



ESOA

EMEA SATELLITE OPERATORS ASSOCIATION

MARKET ACCESS FOR SATELLITE COMMUNICATIONS

Introduction

Free trade is accepted as a principle of any well-functioning market economy, which is particularly important for satellite services in large part because of their capability for wide coverage. Satellite signals illuminate large geographical areas and are blind to national boundaries.

Satellite operators draw on this natural benefit to build networks that are regional or global and by doing so, support socio-economic development worldwide.

Technical or commercial local presence requirements for satellite operators, such as Hub, Gateway, Control Centre, Subsidiary, Local Representative, are inconsistent with the characteristics and benefits of satellite technology and with the least burdensome principles of the General Agreement on Trade in Services (GATS).

Satellite operators do not require a physical presence in every country where they provide services because their satellites can reach broad populations in multiple countries from a single point in space and with limited ground infrastructure. Satellite operators business models are built on this principle and do not factor in the significant costs that would be associated with establishing a local presence.

The fact that satellites do not require physical presence in every country does not mean they are not regulated. As a global infrastructure, their launch and operation are coordinated through the mechanisms of the International Telecommunications Union (ITU). In addition, every satellite launched has been authorised by the satellite operator's home licensing administration. There is therefore no need for rights or licenses to access the space segment ("so-called landing rights") or to impose other regulatory requirements on satellite operators for the provision of satellite services.

In most countries of the world, satellite communications are successfully and efficiently regulated by licensing transmitting earth stations. This approach addresses important regulatory requirements such as location of antennas, monitoring of data traffic and regulatory cost recovery.

The Technology

Satellite technology has seen enormous innovation in recent years. High-Throughput Satellites (HTS) provide Gigabit connectivity today and will deliver Terabit solutions tomorrow. Satellite will be part of the 5G ecosystem, bringing reach, resilience, security and other network efficiencies that come from a space-based infrastructure.



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The Services

Countries can only benefit from satellite services if they have favourable market access and regulatory policies in place.

Satellite remains essential for the large deployment of HDTV or broadband services in all parts of the world. Besides unconnected or sparsely populated areas, satellite is also highly relevant for mobile connectivity. Not only do they reach places where other land-based, wired or wireless communications technologies cannot reach, but they also have the benefit of being regional or global networks, which is relevant for aircraft, ships, cars and trains. Satellite is important to bridge digital, education, health and social divides across diverse geographies and economies. They are also critical at times of disaster when land-based communications infrastructures are destroyed, enabling immediate connectivity, business continuity and informing world citizens of important events as they unfold, in real-time.

Given the overwhelming and unique benefits of satellite technology, satellite services should be prioritized in ICT trade negotiations.

Benefits of Free Trade

Open market access is applied effectively by many countries in the world. As a result, they benefit from increased competition which brings more choice and lower prices for consumers. They also see greater economic growth as essential telecom services and Internet connectivity improve throughout the country, creating jobs, economic opportunities and stimulating investment.

A country freely receiving satellite signals will see more high-definition TV content becoming available with increased competition in the pay TV marketplace.

Economies that foster connectivity for all will benefit not only from 2G and 3G satellite backhaul but 4G backhaul and soon 5G via satellite as well.

Countries enabling eHealth or eEducation via satellite can provide connectivity for the local community as well, giving rise to novel local projects and small businesses even where there is no terrestrial infrastructure.

Many such examples exist in all continents and in land locked or island countries in particular.

Market Access Expectations

An open market allows authorised service providers to freely choose any satellite operator or satellite service provider to distribute services to their target market. In such markets satellite operators and service providers can offer the following products and services without discrimination and without needing to fulfill burdensome regulatory requirements:

- 1 • **“Bare” satellite capacity (similar to submarine cable capacity or “dark” fiber)**
- 2 • **Satellite-based communications networks (similar to a 3G/4G network)**
- 3 • **Satellite-based communications services (public or private)**
- 4 • **Satellite terminals, including portability (mobile, transportable and in-motion)**

Existing Restrictions

Some countries impose restrictive regulatory procedures and unfair treatment on foreign satellite operators, including preference for a national operator, burdensome licensing conditions, requirements for unnecessary and duplicative national infrastructure, changes in spectrum allocation decisions, disparate fiscal treatment, high equipment importation duties and type approvals, or requirements of national commercial presence.

As a result, the evolution of their national communications system is slow and the benefits of satellite services that would otherwise be immediately available are lost or seriously diminished. Particularly troubling are countries where satellite coverage exists thanks to the substantial up-front investment of satellite operators, but market access is denied.

Recommended Policy Principles

Governments and their National Regulatory Authorities (NRAs) should consider adopting the following market access principles to maximise the positive impact of satellite services on their territories:

Facilitate provision of bare satellite capacity

Satellites duly authorised by another country and coordinated through the ITU process carry capacity that is available for use in the countries they cover. There is no need to require further licenses or impose other regulatory requirements solely for the provision of satellite capacity to a licensed entity. The European Union has deregulated this activity in treating EU and foreign satellite operators equally, which has contributed to develop satellite market competition and widen consumer choice.

Treat all satellite operators equally

Exemptions to Most Favoured Nation (MFN) and any other limitations that put foreign satellite operators at a disadvantage should be avoided. Specifically, national governments should not give preferential or exclusive treatment to domestic satellite operators nor should they require foreign satellite operators to provide capacity with the domestic operator acting as intermediary. Such requirements result in an uncompetitive domestic market, higher prices and little or no innovation.

Minimise local requirements

It is neither feasible nor necessary for a global satellite operator to establish a local presence in every country it covers. Foreign satellite operators should not be required to be licensed through a local company or legal representative; instead a workable registration system can be applied. Similarly, restrictions on foreign ownership or foreign direct investment in entities permitted to access foreign satellite capacity and services should be avoided.

Provide transparent, non-discriminatory authorisation procedures

Licensing procedures applicable to national service providers should be streamlined, transparent and the same for domestic or foreign satellite systems. Licensing fees and other regulatory / administrative charges should be cost-based rather than used as revenue generation mechanisms. Finally, the treatment of satellite technology should be comparable to the treatment of terrestrial communications technologies.

Permit transport of video & audio signals

There is a critical difference between (1) the satellite capacity leased or sold to a nationally-authorized service provider (telecoms or broadcaster); and (2) the content that those nationally-authorized service providers select to distribute via satellite. Satellite operators provide the transport service (transmission and connectivity) of content developed by licensed broadcasters and telecoms providers and do not typically get involved on content. Nationally-authorized service providers should therefore be allowed to use foreign satellite operators to deliver video and associated audio signals including for Direct-to-Home (DTH) services.



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Encourage free circulation and use of satellite terminals

Satellite terminals and other satellite end-user equipment should be exempted from custom duties, not subject to duplicative testing or type approvals and, to the greatest extent possible, be freely deployable within a country. Countries with a blanket licensing scheme benefit most as they allow the greatest number of people to be connected.

Address security concerns adequately

National governments sometime fear that undesirable customers might transmit over foreign satellites and/or the traffic might not be controllable, leading them to impose additional market barriers such as the installation of costly local technical facilities in their territory, e.g. for lawful interception. In fact, the most recent technology developments enable regulators to effectively address concerns on the monitoring of data traffic or the unauthorized use of earth stations, without the need for local installations.

Adhere to the GATS Telecommunications Reference Paper

The 1997 WTO General Agreement on Telecommunications reference Paper and the principles embodied in the Chairman's Note on Scheduling allow all satellite communications for the transport of video and data to be covered without exemption.

Exchange on and follow Best Practices

NRAs should work with other countries in their region to ensure an exchange of information on best practices with a view of developing regionally harmonized approaches to licensing satellite systems. Services in harmonized spectrum should be subject to no more than a general authorisation and should not require an explicit consent prior to commencing service. The European Union is a good example of an integrated regional policy; its telecommunications regulations have considerably evolved to be simpler and more open.

Adhere to the ITU Table of Frequency Allocations

NRAs should ensure that existing ITU primary frequency allocations to satellite services are maintained and respected in order to benefit from available satellite services without interference.

Conclusion

Ultimately foreign satellite operators should be able to compete on a level-playing field with domestic satellite operators and terrestrial communications systems so that government entities and nationally-licensed operators such as broadcasters, telecoms companies, internet service providers, corporation/enterprises, VSAT service providers can all enjoy the benefits of complete coverage and connectivity, anytime, anywhere.

