telecommunications regulatory authority and telecommunications dispute resolution authority are separate from, and not accountable to, any supplier of public telecommunications networks and services.
2. Each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications networks or services.
3. Each Party shall ensure that regulatory decisions of, and the procedures used by, its telecommunications regulatory authority and telecommunications dispute resolution authority related to provisions contained in this Chapter are impartial with respect to all market participants.

Article 11.19 Enforcement

Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of public telecommunications networks or services provide it, promptly on request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Information requested shall be treated in accordance with the Party's law relating to confidentiality.

Article 11.20 Transparency

1. Each Party shall make publicly available online the functions of its telecommunications regulatory authority.
2. Each Party shall endeavour to ensure that suppliers of public telecommunications networks or services are provided with adequate advance notice of, and opportunity to comment on, a regulatory decision of general application that its telecommunications regulatory authority proposes.
3. Each Party shall make publicly available, including online, its measures or information relating to public telecommunications networks or services:
 - (a) tariffs and other terms and conditions of service;
 - (b) specifications of technical interfaces with those networks and services;
 - (c) bodies responsible for the preparation and adoption of relevant standards;
 - (d) conditions applying to the attachment of terminal or other equipment to the public telecommunications networks; and
 - (e) notification, registration or licensing requirements, if any.

Article 11.21 Confidentiality

Each Party shall ensure, in accordance with its laws and regulations, the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures are not applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services.

Article 11.22
Dispute Settlement and Appeal

1. Each Party shall ensure that any supplier of public telecommunications networks or services affected by a decision of the telecommunications regulatory authority or telecommunications dispute resolution authority has the right to appeal against that decision to an independent judicial or administrative authority. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority or telecommunications dispute resolution authority shall stand, unless interim measures are granted in accordance with the Party's law.
2. Each Party shall ensure that a supplier of public telecommunications networks or services that is supplying those networks or services in the territory of a Party has timely recourse to its telecommunications dispute resolution authority to resolve disputes in accordance with the law of that Party.
3. Each Party shall ensure that a decision issued by its telecommunications dispute resolution authority is made publicly available, having regard to the Party's law relating to confidentiality.
4. Each Party shall ensure that the suppliers of public telecommunications networks or services involved in the dispute:
 - (a) are given a full statement of the reasons on which the decision is based; and
 - (b) may appeal the decision to a body that is independent of the telecommunications dispute resolution authority, in accordance with paragraph 1.

Article 11.23
Cooperation

1. The Parties recognise the transformational impact of telecommunications networks, infrastructure and technologies (including those that are new and emerging), and the importance of those technologies to the Parties' respective economies and societies. Accordingly, the Parties shall endeavour to:
 - (a) exchange information on the opportunities and challenges associated with telecommunications networks, infrastructure and technologies;
 - (b) work together in international fora to promote a shared approach to these opportunities and challenges; and
 - (c) exchange information and experience in spectrum management.
2. The Parties further recognise the importance of promoting diversified and secure telecommunications markets. To this end, each Party shall:

- (a) encourage a diverse and competitive market for public telecommunications networks and services in its territory; and
 - (b) protect the security and integrity of its telecommunications infrastructure.
- 3. The Parties recognise the importance of international standards for global compatibility and interoperability of public telecommunications networks and services, and endeavour to promote those standards bilaterally and through the work of relevant international organisations.