

## 10 TELECOMMUNICATIONS SERVICES

### ARTICLE 1

#### *Definitions*

For the purposes of this Chapter:

- (a) “commercial mobile services” means public telecommunications services supplied through mobile wireless means;
- (b) “cost-oriented” means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) “cross-connect links” means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station;
- (d) “end-user” means a person (including a service consumer and a service supplier) to whom a public telecommunications network or service is supplied, other than for use in the further supply of a public telecommunications network or service;
- (e) “enterprise” means:
  - (i) any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; and
  - (ii) a branch of an enterprise;
- (f) “essential facilities” means facilities of a public telecommunications network or service that:
  - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
  - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (g) “facilities-based suppliers” means suppliers of public telecommunications networks or services that are:
  - (i) licensed carriers in Australia; or

- (ii) facilities-based operators in Singapore;
- (h) “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;
- (i) “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;
- (j) “leased circuit” means a telecommunications facility between two or more designated points which is set aside for the dedicated use of, or availability to, a particular user;
- (k) “licence” means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications network or service, including concessions, permits or registrations;
- (l) “major supplier” means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market<sup>1</sup> for public telecommunications networks or services as a result of:
  - (i) control over essential facilities; or
  - (ii) use of its position in the market;
- (m) “measure” includes any law, regulation, procedure, requirement or practice;
- (n) “network element” means facilities or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facilities or equipment, which may include local loops, sub-loops and line sharing;
- (o) “non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances, including with respect to timeliness;

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

- (p) “number portability” means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (q) “person” means a natural person or an enterprise;
- (r) “physical co-location” means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;
- (s) “public telecommunications network” means the telecommunications infrastructure authorised by a Party to be used to provide public telecommunications services between defined network termination points;
- (t) “public telecommunications service” means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally;<sup>2</sup>
- (u) “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 networks or 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;
- (v) “regulatory decisions” means decisions by a telecommunications regulatory body made pursuant to authority conferred under domestic law in relation to:
  - (i) the making of rules for the telecommunications industry excluding legislation and statutory rules;
  - (ii) the approval of terms and conditions, standards and codes to apply in the telecommunications industry;
  - (iii) the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and
  - (iv) licensing;
- (w) “submarine cable landing station” means the premises where interconnection takes place with the submarine cable system, as determined by the telecommunications regulatory body, if required;

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<sup>2</sup> “Public telecommunications service” includes Internet routing and connectivity services.

- (x) “supplier of public telecommunications networks or services” means a supplier of public telecommunications networks and/or public telecommunications services to users;
- (y) “telecommunications” means the transmission and reception of signals by any electromagnetic means, including by photonic means;
- (z) “telecommunications regulatory body” means a body or bodies responsible for the regulation of telecommunications;
- (aa) “user” means an end-user or a supplier of public telecommunications network or services; and
- (bb) “virtual co-location” means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

## ARTICLE 2

### *Scope*

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

## ARTICLE 3

### *Access to and Use of Public Telecommunications Networks or Services*<sup>3</sup>

1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders in a timely fashion, on reasonable, transparent, and non-discriminatory terms and conditions, including as set out in this Article.<sup>4</sup>
2. Each Party shall ensure that a service supplier of the other Party is permitted to:

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<sup>3</sup> For the avoidance of doubt, access to unbundled network elements is addressed in Article 9.3 (Additional Obligations Relating to Major Suppliers).

<sup>4</sup> For the avoidance of doubt, each Party may fulfil the obligations in this Article by any measure it considers necessary or appropriate, within the context of their respective domestic laws and regulations.

- (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 service consumers over any leased or owned circuits;
- (c) interconnect leased or owned circuits with public telecommunications networks or services in the territory of that Party or across the borders of that Party or with circuits leased or owned by another service supplier;
- (d) perform switching, signalling, processing and conversion functions; and
- (e) use operating protocols of their choice in the supply of any service to ensure the availability of telecommunications networks and services to the public generally.

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

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

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

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary to:

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

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

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

- (b) requirements, where necessary, for the inter-operability of such networks and services;
- (c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and
- (d) notification, registration and licensing.

## ARTICLE 4

### *Transparency*

1. Each Party shall apply the measures referred to in Article 2.1 (Scope) in a transparent manner, which:

- (a) provides suppliers of public telecommunications networks or services of the other Party who are likely to be affected by regulatory decisions with a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on proposed regulatory decisions and to provide these views to the telecommunications regulatory body;
- (b) requires its telecommunications regulatory body to provide interested persons the opportunity to comment, and to the extent practicable, respond to all significant and relevant issues raised; and
- (c) ensures that its telecommunications regulatory body makes available to suppliers of public telecommunications networks or services of the other Party its regulatory decisions and an explanation of its reasons for those regulatory decisions.

2. Each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces;
- (c) conditions for attaching terminal or other equipment to the public telecommunications network;
- (d) licensing, permit, registration or notification requirements, if any;
- (e) general procedures relating to resolution of telecommunications disputes provided for in Article 6 (Dispute Settlement and Appeal); and
- (f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing,

amending and adopting standards-related measures affecting access and use.

3. At the request of a supplier of public telecommunications networks or services who is likely to be affected by regulatory decisions, a telecommunications regulatory body may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in paragraph 1(a) and paragraph 1(c), provided that such limitations permit that supplier to submit a request to the telecommunications regulatory body for its consideration to treat certain information provided by the supplier as confidential. Where such information is found to be confidential by the telecommunications regulatory body, subject to domestic laws, regulations and policies, paragraph 1(a) and paragraph 1(c) shall not apply to such information, provided that this:

- (a) is applied only to the extent necessary to protect such commercial interests; and
- (b) does not deprive suppliers of public telecommunications networks or services of the other Party of their right under paragraph 1(a) to provide their views to the telecommunications regulatory body.

4. Where a licence is required, the following shall be made publicly available:

- (a) all the licensing criteria, any terms and conditions of the licence, and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

5. Each Party shall ensure that, on request, an applicant receives the reasons for the:

- (a) denial of a licence;
- (b) imposition of supplier-specific conditions on a licence;
- (c) revocation of a licence; or
- (d) refusal to renew a licence.

## ARTICLE 5

### ***Independent Regulatory Bodies***

1. Telecommunications regulatory bodies shall be independent of any supplier of public telecommunications networks or services.

2. The decisions of, and the procedures used by, telecommunications regulatory bodies shall be fair and impartial and shall be made and implemented without undue delay.

## ARTICLE 6

### *Dispute Settlement and Appeal*

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

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

3. Each Party shall ensure that, in the hearing of an appeal by an administrative authority referred to in paragraph 2:<sup>5</sup>

- (a) suppliers of public telecommunications networks or services of the other Party which are party to the appeal have a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on the issues to be determined in the appeal and to provide these views to the administrative authority;
- (b) the administrative authority takes into account views provided by such suppliers pursuant to subparagraph (a); and
- (c) the administrative authority makes available to such suppliers its decision and an explanation of the reasons for its decision.

4. At the request of a supplier of public telecommunications networks or services which is a party to an appeal referred to in paragraph 3, an administrative authority may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in paragraph 3(a) and paragraph 3(c) provided that such limitations:

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

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



- (b) do not deprive suppliers of public telecommunications networks or services of the other Party which are party to an appeal referred to in paragraph 3 of their right under paragraph 3(a) to provide their views to the administrative authority.

## ARTICLE 7

### *General Competitive Safeguards*

1. Each Party shall maintain appropriate measures<sup>6</sup> for the purpose of preventing suppliers of public telecommunications networks or services in its territory from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 include in particular:
  - (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 suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that is necessary for them to provide services.

## ARTICLE 8

### *Interconnection between Suppliers of Public Telecommunications Networks*

1. Each Party shall maintain appropriate measures to achieve connectivity between public telecommunications networks in order to ensure that end-users of public telecommunications services can communicate with each other, including, where that Party considers it necessary, by requiring facilities-based suppliers to interconnect with one another.
2. In carrying out paragraph 1, 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 that those suppliers only use that information for the purpose of providing these services.

## ARTICLE 9

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<sup>6</sup> The maintenance of appropriate measures includes the effective enforcement of such measures.

### ***Additional Obligations Relating to Major Suppliers<sup>7</sup>***

#### **1. Non-discrimination**

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

- (a) availability, provisioning, rates,<sup>8</sup> or quality of like public telecommunications networks or services; and
- (b) availability of technical interfaces necessary for interconnection,

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

#### **2. Competitive Safeguards**

- (a) Each Party shall maintain appropriate measures<sup>9</sup> for the purpose of preventing major suppliers in its territory from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in subparagraph (a) shall include:
  - (i) engaging in anti-competitive cross-subsidisation;
  - (ii) using information obtained from competitors with anti-competitive results;
  - (iii) not making available, on a timely basis, to suppliers of public telecommunications networks or services of the other Party, technical information about essential facilities and commercially relevant information which is necessary for them to provide services; and

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

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

<sup>9</sup> The maintenance of appropriate measures includes the effective enforcement of such measures.

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

3. Unbundled Network Elements

- (a) Each Party shall ensure that a major supplier in its territory provide to facilities-based suppliers of the other Party access to network elements for the provision of public telecommunications services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory to provide access to in accordance with subparagraph (a) on the basis of the technical feasibility of unbundling and the state of competition in the relevant market.

4. Co-Location

- (a) Subject to subparagraph (b) and subparagraph (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.
- (b) Where physical co-location under subparagraph (a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers co-operate with facilities-based suppliers to find and implement the most feasible alternative solution in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory. Such solutions may include:
  - (i) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
  - (ii) conditioning additional equipment space;
  - (iii) optimizing the use of existing space;
  - (iv) finding adjacent space; or
  - (v) facilitating virtual co-location.
- (c) Each Party may determine in accordance with its domestic laws and regulations the locations at which it requires major suppliers in its territory to provide co-location under subparagraph (a) on the basis of the state of competition in the relevant market, 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.

5. Resale

Each Party shall ensure that major suppliers in its territory:

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

6. Rights of Way

- (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by those major suppliers to facilities-based suppliers of the other Party:
  - (i) in a timely fashion; and
  - (ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.
- (b) Each Party may determine in accordance with its domestic laws and regulations the poles, ducts, conduits or other structures to which it requires major suppliers in its territory to provide access under subparagraph (a) on the basis of the state of competition in the relevant market.

7. Interconnection with a Major Supplier

- (a) Each Party shall ensure that major suppliers in its territory provide interconnection to facilities-based suppliers of the other Party:
  - (i) at any technically feasible point in the major supplier's network;
  - (ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
  - (iii) of a quality no less favourable than that provided by the major supplier for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
  - (v) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities.
- (b) Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory pursuant to at least one of the following options:
  - (i) a publicly available reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services;
  - (ii) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services;
  - (iii) an individualised agreement between the major supplier and the supplier of public telecommunications networks or services that seeks to interconnect with it; or
  - (iv) binding arbitration.
- (c) In addition to the options provided in subparagraph (b), 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.
- (d) Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.
- (e) Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

## 8. Resolution of Interconnection Disputes

- (a) When facilities-based suppliers are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the telecommunications regulatory body, which shall aim to resolve the

disputes within 180 days of the referral to it. The Parties understand that the resolution of complex disputes may take longer than 180 days.

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

9. Access to Numbers

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.

10. Provisioning and Pricing of Leased Circuit Services by Major Suppliers

- (a) Each Party shall ensure that a major supplier in its territory provides to service suppliers of the other Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.
- (b) Further to subparagraph (a), each Party shall provide its telecommunications regulatory body or other appropriate bodies 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 and cost-oriented prices.

## ARTICLE 10

### ***Number Portability***

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, for those services designated by that Party, without impairment to quality and reliability, to the extent technically feasible, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

## ARTICLE 11

### ***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 and technological alternatives to roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with the other Party.

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which:<sup>10</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 both Parties;<sup>11</sup> or
- (b) in the absence of an arrangement of the type referred to in subparagraph (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>12</sup> and

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<sup>10</sup> For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

<sup>11</sup> For greater certainty, access under this subparagraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

<sup>12</sup> For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

- (ii) meets any additional requirements<sup>13</sup> that the first Party imposes with respect to the availability of the regulated rates or conditions.

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

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), and Articles 3 (Access to and Use of Public Telecommunications Networks or Services) and 9.1 (Additional Obligations Relating to Major Suppliers – Non-Discrimination) with respect to international mobile roaming services.

6. Each Party shall endeavour to ensure that:

- (a) suppliers of public telecommunications services in its territory; or
- (b) its telecommunications regulatory body

make publicly available retail rates for international mobile roaming services.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

## ARTICLE 12

### *International Submarine Cable Systems*

1. This article applies to international submarine cable systems where, under national law and regulation, a Party has authorised a supplier of public telecommunications services in its territory to operate a submarine cable system as a public telecommunications service.

2. Where submarine cable systems cannot be economically or technically substituted, each Party shall provide its telecommunications regulatory body with the authority to:

- (a) subject to technical feasibility and pre-existing contractual commitments, require a major supplier of public telecommunications services to allow suppliers of public telecommunications services of the other Party to:

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<sup>13</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.



- (i) access the submarine cable landing station for the purpose of interconnection with the submarine cables owned by any supplier of telecommunications;
  - (ii) co-locate their transmission and routing equipment at the submarine cable landing station;
  - (iii) connect their equipment to submarine cable capacity, including by accessing the supplier's cross-connect links; and
  - (iv) access ancillary services; and
- (b) ensure that the terms, conditions and rates for the services referred to in subparagraph (a) as supplied by a major supplier are reasonable and non-discriminatory.

3. For greater certainty, co-location should be consistent with Article 9.4 (Additional Obligations Relating to Major Suppliers – Co-Location) and interconnection should be consistent with Article 9.7 (Additional Obligations Relating to Major Suppliers – Interconnection with a Major Supplier).

## ARTICLE 13

### *Universal Service*

Each Party has the right to define the kind of universal service obligation it wishes to maintain. 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 14

### *Allocation and Use of Scarce Resources*<sup>14</sup>

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

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<sup>14</sup> Decisions on the allocation and assignment of spectrum and frequency management are not measures that are per se inconsistent with Article 3 (Market Access) of Chapter 7 (Cross-Border Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

## ARTICLE 15

### *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 consistent with Article 4 (Transparency).

2. When a Party finances the development of advanced networks,<sup>15</sup> it may make its financing conditional on the use of technologies that meet its specific public policy interests.

## ARTICLE 16

### *Industry Participation*

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

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

## ARTICLE 17

### *Enforcement*

Each Party shall adopt or maintain timely, proportionate and effective sanctions for the purpose of enforcing domestic measures relating to the obligations contained in this Chapter. Such sanctions may include financial penalties, injunctions, orders to cease and desist (on an interim or final basis), and/or the ability to suspend, modify or revoke licences.

## ARTICLE 18

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<sup>15</sup> For greater certainty, “advanced networks” includes broadband networks.

### *Exceptions*

This Chapter shall be subject to Article 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services) and Article 19 (General Exceptions) of Chapter 8 (Investment), and to Article 2 (Security Exceptions) of Chapter 17 (Final Provisions).