

CHAPTER TWELVE TELECOMMUNICATIONS

ARTICLE 12.1: SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in the telecommunications sector.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure relating to broadcast or cable distribution of radio or television programming.
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 telecommunications networks or services not offered to the public generally; or
 - (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.

ARTICLE 12.2: ACCESS TO AND USE 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, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 4.
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;
 - (b) provide services to individual or multiple end-users over leased circuits;¹
 - (c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another service supplier;
 - (d) perform switching, signaling, processing, and conversion functions; and
 - (e) use operating protocols of their choice in the supply of any service.
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 and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

¹ For greater certainty, this subparagraph does not prohibit either Party from requiring a service supplier to obtain a license to supply telecommunications services to third parties.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, 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.

ARTICLE 12.3: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES²

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates.
- (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications 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 only use such information for the purpose of providing these services.

Number Portability

2. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions.³

Dialing Parity

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of the other Party.⁴

ARTICLE 12.4: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES⁵

Treatment by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party, licensed within its territory, no less favorable treatment than such major supplier accords to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

² This Article is subject to Annex 12-A.

³ This paragraph applies to Bahrain upon a determination by its telecommunications regulatory body that sufficient consumer demand exists for number portability.

⁴ Bahrain may exempt commercial mobile services from its obligations under this paragraph.

⁵ This Article is subject to Annex 12-B.

Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in subparagraph (a) include in particular:
 - (i) engaging in anti-competitive cross-subsidization;
 - (ii) using information obtained from competitors with anti-competitive results; and
 - (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Resale

3. Each Party shall ensure that a major supplier in its territory:
 - (a) offers for resale, at reasonable rates,⁶ to suppliers of public telecommunications services of the other Party, public telecommunications services that the major supplier provides at retail to end-users that are not suppliers of public telecommunications services; and
 - (b) does not impose unreasonable or discriminatory conditions or limitations on the resale of such services.⁷

Unbundling of Network Elements

4. Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer 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.

Interconnection

5. (a) General Terms and Conditions

Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- (i) at any technically feasible point in the major supplier's network;

⁶ For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations shall be considered reasonable.

⁷ Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
 - (iii) of a quality no less favorable 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;
 - (iv) in a timely fashion, and 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 need not pay for network components or facilities that they do not require for the service to be provided; and
 - (v) 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.
- (b) Options for Interconnecting with Major Suppliers
- Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of a major supplier in its territory pursuant to at least one of the following options:
- (i) 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; or
 - (ii) the terms and conditions of an interconnection agreement in effect or through negotiation of a new interconnection agreement.
- (c) Public Availability of Interconnection Offers
- Each Party shall require a major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.
- (d) Public Availability of Procedures for Interconnection Negotiations
- Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.
- (e) Public Availability of Interconnection Agreements Concluded with Major Suppliers
- (i) Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body or other relevant body.

- (ii) Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

- 6. (a) Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.
- (b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based, cost-oriented prices.

Co-Location

- 7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
- (b) 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:
 - (i) provides an alternative solution; or
 - (ii) facilitates virtual co-location,on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.
- (c) Each Party may determine through its law or regulations which premises are subject to subparagraphs (a) and (b).

Poles, Ducts, and Conduits

- 8. Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, and conduits to suppliers of public telecommunications services of the other Party on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

ARTICLE 12.5: SUBMARINE CABLE SYSTEMS

Each Party shall ensure that any supplier that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non-discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services.

ARTICLE 12.6: CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services to facilities that it does not own to:

- (a) supply those services to the public generally;
- (b) cost-justify its rates for those services;
- (c) file a tariff for those services;
- (d) interconnect its networks with any particular customer for the supply of those services; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 12.7: 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 services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Neither Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of value-added services in its territory than that accorded to a like supplier of the other Party on the basis that the supplier receiving more favorable treatment is owned by the national government of the Party.

4. Each Party shall maintain the absence of or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services. Where a Party has an ownership interest in a supplier of public telecommunications services and intends to reduce or eliminate its interest, it shall notify the other Party of its intention as soon as possible.

ARTICLE 12.8: UNIVERSAL SERVICE

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

ARTICLE 12.9: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications services to

have a license, the Party shall make publicly available:

- (a) all the licensing criteria and procedures it applies;
- (b) the period it normally requires to reach a decision concerning an application for a license; and
- (c) the terms and conditions of all licenses it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a license.

ARTICLE 12.10: ALLOCATION AND USE OF SCARCE RESOURCES

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights of way,⁸ in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 10.4 (Market Access). 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 it does so in a manner 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.

ARTICLE 12.11: ENFORCEMENT

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Articles 12.2 through 12.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

ARTICLE 12.12: RESOLUTION OF TELECOMMUNICATIONS DISPUTES

Further to Articles 17.3 (Administrative Proceedings) and 17.4 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

- (a) enterprises may seek review by a 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 12.2 through 12.5; and
- (b) 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 and publicly specified period after the supplier requests interconnection, by its

⁸ With respect to Bahrain's obligations under paragraph 1, "rights of way" means right of use as provided under Chapter 13 of the Telecommunications Law of Bahrain.

telecommunications regulatory body⁹ to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

Review and Appeal

- (c) any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of its telecommunications regulatory body may obtain review of the determination or decision by an independent judicial authority or other independent tribunal.

ARTICLE 12.13: TRANSPARENCY OF MEASURES RELATING TO TELECOMMUNICATIONS

Further to Article 17.1 (Publication), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures relating to public telecommunications services are made publicly available, including measures relating to:
 - (i) tariffs and other terms and conditions of service;
 - (ii) procedures relating to judicial and other adjudicatory proceedings;
 - (iii) specifications of technical interfaces;
 - (iv) conditions for attaching terminal or other equipment to the public telecommunications network; and
 - (v) notification, permit, registration, or licensing requirements, if any.

ARTICLE 12.14: FLEXIBILITY IN THE CHOICE OF TECHNOLOGIES

Neither Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

ARTICLE 12.15: FORBEARANCE

1. The Parties recognize the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications services. To this end, each Party may forbear, to the extent provided for in its law, from applying a

⁹ The United States may comply with this obligation by providing for review by a state regulatory authority.

regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

- (a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of the regulation is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. For greater certainty, each Party shall subject its regulatory body's decision to forebear to judicial review in accordance with subparagraph (c) of Article 12.12.

ARTICLE 12.16: 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.

ARTICLE 12.17: DEFINITIONS

For purposes of this Chapter:

co-location (physical) means physical 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 services;

co-location (virtual) means the ability to lease and control equipment of a supplier of public telecommunications services for the purpose of interconnecting with that supplier or accessing its unbundled network elements;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

end-user means a final consumer of or final subscriber to a public telecommunications service;

enterprise means an "enterprise" as defined in Article 1.3 (Definitions) and includes a branch of an enterprise;

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 supply a service;

interconnection means linking with suppliers providing public telecommunications 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;

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

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

- (a) control over essential facilities, or
- (b) 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 favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

public telecommunications service¹⁰ 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 customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body¹¹ that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

service supplier of the other Party means, with respect to a Party, a person that is either a BIT investment in the territory of the Party or a person of the other Party and that seeks to supply or supplies services in or into the territory of the Party, and includes a supplier of public telecommunications services;

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

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

¹⁰ In Bahrain, public telecommunications services do not include services provided pursuant to a VSAT license, a paging license, a public access mobile radio services license, a value-added services license, an internet exchange license, or an internet service provider license.

¹¹ In the United States, this body may be a state regulatory authority.

user means a service consumer or a service supplier; and

value-added services means services that add value to telecommunications services through enhanced functionality. In the United States, these are services as defined in 47 U.S.C. § 153(20).

ANNEX 12-A

Paragraphs 2 and 3 of Article 12.3 do not apply to the United States with respect to suppliers of commercial mobile services. In addition, a state regulatory authority of the United States may exempt a rural local exchange carrier, as defined in Section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in paragraphs 2 and 3 of Article 12.3.

ANNEX 12-B

1. Article 12.4 does not apply to the United States with respect to a rural telephone company, as defined in section 3(37) of the Communications Act of 1934, as amended, unless a state regulatory authority orders that the requirements described in that Article be applied to the company. In addition, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in Article 12.4.
2. Paragraphs 3 through 8 of Article 12.4 do not apply to the United States with respect to suppliers of commercial mobile services.