



Position Paper MARKET ACCESS and REGULATORY BARRIERS

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The European Satellite Operators Association (ESOA), a non-profit organisation based in Brussels, Belgium represents the views of its member satellite operators on critical political, regulatory and commercial matters both in Europe and on the international level. ESOA members, their customers and end-users face different layers of regulations applicable to their systems, services and terminals in different countries in order to be able to lawfully:

- i) offer space segment capacity to entities interested in using such capacity to provide services to, from or within the territory of a given country;
- ii) deploy and operate communications networks within a given country;
- iii) provide communications services within a given country or cross-border services within a region;
- iv) carry and use mobile terminals.

The European Union has liberalised the telecommunications sector and since 1998 the European (EC) market has been fully open to both domestic and foreign satellite operators and telecommunications service providers. Within Europe, administrations rely on the International Telecommunication Union (ITU) frequency coordination process as well as CEPT coordination at a regional level. CEPT administrations generally do not regulate the space segment further on a national basis. Notwithstanding the progress made towards harmonisation achieved through the transposition at national level of CEPT rules and European Directives, within Europe some significant regulatory barriers still persist (e.g., local presence required in some countries, wide divergences in the regulatory approach, and discrepancies in the fee calculation methodologies).

In addition, many countries in different regions of the world impose even more restrictive regulatory procedures and unfavourable treatment on non-national satellite operators. These may take the form of discriminatory licensing conditions, especially restrictive operational conditions, disparate tax or fiscal obligations, requirements to establish a local presence or legal entity, enforcing a predefined business model, and especially cumbersome administrative requirements. In almost every case, these measures require additional, expensive, and lengthy negotiations that increase the cost of doing business and negatively affect the ability for providers to develop new markets and services, particularly in many markets where satellite services could be used to supply needed infrastructure. This, of course, directly affects the choice of services which distributors can offer and from which the end-users can choose, as well as the service costs. Particularly troubling are some cases where satellite coverage exists today, but market access is denied – stranding investment made by satellite operators and denying the users in a given territory the benefits of satellite services that would otherwise be immediately available.

Accordingly, ESOA supports efforts by administrations to adopt market-driven, pro-competitive market entry policies where the greatest number of satellite providers can compete, ensuring that the benefits of satellite communication can be realized by users in a given jurisdiction. Recognizing the benefits that satellite services can offer, including high reliability, broad geographic reach including remote areas and the open sea, rapidly deployable infrastructure, cost-effective collection and distribution of news and other information, redundancy for disaster relief, and the ability to help close

the digital divide by providing essential access, ESOA urges governments and their national regulatory authorities (NRAs) to adopt the following principles to reduce regulatory and market access barriers for satellite services:

- Adopt a non-preferential, non-discriminatory “open skies” market access policy for satellite services, promoting and encouraging market entry by as many satellite service providers as technically feasible without discrimination based on satellite technology used. Countries should endeavour to make this “open skies” commitment available to all technically qualified satellite operators without regard to the identity of their national managing administration.
- Eliminate requirements to conclude bilateral (i.e., reciprocal) market access instruments. Instead, NRAs should commit to providing market access on the widest-possible multilateral basis, such as the World Trade Organization’s (WTO’s) General Agreement on Trade in Services (GATS), along with its Fourth Protocol on Basic Telecommunications Services¹. Where administrations have previously taken “most favoured nation” (MFN) exemptions for all or specific satellite services, these MFN exemptions should be eliminated. NRAs should faithfully implement the market-opening commitments made at the WTO.
- Avoid burdensome and unnecessary re-authorization of space stations. Satellite networks are coordinated through the ITU procedures defined in the Radio Regulations. Allocations are made in the Radio Regulations based on detailed studies of compatibility between different radio services. The ITU also produces guidelines on how to avoid interference between services. These coordination and allocation processes therefore ensure that the satellite networks are protected against interference from, and do not cause unacceptable interference to, other satellite networks and terrestrial systems. Hence, space stations should be authorized only by the one administration responsible for the international registration and frequency coordination of the system; market entry should be permitted because such coordinated systems will not cause harmful radio-frequency interference. As national administrations are bound by these international procedures for frequency coordination and allocation, and as these procedures provide all necessary security and assurance for efficient spectrum usage, additional national authorisations for satellite space stations are unnecessary and could potentially conflict with existing and well established international procedures.
- NRAs should not require satellite operators to establish legal entities, or subsidiary operations for the sole provision of space segment capacity by the satellite operator. Imposing these obligations increases the cost of services and delays their availability by adding an additional layer to the authorisation process.
- NRAs should be flexible with regard the entity that is required to obtain an authorisation. The way in which services are commercialised over different satellite systems vary largely; the space segment operator does not necessarily have operational, technical and commercial management of the service provision to the local service providers/end-users. The same is true for the hub stations or satellite access stations. The entity subject to authorisation should be the one that is most appropriate in terms of capability to comply with licensing obligations in function of the technical and commercial set up of the end-to-end service.

¹ Reference Paper, Fourth Protocol to the General Agreement on Trade in Services, 436 (WTD 1997)

- NRAs should encourage maximum transparency in telecommunications regulation by publishing regularly their laws and internal rules on satellite licensing, earth station permits, and service licensing; ideally, such publications should be available on the Internet. It is equally highly important that review of regulation and licensing conditions is subject to prior consultation with operators.
- NRAs should craft regulations that are service oriented and technology neutral. For example, where NRAs have adopted a competitive policy for Internet Service Providers (ISPs), ISPs should be permitted to select a combination of satellite, terrestrial wire line and wireless access providers to obtain internet connectivity without requiring special licenses for use of satellite access technology. International telecommunications carriers should be permitted to select satellite technology if desired. In all cases, satellite consumer terminals should be exempted from individual licensing to the maximum extent possible. Users of mobile terminals operating on systems that have taken the necessary measures to avoid harmful interference between services should be allowed to carry and use their terminal across borders without individual licence.
- Due to the inherently trans-border nature of satellite transmissions, relying on auction or spectrum trading approaches is economically irrational, and should therefore not be employed in national authorisation regimes for satellite services.
- NRAs should set fees for licensing satellite ground segment infrastructure or services in those countries where such infrastructure or services are installed to recover only the actual administrative costs incurred on the basis of a coherent calculation method. Fees for spectrum use should not hamper development of a competitive satellite industry, and such fees should be proportionate to their intended purpose.
- One of the benefits of satellite communication, the regional or even global coverage of satellites which enables, for example, the possibility of pan-European services, is largely dependent on harmonized allocation of satellite frequencies. NRAs should allocate frequency spectrum with satellite services in mind. NRAs should adhere to the ITU table of frequency allocation and ensure that existing ITU primary frequency allocations to satellite services are maintained.
- NRAs should work with other members within their region to ensure an exchange of information on the lightest possible requirements, with a view of developing a regionally harmonized approach to ground segment and network service licensing that should result, eventually, in a regional license for pan-regional services or cross-border recognition of licences. Services in harmonised spectrum should be subject to no more than general authorisation and should not require an explicit consent prior to commencing service.

To help advocate these principles, ESOA contributes regularly to various Directorates of the European Commission and other governmental authorities concerning information on trade and regulatory barriers that have been identified in different countries where its members are seeking market access. ESOA is equally concerned by those instances where clients and service providers of its members have encountered discriminatory treatment or significant barriers.

ESOA will continue to share the recommendations and experiences of its members directly with the European Commission including in the EU's preparatory work for the next 'Doha' round of negotiations for the communication services. One major objective for ESOA is to see existing MFN exemptions on satellite services lifted and to push forward the real practical implementation of the engagements already taken by the different countries in view of further liberalisation.

ESOA urges the European Commission to place the highest priority on identifying and removing barriers to the provision of satellite communication services in the Doha round. ESOA also urges the Commission to adopt interim market-opening measures where possible, without disruption to any existing access arrangements, on a multilateral basis between the EU member countries and countries where national regulatory authorities now require bilateral instruments for market entry by satellite providers.