

CHAPTER 16

TELECOMMUNICATIONS SERVICES

Article 16.1

Scope

1. This Section sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalised pursuant to Sections [...], [...] and [...] of this Chapter.
2. This Section does not apply to services providing, or exercising editorial control over, content transmitted using telecommunication networks and services.

Article 16.2

Definitions

For the purposes of this Section:

- a) "associated facilities" means those services, physical infrastructures and other facilities associated with a telecommunications network and/or service which enable and/or support the provision of services via that network and/or service or have the potential to do so and may include, among other things, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;
- b) "essential facilities" mean 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;
- c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;

- d) "leased circuits" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points.
- e) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
- f) "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;
- g) "number portability" means:

For the European Union, the ability of all subscribers of public telecommunications services who so request to retain, at the same location in the case of fixed line subscribers, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;

For Chile, the ability of end-users to retain existing telephone numbers when switching between suppliers of public telecommunications services without impairment of quality, reliability or convenience;
- h) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;
- i) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- j) "subscriber" means any natural or juridical person that is party to a contract with a supplier of public telecommunications services for the supply of such services;"
- k) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- l) "telecommunications network" means transmission systems and, where 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;
- m) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Section¹;
- n) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including of broadcasting signals, via telecommunications networks, including via networks used for broadcasting.

¹ For greater certainty, this includes any authority charged by a Party with the enforcement of the disciplines in this Section.

Telecommunications services exclude services providing, or exercising editorial control over, content transmitted using telecommunications networks and services;

- o) "universal service" means the minimum set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price;
- p) "user" means any legal entity or natural person using a public telecommunications network or service;
- q) "internet access service" means a public telecommunications service that provides access to the internet in the territory of a Party, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

Article 16.3

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment, and that the decisions of and the procedures used by the telecommunications regulatory authority are impartial with respect to all market participants.
2. A Party that retains ownership or control of suppliers of telecommunications networks or services or telecommunications equipment shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
3. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure in particular 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, or telecommunications equipment.
4. Each Party shall ensure that suppliers of telecommunications networks or services, or telecommunications equipment do not influence the decisions and procedures of the telecommunications regulatory authority.
5. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this Section. Such power shall be exercised transparently and in a timely manner. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

6. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon 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 Section. Information requested shall be treated in accordance with the requirements of confidentiality.
7. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision to an appeal body that is independent of the telecommunications regulatory authority and of the parties affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with national law.

Article 16.4

Authorisation to Provide Telecommunications Services

1. Where a Party requires an authorisation for the provision of telecommunications networks or services, the Party shall make publicly available the types of services requiring authorisation, all authorisation criteria, any terms and conditions generally associated with the authorisation, and the applicable procedures.
[to be dropped if provided for in the final negotiated general Domestic Regulation provisions]
2. If a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain such a decision, communicate this in a transparent manner and shall endeavour to ensure that the decision is taken within the stated period of time².
3. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services provided.
4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall be able to seek recourse before an appeal body.
[to be dropped if provided for in the final negotiated general Domestic Regulation provisions]

² For greater certainty, this provision does not preclude a Party from authorising the provision of telecommunications networks or services without a formal authorisation procedure and permitting the supplier to start providing its networks or services upon simple notification without having to wait for a decision by the telecommunications regulatory authority.

5. Administrative fees imposed on suppliers, if any, shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Section³. [to be dropped if provided for in the final negotiated general Domestic Regulation provisions]

Article 16.5

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, upon the request of another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

Article 16.6

Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory⁴ terms and conditions. This obligation shall be applied, inter alia, through paragraphs 2 through 5 of this Article.
2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to the provisions in paragraph 5 of this Article, that such suppliers are permitted:
 - a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
 - b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another service supplier; and
 - c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information within and

³ Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

⁴ For the purposes of this article, "non-discriminatory" means most-favoured-nation and national treatment as defined in [articles XX and YY], as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding the provisions in paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which 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 services other than as necessary:
 - a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally;
 - b) to protect the technical integrity of public telecommunications networks or services.

Article 16.7

Resolution of Telecommunications Disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Section, and at the request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.
2. The decision issued by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right to appeal this decision, according to Article 16.3 Telecommunications Regulatory Authority, paragraph 5 of this Section.
3. The procedure referred to in paragraphs 1 and 2 of this Article shall not preclude either party concerned from bringing an action before the courts.

Article 16.8

Competitive Safeguards on Major Suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or services who, alone or together, are a major

supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall 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 to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 16.9

Interconnection with Major Suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:
 - a) under non-discriminatory terms and conditions (including in regard to rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for its own like services, or for like services of its subsidiaries or other affiliates;
 - b) in a timely fashion, on terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. The procedures applicable for interconnection to a major supplier shall be made publicly available.
3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.

Article 16.10

Access to Major Suppliers' Essential Facilities

Each Party shall provide its telecommunications regulatory authority with the power to require that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and

conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include, inter alia, network elements, leased circuits services and associated facilities.

Article 16.11

Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.
2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article [...] (market access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with the other provisions of this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 16.12

Number Portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability, on a timely basis, and on reasonable terms and conditions.

Article 16.13

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Universal service obligations will not be regarded per se as anti-competitive, provided they are administered in a proportionate, transparent, objective and non-discriminatory way. The administration of such obligations shall be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by the Party.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.
4. If a Party decides to fund the provision of universal service by a supplier, it shall ensure that such funding does not exceed the net cost caused by the universal service obligation.

Article 16.14

Confidentiality of Information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles 5.15 Interconnection, 5.16 Access and Use, 5.19 Interconnection with Major Suppliers and 5.20 Access to Major Suppliers' Essential Facilities of this Section use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

Article 16.15

Foreign Shareholding

With regard to the provision of telecommunications networks or services, other than public radio broadcasting, through commercial presence and notwithstanding Articles [...] (market access, national treatment), no Party shall impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 16.16

Open and Non-discriminatory internet access

1. The Parties shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to access and distribute information, content and services of their choice.
2. Paragraph 1 is without prejudice to the Party's laws related to the lawfulness of the content or services.
3. Notwithstanding Paragraph 1, suppliers of internet access services may implement non-discriminatory⁵, reasonable, transparent and proportionate network management measures which are consistent with the Party's laws.
4. The Parties shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.

Article 16.17

International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services in ways that can help promote the growth of trade among the Parties and enhance consumer welfare.
2. Parties 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 the public; and
 - b) minimising impediments to the use of technological alternatives to roaming, whereby users visiting the territory of a Party from the territories of other Parties can access telecommunications services using the device of their choice.

⁵ Subject to the exceptions provided in the Party's law.