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## **Telecommunications Chapter**

Submitted by: Peru



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with a Negative List Approach**

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**CAPACITY BUILDING WORKSHOP ON NEGOTIATIONS OF SERVICES  
CHAPTERS UNDER FTAS WITH A NEGATIVE LIST APPROACH  
TELECOMMUNICATIONS CHAPTER**

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## TELECOMMUNICATIONS IN FTAs

Options for addressing Telecommunications in a FTA:

- To avoid any specific Annex/Chapter on Telecommunications.
- Annex on Telecommunications: regulatory provisions applicable to the Telecommunications sector.
- Chapter on Telecommunications: regulatory provisions applicable to the Telecommunications sector. The benefits of the provisions may go beyond the “services sectors” (this issue will be addressed later...)

Why including a specific Annex/Chapter on Telecommunications?

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## TELECOMMUNICATIONS CHAPTER

### Objectives:

- To ensure transparency and competition in the telecommunications sector.
- To ensure that there will be expedite process for the issuance of licenses in the sector.
- ***To ensure that the liberalization achieved in the CBTS and Investment Chapters, will not be blocked by regulatory provisions in the telecommunications sector.***

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## TELECOMMUNICATIONS CHAPTER

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### Objectives:

#### Example 1:

If there are no regulation regarding interconnection rates, it will be too expensive for subscribers of enterprise A to call subscribers of enterprise B (major supplier). Consumers will prefer enterprise B.

#### Example 2:

If there is no regulation that requires major suppliers to share its infrastructure, new enterprises will need to build their own infrastructure (high costs => expensive service).

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## TELECOMMUNICATIONS CHAPTER

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### Scope:

A Telecommunications Chapter applies to mesures relating to:

- ▶ **Access and use to PTS**
    - *Access and Use*
  - ▶ **Obligations on PTS suppliers**
    - *Interconnection*
    - *Competitive Safeguard*
    - *Access to Pole, Ducts, Conduits*
    - *Number Portability*
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## TELECOMMUNICATIONS CHAPTER

### Scope:

A Telecommunications Chapter applies to measures relating to:

#### ▶ **Other measures relating to PTS**

- Transparency
- Licencing process
- Universal Service
- Scarce Resources

A Telecommunications Chapter does not apply to measures relating to broadcast or cable distribution of radio or television programming.

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## MARKET ACCESS IN THE TELECOMMUNICATIONS CHAPTER?

Normally, Telecommunications Chapters do not include market access provisions (NT, MA, MFN or LP).

These provisions are addressed in the Investment and the CBTS Chapter:

- ▶ Investment – allows investments in the telecommunications sector (mode 3).
- ▶ CBTS – allows the provision of telecommunication services on a cross border basis (modes 1, 2 and 4).

Telecommunications Chapter only focuses in the regulatory provisions.

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## DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER

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- Terminology
- Relation with the List of Commitments/Non-Conforming Measures
- Ambition of the provisions

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## DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER: TERMINOLOGY

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Text from the Annex on Telecommunications - Paragraph 5 - Access and use of Public Telecommunications Transport Networks and Services

*(a) Each Member shall ensure that any **service supplier** of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and nondiscriminatory terms and conditions (...)*

Text from the FTA Peru-Canada - Article 1002 - Access and Use

*(...) a Party shall ensure that **enterprises** of the other Party are accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions.*

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### DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER: TERMINOLOGY

Is it only a drafting issue? What is the purpose?

The use of the term “enterprises” expands the benefits of the provisions.

The commitments will not only benefit “service suppliers”, but also non-service suppliers (for example, a manufacturing enterprise).

Scope of GATS: services  
and service suppliers

vs.

Scope of FTAs: trade in goods,  
services and investments

This is why some FTAs contain a Telecom Chapter instead of an Annex --  
-> the scope will not be limited to services

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### DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER: Relation with the lists/schedules

Text from Reference Paper - Paragraph 2 - Interconnection

*This section applies to 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(...), **where specific commitments are undertaken.***

Text from the FTA Peru-United States - Article 14.4 - Interconnection

*Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party. **(No reference to non-conforming measures)***

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### DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER: Relation with the lists/schedules

Telecommunications Chapters might not make reference to the Non-Conforming Measures.

In this case, regulatory provisions, like the interconnection article, will be applicable in any case.

The Telecommunications Chapter seeks to ensure that the regulatory provision will be applicable, even if there are non-conforming measures for the telecommunications sector.

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### DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS (GATS) AND THE REFERENCE PAPER: Ambition of the provisions

#### Scope:

**GATS Annex:**  
Excludes broadcast or cable distribution of radio or television programming

vs.

**Telecommunications Chapter:**  
Excludes those services but ensure that those enterprises will have Access and Use to PTS.

#### Access and Use:

**GATS Annex:**  
Conditions on access and use to PTS may include restrictions on resale or interconnection.

vs.

**Telecommunications Chapter:**  
These conditions are not included. Specific commitments that guarantee the resale and interconnection are included

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**DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS  
(GATS) AND THE REFERENCE PAPER: Ambition of the  
provisions**

**Interconnection:**

**Reference Paper:**  
Commitment applicable only to  
major suppliers

vs.

**Telecommunications Chapter:**  
Two different commitments: for all suppliers  
and for major suppliers

**Transparency regarding licenses:**

**Reference Paper:**  
Commitment to provide the  
reasons for the denial of a license

vs.

**Telecommunications Chapter:**  
Commitment to provide the reasons for the  
denial, revocation or refusal to renew a  
license

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**DIFFERENCES WITH THE ANNEX ON TELECOMMUNICATIONS  
(GATS) AND THE REFERENCE PAPER: Ambition of the  
provisions**

**Independent Regulators:**

**Reference Paper:**  
Regulatory body, separate and not  
accountable to any supplier; with  
impartial decisions

vs.

**Telecommunications Chapter:**  
In addition, regulatory body shall not hold  
financial interests or maintain a management  
role in a PTS supplier

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## OTHER ARTICLES INCLUDED IN A TELECOMMUNICATIONS CHAPTER

### Number Portability:

It ensures that users will be able to switch between suppliers of public telecommunications services, retaining its phone number.

### International Mobile Roaming:

It includes transparency commitments regarding the rates imposed to the end-users.

TPP – establishes a mechanism where an Economy is committed to grant Access to regulated wholesale rates.

Pacific Alliance – commitment to jointly evaluate mechanisms for the regulation of roaming.

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## OTHER ARTICLES INCLUDED IN A TELECOMMUNICATIONS CHAPTER

### Access to Infrastructure:

It ensures that major suppliers will grant access to its infrastructure (i.e. poles, ducts, conduits) on reasonable and non-discriminatory terms and conditions.

### Flexibility in the Choice of Technology:

It ensures that public telecommunication services suppliers will be able to choose any technology for the provision of public telecommunications services.

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