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(as shared on 01/02/2013 in m.d. 14/13)

TELECOMMUNICATIONS

Telecommunications

Canada's proposed text

EU's proposed text

Article X.1: Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party relating to telecommunications networks or services, subject to a Party's right to restrict the supply of a service in accordance with its Reservations in Annexes I and II.
2. [This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public.]CAN

[EU: This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public, but for greater certainty it would apply to the transmission of such programming between operators.]
3. Nothing in this Chapter shall be construed to:
 - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications networks or services, other than as specifically provided in this Agreement; or
 - (b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally.

Article X.2: Access to and Use of Public Telecommunications Transport Networks or Services

- 1.A Party shall ensure that[enterprises]of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions(includingtechnical standards andspecifications) and of a quality no less favourable than that accorded to any other enterprise).¹This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

¹ **non-discriminatory** means treatment no less favourable than that accorded to any other [enterprise] when using like public telecommunications transport networks or services[in like circumstances].

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2. Each Party shall ensure that [enterprises] of the other Party have access to and use of any public telecommunications transport network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such [enterprises] are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport network;
- (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another [enterprise];
- (c) use operating protocols of their choice; and
- (d) perform switching, signaling, and processing functions.

3. Each Party shall ensure that [enterprises] of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such [enterprises], and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article X (Exceptions - General Exceptions), and notwithstanding the paragraph 3, a Party shall take appropriate measures to protect:

- (a) the security and confidentiality of telecommunications services, or
- (b) the privacy of users of public telecommunications transport services,

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.

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

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks or services; or
- (c) ensure that [enterprises] of another Party do not supply services limited by the Party's Reservations in Annexes I and II.

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

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for connection with such networks or services;
- (c) requirements, where necessary, for the inter-operability of such services;
- (d) 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;
- (e) restrictions on connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another [enterprise]; and
- (f) notification, registration and licensing.

Article X.3: Authorisation to Provide Telecommunications Services

Each Party should ensure that the authorisation of the provision of telecommunications services, wherever possible, is based upon a simple notification procedure.

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Article X.4: Competitive Safeguards on Major Suppliers

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include:
 - (a) engaging in anti-competitive cross-subsidization;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article X.5: Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory makes available its essential facilities, which may include, inter alia, network elements, operational support systems or support structures, to suppliers of telecommunications services of the other Party on reasonable and non-discriminatory terms and conditions and cost-oriented rates.
2. Each Party may determine, in accordance with its laws and regulations, those essential facilities required to be made available in its territory.

Article X.6: Interconnection

1. Each Party shall ensure that any major supplier in its territory provides interconnection:
 - (a) at any technically feasible point in the network;
 - (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
 - (c) of a quality no less favourable than that provided for the own like services of such major supplier or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
 - (d) 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 a supplier need

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not pay for network components or facilities that it does not require for the services to be supplied; and

- (e) 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. Any supplier authorised to provide telecommunications services shall have the right to negotiate a new interconnection agreement with other suppliers of public telecommunications transport networks and services. Each Party shall ensure that major suppliers are required to establish a reference interconnection offer or negotiate interconnection agreements with other suppliers of telecommunications networks and services.
- 3. Each Party shall ensure that suppliers of public telecommunications transport services that acquire information from another such supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
- 4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier shall be made publicly available.
- 5. Each Party shall ensure that major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.

Article X.7: Universal Service

- 1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
- 2. Each Party shall ensure that any measure on universal service that it adopts or maintains is administered in a transparent, objective, non-discriminatory and competitively neutral manner. Each Party shall also ensure that any universal service obligation imposed by it is not more burdensome than necessary for the kind of universal service that the Party has defined.
- 3. All suppliers should be eligible to ensure universal service. When a supplier is to be designated as the supplier of a universal service, the selection shall be made through an efficient, transparent and non-discriminatory mechanism.

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Article X.8: Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.
2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with [Article X (Cross-Border Trade in Services – Market Access), as it applies to either Chapter X (Investment) or Chapter X (Cross-Border Trade in Services)].² Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands taking into account present and future needs.
3. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Article X.9: Regulatory Authority

1. Each Party shall ensure that its regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, services or equipment, including where a Party retains ownership or control of a supplier of telecommunications network or service.
2. Each Party shall ensure that its regulatory authorities' decisions and procedures are impartial with respect to all market participants and are administered in a transparent and timely manner.
3. Each Party shall ensure that its regulatory authorities are sufficiently empowered to regulate the sector, including having the power to:
 - (a) require suppliers of telecommunications networks or services submit any information the regulator considers necessary for the administration of its responsibilities; and
 - (b) enforce their decisions relating to the obligations set out in articles X.2 and X.4 through appropriate sanctions. Such sanctions may include financial penalties, corrective orders or the suspension or revocation of licences.

² To be later specified, pending discussion on architecture of the agreement.

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Article X.10: Resolution of Telecommunication Disputes

Recourse to Regulatory Authorities

1. Further to Article X (Transparency - Administrative Proceedings) and Article X (Transparency – Review and Appeal), each Party shall ensure the following:
 - (a) [enterprises]CAN have timely recourse to its regulatory authority to resolve disputes with suppliers of public telecommunications transport networks or services regarding the matters covered in Articles [X.2, X.4, X.5 and X. 6 – access to and use, competitive safeguards, access to essential facilities, and interconnection] and that, under the domestic law of the Party, are within the regulatory authority’s jurisdiction. This shall include, as appropriate, the issuance of a binding decision by the regulatory authority to resolve the dispute within a reasonable period of time.
 - (b) suppliers of telecommunications networks or services requesting access to essential facilities or interconnection with a major supplier in the Party’s territory, have recourse to a regulatory authority to resolve disputes regarding the appropriate terms, conditions and rates for interconnection or access with such a major supplier within a reasonable and publicly specified period of time.

Appeal and Review

2. Each Party shall ensure that an [enterprise] whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the domestic law of the Party. Written reasons for the determination or decision of the judicial, quasi-judicial or administrative authority shall be given. Each Party shall ensure that such determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.
3. An application for judicial review shall not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays such determination or decision.

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Article X.11: Transparency

1. Further to Articles X (Transparency - Publication) and X (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall make publicly available:
 - (i) the responsibilities of a regulatory authority in an easily accessible and clear form, in particular where those responsibilities are given to more than one body;
 - (ii) its measures relating to public telecommunications transport network or services, including:
 - (A) regulations of its regulatory authority, together with the basis for such regulations;
 - (B) measures relating to tariffs and other terms and conditions of service;
 - (C) measures relating to specifications of technical interfaces;
 - (D) measures relating to conditions for attaching terminal or other equipment to the public telecommunications transport network;
 - (E) measures relating to notification, permit, registration, or licensing requirements, if any; and
 - (ii) information on bodies responsible for preparing, amending and adopting standards-related measures.

Article X.12: Forbearance

The Parties recognize the importance of a competitive market to achieve legitimate public policy objectives for telecommunications services. To this end, and to the extent provided in its domestic law, each Party may refrain from applying a regulation to a telecommunications service when, following analysis of the market, it is determined that effective competition is achieved.

[Article X.13: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.]CAN

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ARTICLE X.14: NumberPortability

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability on reasonable terms and conditions.

Article X.15: Definitions

For the purpose of thisChapter:

cost-oriented means based on cost and may involve different cost methodologies for different facilities or services;

[**enterprise** means an “enterprise” as defined in Article X (Initial Provisions and General Definitions – Definitions of General Application) and includes a branch of an enterprise;]CAN

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

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

interconnection means linkingsuppliers providing public telecommunications transport 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;

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

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

major suppliermeans a supplier which has the ability to materially affect the terms of participation (having regard to price and supply)in the relevant market forpublictelecommunications transport networks or services as a result of :

- (a) control over essential facilities; or

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- (b) use of its position in the market;

network termination point means the physical point at which a user is provided with access to a public communications network.

public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving 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. Such services may include, *inter alia*, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems.

regulatory authority means the body responsible for the regulation of telecommunications;

service supplier means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

[supply of a service means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;
- (c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or
- (d) by a national of a Party in the territory of the other Party;]CAN

telecommunications services means all services consisting of the transmission and reception of signals by any electro-magnetic means and do not cover the economic activity consisting of the provision of content by means of telecommunications;

user is an [enterprise] or natural person using or requesting a publicly available telecommunications service.

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

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