

Chapter Thirteen

Telecommunications

Article 1301: Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using such networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 1302: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by such persons;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice.

3. Each Party shall ensure that:

(a) the pricing of public telecommunications transport services reflects economic costs directly related to providing such services; and

(b) private leased circuits are available on a flat-rate pricing basis.

Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

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

(a) safeguard the public service responsibilities of providers of public telecommunications transport 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 transport networks or services.

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

(a) a restriction on resale or shared use of such services;

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

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where such circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article 1303: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. A Party shall not require a person providing enhanced or value-added services to:

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

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

- (a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
- (b) a monopoly to which Article 1305 applies.

Article 1304: Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including such measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

- (a) prevent technical damage to public telecommunications transport networks;
- (b) prevent technical interference with, or degradation of, public telecommunications transport services;
- (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
- (d) prevent billing equipment malfunction; or

(e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for such approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. A Party shall not require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913-B.

Article 1305: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the

monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures such as:

- (a) accounting requirements;
- (b) requirements for structural separation;
- (c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or
- (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 1306: Transparency

Further to Article 1802, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and
- (e) notification, permit, registration or licensing requirements.

Article 1307: Relationship to other Chapters

In the event of any inconsistency between a provision of

this Chapter and the provision of another Chapter, the provision of this Chapter shall prevail to the extent of such inconsistency.

Article 1308: Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunications Union and the International Organization for Standardization.

Article 1309: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Article 1310: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a relevant technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

flat-rate pricing basis means pricing on the basis of a fixed charge per period of time regardless of the amount of usage;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intracorporate communications;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standards-related measure means a "standards-related measure" as defined in Article 915;

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

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting

signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.