

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
The relations between Trade Law, Finance and Space Law (4)

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OPEN SKIES: THE IMPACT OF PROTECTIONIST LANDING RIGHTS AND MARKET ACCESS
AUTHORISATION REGULATORY REGIME FOR NEW SPACE SATELLITE SERVICES

Abstract

The satellite industry as a whole has experienced a rapid transformation that has confronted its well-established model with challenges and opportunities. The democratisation and commercialisation of outer space activities have made new commercial small satellite constellations a reality, challenging the traditional the television broadcast business. OTT service adoption have skyrocketed, fuelled by consumers' desire for content choice, convenience, and lower costs, and the advancements in technology to support all of that. Satellite broadband and mobility is on the rise, and communication services over satellite must meet the performance offered by fibre and 5G mobile networks. This rapidly growing market depends on satellites. Satellite operators with the right mix of suitable assets and tailored strategies can diversify their business and build strong positions on this fast-growing segment of the market and lead to a further increase in the competitive landscape. Satellite operators, however, need to obtain various licences and authorisations to access markets and operate their satellites at specific orbital positions and transmit signals in dedicated frequency bands to and from various countries. These activities are regulated both at international, as well as national level. They include orbital slot rights for orbit and frequency band use granted by the ITU, and landing rights required by a national government of a satellite operator. Landing rights are the licenses, permits, registrations or other types of authorisations required in some countries (typically in the Americas and Asia) for the up and downlink of the satellite signals from and to the satellite, an integral part of any satellite's operation. As a consequence, fixed satellite, mobile satellite, and broadcasting satellite operators rely on the landing rights to up and downlink the signal from and to the countries in which they want to offer their services. Although most governments do not require satellite operators to obtain landing rights and market access authorisations before it may provide capacity to customers located in its territory, and instead prefer to follow an "Open Skies" regulatory approach, many other countries still do. This process represents an additional obstacle to market access and the application procedure is often over-bureaucratic. The paper analyses the regulatory constraints for landing right authorisation in countries which adopt a so-called protectionist approach for market access. It provides an overview of the barriers the administrative process impose upon New Space satellite companies, including aspects related to corporate governance, taxation, liability, and the authorisation process for national and foreign satellites.