

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410098-1077-02]

RIN 0660-ZA12

Market for Satellite Communications and the Role of Intergovernmental Satellite Organizations

AGENCY: National Telecommunications and Information Administration, Commerce

ACTION: Notice, Request for Comments

SUMMARY: The Department of Commerce requests comments regarding the advantages accorded signatories of the International Telecommunications Satellite Organization (INTELSAT), in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT, the reason for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of that organization. The Department notes that Inmarsat privatized on April 15, 1999 and INTELSAT plans to privatize by July 18, 2001. The International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, implements the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). In that legislation, the U.S. Congress imposed certain reporting requirements for the Department of Commerce to begin in 1999 and to continue annually for the

next five years. The Secretary of Commerce issued the first report in July 1999¹ and the second in July 2000.²

The House report on the legislation expresses an expectation for extensive fact-findings on the nature of the market for satellite communications and, in particular, the role of the then intergovernmental satellite organizations (ISOs) INTELSAT and Inmarsat. The report required by the legislation monitors the implementation and enforcement of other nations' commitments under the OECD Convention and tracks the reduction of privileges and immunities for the ISOs. This Request for Comments (RFC) will assist the Secretary of Commerce in responding to those reporting requirements.

Moreover, on March 17, 2000, the President signed into law the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, Pub. L. No. 106-180.

This legislation seeks to “promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.” *Id.* at sec. 2.

In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes, and provisions of the Act, including the “[v]iews of the industry and consumers on privatization” and the “[i]mpact privatization has had on United States industry, United States jobs, and United States industry’s

¹See *Addressing the Challenges of International Bribery and Fair Competition - The First Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998*, July 1999 (available at <http://www.mac.doc.gov/TCC/BRIBERY/oecd_report/>).

²See *Addressing the Challenges of International Bribery and Fair Competition - The Second Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998*, July 2000 (available at <http://www.mac.doc.gov/TCC/BRIBERY/oecd_report_2000/>).

access to the global marketplace.” *See id.* at sec. 646(b)(3) and (4). The first such report was released on February 27, 2001.³ By this public notice and RFC, we are also soliciting the views of the industry and consumers on such privatization.

DATES: Comments must be received by [Insert 30 days after publication in the *Federal Register*].

ADDRESS: The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Milton Brown, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to <privatization@ntia.doc.gov>.

Electronic comments should be submitted in the formats specified above.

All comments will be posted on NTIA’s web site at <<http://www.ntia.doc.gov>>.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA/OCC, (202) 482-1816.

SUPPLEMENTARY INFORMATION:

Background: INTELSAT is a treaty-based global communications satellite cooperative with

³*See* Department of State, Report to Congress, *Report Pursuant to Section 646(a) of Section 3 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (Pub. L. 106-180)*, (Feb. 2001) [“ORBIT Report”].

144 member countries. INTELSAT was created to enhance global communications and to spread the risks of creating a global satellite system across telephone operating companies from many countries.⁴ Inmarsat was created to improve the global maritime communications satellite system that would provide distress, safety, and communications services to seafaring nations in a cooperative, cost-sharing entity. In April of 1999, Inmarsat was fully privatized by transferring its assets and operations to Inmarsat Ltd., a U.K. corporation that enjoys no privileges or immunities. INTELSAT divested some of its satellites in 1998 to New Skies Satellites, NV, a Netherlands corporation, and plans to be fully privatized by July 18, 2001.⁵

As an intergovernmental satellite organization, INTELSAT is governed by “Parties” and managed by “signatories.” The Parties are the national government members of the organizations who have signed the INTELSAT Agreement. Signatories are designated by each party to participate in the commercial operations of the organization. They hold ownership interests in varying degrees. They also assist with the operation and management of the systems and are distributors of ISO services in their own countries. Signatories may be government-owned or controlled telecommunications monopolies or other telecommunications service providers. The publicly traded COMSAT Corporation (a wholly-owned subsidiary of Lockheed Martin Corporation) is the U.S. Signatory to INTELSAT.⁶ INTELSAT is currently subject to oversight by the Assembly of Parties, and signatories are subject to oversight by their respective

⁴See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

⁵Although both ISOs will be fully privatized, two small residual intergovernmental organizations, ITSO from INTELSAT, and IMSO (International Mobile Satellite Organization) from Inmarsat, will remain to monitor the performance of certain public services.

⁶COMSAT is now merged into Lockheed Martin Corporation.

governments.

To implement public service obligations effectively and as part of INTELSAT's unique treaty status as an international organization, it benefits from certain privileges and immunities. As such, it is, until privatization, generally immune from suit, including private or public prosecution on antitrust charges.⁷ Moreover, INTELSAT does not pay taxes on revenues, and exemptions extend to import duties and taxes, communications and property taxes. Signatories, however, are subject to national taxes, including taxes on their share of the organization's distributed returns.

The International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, requires the Secretary of Commerce to submit a report to the House of Representatives and the Senate that contains information regarding the OECD Convention including the following: (1) a list of countries that have ratified the Convention; (2) a description of the domestic laws enacted by each party to the Convention that implements commitments under the Convention; and (3) an assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention. *See* Pub. L. No 105-366, sec. 6(a). Accordingly, the Secretary of Commerce is required to report, *inter alia*, on the "terms of market access, government ownership, government contracts or connections, privileges and immunities, favorable treatment by national regulatory authorities or tax treatment . . . in the countries or regions served by the [INTELSAT], and the reasons for such advantages." H.R. Rep. No. 105-802, at 9 (1998). In preparation for this report, the Secretary of Commerce is required to seek

⁷We note that the ORBIT Act limits privileges and immunities previously afforded COMSAT as the U.S. Signatory to INTELSAT. *See* Pub. L. No. 106-180, sec. 642(b).

and incorporate comments from the private sector, including competing satellite companies and satellite services users. *Id.* The Secretary of Commerce issued the first two reports in July 1999 and July 2000.⁸

NTIA is now formally soliciting public comment for the Secretary's third annual report on the advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT, the reasons for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of this organization. "Pro-competitive privatization" is defined as "privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services." *See* Pub. L. No. 105-366, sec. 5(a)(2). Respondents may find it useful to review the full text of the International Anti-Bribery and Fair Competition Act of 1998.

On March 17, 2000, the President signed into law the Open-market Reorganization for the Betterment of International Telecommunications (ORBIT) Act. Pub. L. No. 106-180. The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat." *Id.* at sec. 2. To achieve this goal, the ORBIT Act provides specific criteria for licensing and market access for INTELSAT, Inmarsat and New Skies Satellites, and changes the statutes affecting COMSAT. In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes,

⁸*Supra* n. 1, 2.

and provisions of the Act including the “[v]iews of the industry and consumers on privatization” and the “[i]mpact privatization has had on United States industry, United States jobs, and United States industry’s access to the global marketplace.” *See id.* at sec. 646(b)(3) and (4). By this public notice and RFC, we are also soliciting the views of the industry and consumers on the privatization of INTELSAT and Inmarsat with respect to the goals of achieving a pro-competitive privatization of these organizations. Respondents may find it useful to review the full text of the ORBIT Act.

Kathy Smith

Chief Counsel

Date: _____