

## In Focus: E-Commerce and Telecom in FTAs

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# E-Commerce and Telecom Featured in FTA Agreements

The United States and Singapore, in May 2003, have signed a Free Trade Agreement (FTA) that affords substantial market access across many services sectors. Singapore has agreed to treat US services suppliers the same as its own suppliers or other foreign suppliers. An important dimension of the FTA, according to the US Trade Representative, is that American firms will enjoy fair and non-discriminatory treatment through strong disciplines on both cross-border supply and the right to invest and establish a local services presence. The agreement also contains detailed disciplines on regulatory transparency. An FTA containing similar provisions, has been concluded, but not formally signed between the US and Chile. The full text of each FTA is accessible at <[www.ustr.gov](http://www.ustr.gov)>.

### 1. Digital Products

The US-Singapore FTA is the first bilateral agreement the US has negotiated for digital products delivered electronically, including legitimate downloads of music, videos, software or text. It also covers digital products delivered on hard media (such as a DVD or CD), on which customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software. The E-Commerce text makes binding a number of E-Commerce commitments that are now only voluntary or temporary in WTO agreements. It also affirms that any commitments made related to services in the FTA also extend to the electronic delivery of such services, such as financial services delivered over the Internet.

According to members of the US Coalition of Services, the Singapore Agreement “contains a groundbreaking E-Commerce chapter, which introduces the concept of ‘digital products’ in terms of trade”. It

affirms the importance of avoiding unnecessary E-Commerce barriers and the applicability of WTO rules. The Chile FTA section on E-Commerce is quite similar to that of Singapore but there are some differences in the definition of digital products and other provisions.

Bilateral FTAs have been launched by the US and Australia, Morocco, Central Africa (CAFTA) and the Free Trade of the Americas (FTAA). Each agreement, US negotiators have noted, “is expected to stress the global nature of E-Commerce and recognize the importance of working to maintain cross-border flows of information as an essential element for a vibrant E-Commerce environment”. A chapter in all of these agreements will be directed to opening telecommunications markets.

### 2. Competitive Telecommunications Markets

The US-Singapore FTA contains a full range of commitments on telecommunications services providing for open markets, consistent with the regulatory regimes of the US and Singapore. Users of telecom networks are guaranteed reasonable and non-discriminatory access to the networks. USTR considers this chapter in the agreement to be highly important because US phone companies must obtain the right to interconnect with networks in Singapore in a timely fashion, on terms, conditions, and cost-oriented rates that are transparent and reasonable. American firms seeking to build a physical network in Singapore are granted non-discriminatory access to buildings that contain telephone switches and submarine cable heads. US firms will be able to lease elements of Singaporean telecom networks on non-discriminatory terms and to re-sell services of Singaporean suppliers to build a customer base.

The Agreement also opens rule-making procedures of telecom regulatory authority and requires publication of inter-connection agreements and service rates. The US considers an important market opening to be Singapore's commitment that when competition emerges in a telecom services area, that area will be deregulated. Specified in the agreement is that companies, not governments, make technology choices, particularly for mobile wireless services, thus allowing firms to compete on the basis of technology and innovation, not on government-mandated standards.

The complete Singapore and Chile E-Commerce chapters are presented in the following sections. These texts are subject to legal review for clarity and consistency.

### 1.1 US-Singapore FTA – E-Commerce (May 2003)

#### *Chapter 14: Electronic Commerce*

##### *Article 14.1: General*

The Parties recognize the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development and the applicability of WTO rules to electronic commerce.

##### *Article 14.2: Electronic Supply of Services*

The Parties affirm that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapters 8 (Cross Border Trade in Services), 10 (Financial Services) and 15 (Investment), subject to any reservations or exceptions applicable to such obligations.

##### *Article 14.3: Digital Products*

1. A Party shall not apply customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products by electronic transmission.<sup>1</sup>

<sup>1</sup>The obligations in paragraph 1 of this Article does not preclude a Party from imposing internal taxes or other internal charges provided that these are imposed in a manner consistent with Article III of GATT 1994 and its interpretative notes as incorporated into this Agreement by Article 2.1 of Chapter 2 (National Treatment and Market Access for Goods).

2. Each Party shall determine the customs value of imported carrier media bearing digital products according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored on the carrier medium.
3. A Party shall not accord less favorable treatment to some digital products than it accords to other like digital products
  - (a) on the basis that
    - (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory or
    - (ii) the author, performer, producer, developer, or distributor of such digital products is a foreign person,
  - or
  - (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.
4. (a) A Party shall not accord less favorable treatment to digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.
  - (b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.
5. This obligation is subject to the exceptions contained in Chapter 21 (General Exceptions) Article 2, Paragraph 2<sup>2</sup> and any other relevant excep-

<sup>2</sup>This is without prejudice to the classification of digital products as a good or a service.

tions or reservations set forth in other Chapters of this agreement. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

#### *Article 14.4: Transparency*

Each Party shall publish or otherwise make available to the public its laws, regulations, and measures of general application which pertain to electronic commerce.

#### *Article 14.5: Definitions*

For purposes of this Chapter:

**carrier medium** means any physical object capable of storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape.

**digital products** means computer programs, text, video, images, sound recordings and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically.<sup>3</sup>

**electronic means** means employing computer processing.

**electronic transmission or transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.

### **1.2 US-Chile FTA – E-Commerce (May 2003)**

#### *Chapter 15: Electronic Commerce*

##### *Article 15.1: General Provisions*

1. The Parties recognize the economic growth and opportunity provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.

<sup>3</sup>For greater clarity, digital products do not include digitized representations of financial instruments.

2. Nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.
3. This Chapter is subject to any other relevant provisions, exceptions, or non-conforming measures set forth in other Chapters or Annexes of this Agreement.

##### *Article 15.2: Electronic Supply of Services*

The Parties recognize that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapter Eleven (Cross-Border Trade in Services) and Chapter Twelve (Financial Services), subject to any non-conforming measures or exceptions applicable to such obligations.<sup>4</sup>

##### *Article 15.3: Customs Duties on Digital Products*

Neither Party may apply customs duties on digital products of the other Party transmitted electronically.

##### *Article 15.4: Non-Discrimination for Digital Products*

1. A Party shall not accord less favorable treatment to a digital product than it accords to other like digital products, on the basis that:
  - (a) the digital product receiving less favorable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party; or
  - (b) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party.<sup>5</sup>
2. (a) A Party shall not accord less favorable treatment to a digital product created, produced, published, stored, transmitted, contracted for,

<sup>4</sup>For greater certainty, nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services except in accordance with the provisions of Chapter Eleven (Cross-Border Trade in Services) and Chapter Twelve (Financial Services), including their Annexes (Non-Conforming Measures).

<sup>5</sup>For greater certainty, if one or more of the criteria of paragraph 1(a) or (b) is satisfied, the obligation to accord no less favorable treatment to that digital product applies even if one or more of the activities listed in paragraph 1(a) occurs outside of the territory of the other Party, or one or more persons listed in paragraph 1(b) are persons of the other Party or a non-Party.

commissioned, or first made available on commercial terms in the territory of the other Party than it accords to a like digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

- (b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.
3. A Party may maintain an existing measure that does not conform with paragraph 1 or 2 of this Article for one year after the date of entry into force of this Agreement. A Party may maintain the measure thereafter, if the treatment the Party accords under the measure is no less favorable than the treatment the Party accorded under the measure on the date of entry into force of this Agreement, and the Party has set out the measure in its Schedule in Annex 15.4. A Party may amend such a measure only to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with paragraphs 1 and 2.

#### *Article 15.5: Cooperation*

Having in mind the global nature of Electronic Commerce, the Parties recognize the importance of:

- (a) working together to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce;
- (b) sharing information and experiences on regulations, laws, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, cybersecurity, electronic signatures, intellectual property rights, and electronic government;
- (c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;
- (d) encouraging the development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (e) actively participating in international fora, at both a hemispheric and multilateral level, with the purpose of promoting the development of electronic commerce.

#### *Article 15.6: Definitions*

For purposes of this Chapter:

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and transmitted electronically, regardless of whether a Party treats such products as a good or a service under its domestic law;<sup>6</sup>

**electronic means** means employing computer processing; and

**electronic transmission or transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.

### **1.3 US-Singapore FTA – Telecommunication (May 2003)**

#### *Chapter 9: Telecommunications*

##### *Article 9.1: Scope and Coverage*

1. This Chapter applies to measures affecting trade in telecommunications.
2. 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.<sup>7</sup>
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party to oblige any enterprise to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications services where such networks or services are not offered to the public generally; or
  - (b) require a Party to compel any enterprise 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, unless a Party specifically designates such facilities as such.

<sup>6</sup>For greater certainty, digital products do not include digitized representations of financial instruments, including money. The definition of digital products is without prejudice to the on-going WTO discussions on whether trade in digital products transmitted electronically is a good or a service.

<sup>7</sup>Singapore's obligation under this Chapter shall not apply to measures adopted or maintained relating to broadcasting services as defined in {Singapore's Schedule to Annex 8-II of Chapter 8 (Cross Border Trade in Services) of} of this Agreement.

*Article 9.2: Access to and Use of Public Telecommunications Transport Networks and Services*<sup>8</sup>

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport network and service, including leased circuits, offered in its territory or across its borders on reasonable, non-discriminatory (including with respect to timeliness), and transparent terms and conditions, including as set out in paragraphs 2 through 4.
2. Each Party shall ensure that such enterprises are permitted to:
  - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network.
  - (b) provide services to individual or multiple end-users over any leased or owned circuit(s);
  - (c) connect leased or owned circuits with public telecommunications transport networks and services in the territory or across the borders of that Party, or with circuits leased or owned by another enterprise;
  - (d) perform switching, signaling, processing and conversion functions; and
  - (e) use operating protocols of their choice.
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 and for access to information contained in the databases or otherwise stored in machine-readable form in the territory of either Party.
4. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security and confidentiality of messages; or protect the privacy of customer proprietary network information, 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.

*Article 9.3: Obligations Relating to Suppliers of Public Telecommunications Services*

1. Each Party shall ensure that suppliers of public telecommunications services in its territory pro-

vide, directly or indirectly, interconnection with the facilities and equipment of suppliers of public telecommunications services of the other Party.

2. With respect to interconnection, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of proprietary information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing public telecommunications services.

*Article 9.4: Additional Obligations<sup>9</sup> Relating To Major Suppliers Of Public Telecommunications Services*<sup>10</sup>

*1. Treatment by Major Suppliers*

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party treatment no less favorable<sup>11</sup> than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:

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

*2. Competitive Safeguards*

- (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in paragraph 2(a) shall include in particular:

<sup>9</sup>For the purpose of the United States' obligations, Article 9.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1996, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1996, from the obligations contained in Article 9.4.

<sup>10</sup>Article 9.4 does not apply to suppliers of commercial mobile services.

<sup>11</sup>When considering "like circumstances", the Parties shall assess whether major suppliers accord treatment no less favorable to suppliers of public telecommunications services of the other Party than they accord to subsidiaries, affiliates, and non-affiliated service suppliers on the basis of whether the suppliers of public telecommunications services, subsidiaries, affiliates and non-affiliated service suppliers are in "like circumstances".

<sup>8</sup>Access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 9.4.3.

- (i) engaging in anti-competitive cross-subsidization;
- (ii) using information obtained from competitors with anti-competitive results; and
- (iii) not making available, on a timely basis, to suppliers of public telecommunications services of the other Party, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

### 3. *Unbundling of Network Elements*

- (a) Recognizing that both Parties currently provide for access to unbundled network elements, each Party shall provide its telecommunications regulatory body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis at terms, conditions, and cost-oriented rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent for the provision of public telecommunications services.
- (b) Which network elements will be required to be made available in its territory, and which suppliers may obtain such elements, will be determined in accordance with national law and regulation.
- (c) In determining the network elements to be made available, each Party's telecommunications regulatory body shall consider, at a minimum, in accordance with national law and regulation:
  - (i) Whether access to such network elements as are proprietary in nature are necessary; and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other party to provide the services it seeks to offer; or
  - (ii) Whether the network elements can be replicated or obtained from other sources at reasonable rates, such that the unavailability of these network elements from the major supplier will not impair the ability of other suppliers of public telecommunications services to provide a competing service; or
  - (iii) Whether the network elements are technically or operationally required for the provision of a competing service; or
  - (iv) Other factors as established in national law;

as that body construes these standards.

### 4. *Co-Location*

- (a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location, at premises owned or controlled by the major supplier (as required by national law or regulation) of equipment necessary for interconnection or access to unbundled network elements at terms, conditions, and cost-oriented rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.
- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide or facilitate virtual co-location as required by national law or regulation at terms, conditions, and cost-oriented rates that are reasonable, nondiscriminatory (including with respect to timeliness), and transparent.

### 5. *Resale*

Each Party shall ensure that major suppliers in its territory:

- (a) offer for resale, at reasonable<sup>12</sup> rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end-users; and
- (b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.<sup>13</sup>

### 6. *Poles, Ducts, and Conduits*

- (a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, and conduits, owned or controlled by such major sup-

<sup>12</sup>In the United States, wholesale rates, set pursuant to domestic law and regulation, shall satisfy the standard of reasonableness in this article. In Singapore, wholesale rates are not required by the national telecommunications regulatory body and therefore are not factored into a determination of the standard of reasonableness in this article.

<sup>13</sup>In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers. In Singapore, where national law and regulation provides for this, resellers that obtain public telecommunications services available at retail only to a category of subscribers at particular rates may be prohibited from offering such service to a different category of subscribers at that particular rate.

pliers to suppliers of public telecommunications services of the other Party under terms, conditions, and cost-oriented<sup>14</sup> rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.

- (b) Each Party may determine in accordance with domestic law and regulation, which structures owned or controlled by the major suppliers in its territory, are required to be made available in accordance with paragraph (a), upon its determination that such structures cannot feasibly be economically or technically substituted in order to provide a competing service.

#### 7. Number Portability

Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

#### 8. Interconnection

##### (a) General Terms and Conditions

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

- (i) at any technically feasible point in the major supplier's network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major supplier for its own like services or for like services of non-affiliated suppliers of public telecommunications services 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 suppliers of public telecommunications services, subject to charges that reflect the cost of construction of necessary additional facilities.<sup>15</sup>

##### (b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

- (i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- (ii) the terms and conditions of a new or existing interconnection agreement.

##### (c) Public Availability of Interconnection Offers

Each Party shall require major suppliers in its territory to make publicly available either a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

##### (d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

##### (e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

- (i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.
- (ii) Each Party shall make available for public inspection to suppliers of public telecommunications services which are seeking interconnection, interconnection agreements in force concluded between a major supplier in its territory and any other supplier of public telecommunications services in such territory, including interconnection agreements concluded between a major supplier and its affiliates and subsidiaries.

<sup>14</sup>In the United States, this obligation may not apply to those states that regulate such rates as a matter of state law.

<sup>15</sup>These costs may include the cost of physical or virtual collocation referenced in Article 9.4.4.

(f) *Resolution of Interconnection Disputes*

Each Party shall ensure that suppliers of public telecommunications services of the other Party, which request interconnection with a major supplier in its territory, have recourse to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection within a reasonable and publicly available period of time.

9. *Provisioning and Pricing of Leased Circuits Services*<sup>16</sup>

- (a) Each Party shall ensure that major suppliers of leased circuit services in its territory provide enterprises of the other Party such leased circuits that are classified as public telecommunications services, at terms, conditions, pricing structures and rates that are reasonable, non-discriminatory (including with respect to timeliness), and transparent.
- (b) Each Party may determine whether rates for leased circuits in its territory are reasonable by taking into account the rates of like circuits in comparable markets in other countries.

*Article 9.5: Submarine Cable Landing Stations*

1. Where under national law and regulation, a Party has authorized a supplier of public telecommunications services in its territory to operate a submarine cable system (including the landing facilities and services) as a public telecommunications service, that Party shall ensure that such supplier provides those public telecommunications services<sup>17</sup> to suppliers of public telecommunications services of the other Party on reasonable terms, conditions and rates that are no less favorable than such supplier offers to any other supplier of public telecommunications services in like circumstances.
2. Where submarine cable landing facilities and services cannot be economically or technically substituted, and a major supplier of public international services that controls such cable landing facilities and services has the ability to materially affect the price and supply for those facilities and

services for the provision of public telecommunications services in its territory, each Party shall ensure that:

- (a) such major supplier permits suppliers of public telecommunications services of the other Party to:
  - (i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and
  - (ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the submarine cable landing station at terms, conditions, and cost-oriented rates that are reasonable and non-discriminatory.
- (b) such supplier of submarine cable landing facilities and services provide suppliers of telecommunications of the other Party submarine cable capacity, backhaul links, and cross-connect links in the submarine cable landing station at terms, conditions, and rates that are reasonable and non-discriminatory.

*Article 9.6: Independent Regulation and Privatization*

- (a) Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold any financial interest or maintain an operating role in such a supplier.
- (b) Each Party shall ensure that the decisions of, and procedures used by its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it may hold in a supplier of public telecommunications services does not influence the decisions of and procedures used by its telecommunications regulatory body.
- (c) Where a Party has an ownership interest in a supplier of public telecommunications services, it shall notify the other Party of any intention to eliminate such interest as soon as feasible.

<sup>16</sup>The obligation under this article is not an obligation to provide leased circuits as an unbundled network element, which is addressed in Article 9.4.3.

<sup>17</sup>This shall include any submarine cable landing facilities included as part of that authorization.



*Article 9.7: Universal Service*

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

*Article 9.8: Licensing Process*

(a) Each Party shall make publicly available when it requires a license:

- (a) all the licensing criteria, procedures, and the period of time normally required to reach a decision concerning an application for a license; and
- (b) the terms and conditions of all licenses issued.

3. Each Party shall ensure that an applicant receives, upon request, the reasons for the denial of a license.

*Article 9.9: Allocation and Use of Scarce Resources*<sup>18</sup>

1. Each Party shall administer procedures for the allocation and use of scarce resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and nondiscriminatory fashion.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not have the obligation to provide detailed identification of frequencies allocated for specific government uses.

*Article 9.10: Enforcement*

Each Party shall ensure that its national telecommunications regulatory body maintains appropriate procedures and authority to enforce domestic measures relating to the obligations contained in this Chapter. Such measures shall include effective sanction authority, such as the ability to impose financial penalties, or order injunctive relief (on an interim or final basis), or modify, suspend, and revoke licenses.

<sup>18</sup>The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are per se inconsistent with [Article {8.6 of Chapter 8 (Cross Border Trade in Services) and Article 15.07 of Chapter 15 (Investment)}]. Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

*Article 9.11: Resolution of Domestic Telecommunications Disputes*

In addition to the obligations contained in the relevant provisions of Chapter 19 (Transparency), each Party shall ensure the following:

1. *Recourse to Telecommunications Regulatory Bodies*

Each Party shall ensure that enterprises of the other Party have recourse within a reasonable period of time to a national telecommunications regulatory body or other relevant body to resolve disputes regarding compliance with domestic measures relating to the obligations contained in this Chapter.

2. *Reconsideration*

Each Party shall ensure that any enterprise aggrieved or whose interests are adversely affected by a determination or decision of the telecommunications regulatory body has the opportunity to petition that body for reconsideration of that determination or decision. Such a petition shall not constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

3. *Judicial Review*

Each Party shall ensure that any enterprise aggrieved by a determination or decision of the telecommunications regulatory body has the opportunity to obtain judicial review of such determination or decision by an independent judicial authority.

*Article 9.12: Transparency*

In addition to the obligations contained in Chapter 19 (Transparency), each Party shall ensure that:

1. rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;
2. interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by a national telecommunications regulatory body; and
3. its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (a) tariffs and other terms and conditions of service;
  - (b) specifications of technical interfaces;

- (c) information on bodies responsible for the preparation and adoption of standards-related measures;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and
- (e) notification, permit, registration, or licensing requirements, if any.

*Article 9.13: Flexibility in the Choice of Technologies*

Each Party shall endeavor to ensure that suppliers of public telecommunications services have the flexibility to choose the technologies that they use to supply their services, including commercial mobile services, subject to the ability of each Party to take measures to ensure that end-users of different networks are able to communicate with each other.

*Article 9.14: Forbearance and Minimal Regulatory Environment*

The Parties recognize the importance of relying on market forces to achieve wide choice and efficient supply of telecommunications. To this end, each Party may forbear from applying regulation to a telecommunications service that such Party classifies as a public telecommunications service, according to its domestic laws and regulations, upon a determination by its telecommunications regulatory body that:

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

*Article 9.15: Relationship to Other Chapters*

In the event of any inconsistency between a provision of this Chapter and a provision of another Chapter, the provision of this Chapter shall prevail to the extent of such inconsistency.

*Article 9.16: Definitions*

For purposes of this chapter:

**backhaul links** means end-to-end transmission links from the submarine cable landing station to another primary point of access to the Party's public telecommunications transport network.

**co-location (physical)** means physical access to and control over space, in a building used by a major supplier, in order to install, maintain, and repair equipment.

**cost-oriented** means for the purpose of this agreement means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services.

**commercial mobile services** means public telecommunications services delivered via mobile wireless means.

**cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching and routing equipment of different suppliers of public telecommunications services co-located in that submarine cable landing station.

**customer proprietary network information** means information made available to the supplier of public telecommunications services by the end-user solely by virtue of the end-user-telecommunications service supplier relationship. This includes information regarding the end-user's calling patterns (including the quantity, technical configuration, type, destination, location, and amount of use of the service) and other information (USG: excluding subscriber list information) that appears on or may pertain to an end-user's telephone bill.

**enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or government owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization.

**end-user** means a final consumer of or subscriber to a public telecommunications service, that could be a service supplier, but not a supplier of public telecommunications services.

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

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

**interconnection** means linking with suppliers 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.

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

**major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

**network element** means a facility or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facility or equipment.

**non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances.

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

**person** means either a natural person or an enterprise.

**public telecommunications transport network** means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points.

**public telecommunications service** means any telecommunications service (which a Party may define to include certain facilities used to deliver these telecommunications services) which a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.<sup>19</sup>

<sup>19</sup>Because the United States does not classify services described in 47 USC 153 (20) as public telecommunications services, these services are not considered public telecommunications services for the purposes of this Agreement. This does not prejudice both Parties' positions in the WTO on the scope and definition of these services.

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

**service supplier** means any person that supplies a service.

**submarine cable landing station** means the premises and buildings where international submarine cables arrive and terminate and are connected to backhaul links.

**supplier of public telecommunications services** means any provider of public telecommunications services, including those who supply such services to other suppliers of public telecommunications services.<sup>20</sup>

**telecommunications** means the transmission and reception of signals by any electromagnetic means.<sup>21</sup>

**telecommunications regulatory body** means a national body responsible for the regulation of telecommunications.

**user** means an end-user or a supplier of public telecommunications services.

<sup>20</sup>(a) For purposes of Singapore's obligations in Articles 9.3, 9.4.1, 9.4.5, 9.4.8 and 9.13, the phrase "supplier of public telecommunications services" means facilities based licensees or services based licensees that use switching or routing equipment, in accordance with the Singapore Code of Practice for Competition in the Provision of Telecommunications Services, 2000. (b) For purposes of Singapore's obligations in Articles 9.4.3, 9.4.4, 9.4.6 and 9.5, the phrase "supplier of public telecommunications services" means facilities based licensees in accordance with the Singapore Code of Practice for Competition in the Provision of Telecommunications Services, 2000.

<sup>21</sup>Including by photonic means.