



# Regulations for Access to Physical Facilities

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## 1. Introduction

- (1) The Communications and Information Technology Commission (CITC, hereinafter the “Commission”) Statutes set out rules, regulations, rights, and obligations with regard to:
  - a. Access to Public Telecommunications Networks, and
  - b. Access by a Service Provider to Physical Facilities that are owned or managed by other Service Providers, for the purposes of facilitating the provision of telecommunications services.
- (2) To deploy networks, Service Providers require access to property (“Rights-of-Way”), which is subject to the consent of public authorities, the owner of the property, and relevant rules and regulations.
- (3) Rights-of-Way are a scarce resource and a key factor for effective competition and growth in the telecommunications market. Therefore, all Service Providers must exploit this resource efficiently and effectively, and in accordance with the Commission Statutes.
- (4) Promoting and facilitating Service Providers’ access to Physical Facilities will contribute to the objectives stated in the Telecoms Act regarding, in particular:
  - a. the provision of advanced and adequate telecommunications services at affordable prices;
  - b. the provision of access to the public telecommunications networks, equipment and services at affordable prices; and
  - c. the creation of a favorable atmosphere to promote and encourage fair competition in all fields of telecommunications.

## 2. Definitions, Purpose and Scope of Regulations

### 2.1. Definitions

- (1) The terms and expressions defined the Telecom Act, its Bylaws and other Commission statutes shall have the same meaning in these Regulations, unless specified otherwise.
- (2) The following terms and expressions shall have the meaning assigned to them hereunder:
  - a. “Service Provider” means any person licensed by the Commission to: (1) provide telecommunications services to the public, (2) operate a network used by that person or another person to provide telecommunications services to the public, or both.
  - b. “Reference Offer” means a document prepared by the Dominant Service Provider which defines and provides details of a set of standard terms and conditions for interconnection and access to physical facilities services with other Service Providers.
  - c. “Public Network” means any network used, directly or through another person, to provide telecommunications services to the public, which includes, but is not limited to: networks of electricity, gas, heating, water, transport, or other public utility services.
  - d. “Physical Facilities” include non-electric physical elements of any Public Networks such as spaces, buildings, rooms, manholes, hand-holes, cables, cabinets, ducts, pipes, towers, poles and masts, among others, that are already hosting or capable of hosting Telecommunications Network elements.
  - e. “High Speed Telecommunications Network” means any Telecommunications Network capable of delivering broadband access services at speeds of at least 100 Mbps.
  - f. “Access to Physical Facilities” means the making available of Physical Facilities and related services to a Service Provider, under defined conditions and for the purpose of developing High Speed Telecommunications Networks.
  - g. “Access Seeker” means any Service Provider requesting Access to Physical Facilities controlled by another Service Provider.
  - h. “Access Provider” means any Service Provider requested to provide Access to Physical Facilities under its ownership or management.

- i. “Ancillary Access Services” mean any additional services, such as air conditioning and power supply, which are required for the provision of Access to Physical Facilities.
- j. “Physical Access Agreement” means an agreement concluded for the provision of Access to Physical Facilities and Ancillary Access Services by an Access Provider to an Access Seeker.
- k. “Private Facility” shall mean any real estate that is (i) under the ownership and control of a single person or group of persons, and (ii) whose geographical boundaries are limited to a single space comprising a single, or a group of, residential, commercial, governmental or other types of buildings or facilities.
- l. “Days” means calendar days, unless stated otherwise.

## 2.2. Purpose and Scope of the Regulations

- (1) Most areas in the Kingdom do not dispose of parallel infrastructures for the provision of resilient and competitive services by alternative Service Provider, which requires regulations to facilitate and regulate the access mechanism for technical and commercial agreements between service providers.
- (2) These Regulations follow a comprehensive regulatory approach, through provisions that are legally binding on all Service Providers, with additional remedies applying on Service Providers that have been designated as dominant in relevant markets.
- (3) Sharing Physical Facilities can:
  - a. minimize the amount and cost of civil works, as well as their social and environmental impact through pollution, public nuisance, traffic congestion and underground cable damage; and
  - b. support investment in infrastructure such as a fiber optic networks, and the rollout of fixed and wireless networks by multiple and alternative Service Providers, enabling the rollout of new technologies such as 5G and Fiber-to-the-X (FTTX), by reducing costs and avoiding duplication of civil works.
- (4) The purposes of these Regulations are to:
  - a. foster investment in, and deployment of, High Speed Telecommunications Networks and expanding network coverage in new areas;
  - b. facilitate the upgrading of backhaul of towers to fiber, so as to enable new technologies such as 5G;

- c. optimize the geographical rollout of High-Speed Telecommunications Networks across the Kingdom, by facilitating such rollout in commercially less attractive areas;
  - d. resolve geographical dominance in physical infrastructure and enhance infrastructure competition;
  - e. reduce civil works required for the installation of Physical Facilities and public disruption during the construction of outside plants;
  - f. ensure that all Service Providers are treated fairly and in a non-discriminatory manner with respect to the provision of services of Access to Physical Facilities;
  - g. establish a process for dealing with Access to Physical Facilities requests and disputes; and
  - h. encourage good practice with respect to Access to Physical Facilities services between Service Providers.
- (5) These Regulations govern the rights and obligations for Access to Physical Facilities of any Service Provider licensed to operate a telecommunications network used by that Service Provider, or by another Service Provider, to provide a telecommunications service to the public. Certain specific requirements apply only to those among the above-mentioned Service Providers that have been designated as dominant in a relevant market.
- (6) The Regulations shall provide a basis for any Commission decision in respect of any complaints or disputes that may arise in connection with matters covered by these Regulations and are subject to the Commission's enforcement or dispute resolution powers under any Commission Statute.
- (7) These Regulations shall apply to Access to Physical Facilities Services, unless specified otherwise in any Commission Statute.

### **3. Regulations Applicable to All Service Providers**

- (1) The provisions of these Regulations shall apply to all relevant telecommunications networks, with no discrimination between fixed and wireless technologies.
- (2) Access to Physical Facilities and the provision of Ancillary Access Services should be transparent, fair and non-discriminatory.
- (3) Each Service Provider has the right to request Access to Physical Facilities of a Public Network.
- (4) Access Providers must meet all reasonable requests for Access to Physical Facilities, under fair and reasonable terms and conditions, in terms of commercial, technical and procedures, consistent with the obligations and recommendations set out in these Regulations.
- (5) Any reference to a written request in these Regulations shall mean a request by letter, fax or electronic means (email, online communication or similar technical means).
- (6) Any refusal of an Access to Physical Facilities request must be reasonably justified, transmitted in writing to the Access Seeker, and will be subject to the Commission's approval unless accepted by the Access Seeker.
- (7) Where Physical Facilities of a Telecommunications Network are installed, owned or operated pursuant to an agreement or other entitlement giving a Service Provider an exclusive right to install, own or operate such infrastructure in a Private Facility, to the exclusion of any similar Physical Facilities by other Service Providers, such Physical Facilities shall be deemed to constitute an vital facility for the purposes of these Regulations.
- (8) In addition to any obligations under these Regulations or another Commission Statutes, Access Providers owning or operating Physical Facilities that qualify as vital facilities under these Regulations or any other Commission Statute:
  - a. may not charge any fees for Access to Physical Facilities that exceed the Access Providers' cost-based charges, including proper consideration of a reasonable cost of capital, according to international best practice and the Commission's determinations;
  - b. may not pass any cost inefficiencies through the tariffs or charges of Access to Physical Facilities services, tariffs or charges must be priced similar to networks in other public areas.
  - c. may not refuse to meet a request for Access to Physical Facilities by invoking any temporary or geographically defined exemption granted by the Commission with

regard to the Access Providers' obligations on Access to Physical Facilities, Unless CITC decides otherwise;

- d. must ensure that their obligation to offer Access to Physical Facilities to other Service Providers may not be excluded through an agreement with the parties owning or managing the Private Facility.
- (9) To the extent technically feasible, Access to Physical Facilities Services shall be provided without elements that have not been requested by the Service Provider concerned, unless the Service Provider offering the Access to Physical Facilities Services provides objective and justifiable reasons for the inclusion of any such additional elements.
  - (10) Any disputes between an Access Seeker and an Access Providers concerning the conclusion, content, interpretation, amendment or termination of a Physical Access Agreement must be referred to the Commission by either party pursuant to the Telecom Bylaws.
  - (11) Service Providers must transmit to the Commission a copy of any Access to Physical Facilities Agreement, not later than 10 days from its conclusion.
  - (12) The receipt by the Commission of any Access to Physical Facilities Agreement transmitted to it pursuant to this provision shall not imply approval of its terms and conditions by the Commission and shall be without prejudice to the possible exercise, at any point in the future, of the Commission's powers under the Bylaw.
  - (13) In case the Commission decides, pursuant to the Bylaw, that an Access to Physical Facilities Agreement is not compliant with a Commission Statute, the Commission will notify the Service Providers concerned. These must amend their agreement within 30 days after receiving such notification.
  - (14) All information provided between Service Providers shall be subject to the terms of confidentiality defined in the RO or an Access to Physical Facilities. Where the Service Providers concerned have no obligation to publish a RO, they shall not unreasonably refuse or delay the conclusion of a non-disclosure agreement for the exchange of confidential information prior to the conclusion of an Access to Physical Facilities.

## **4. Regulations Applicable to Dominant Service Providers**

### **4.1. Scope of Obligations**

- (1) Dominant Service Providers' obligations under these Regulations' section 4 shall apply with regard to any non-discrimination (4.2), transparency (4.3), pricing (4.4) and/or

unbundling remedies (4.5) imposed on such Service Providers concerning the grant of Access to Physical Facilities in any markets in which they have been designated as Dominant, according to the Market Definition, Designation and Dominance (MDDD) Report.

- (2) The provisions of these Regulations' sections 3 and 4 shall be without prejudice to any other obligations of Dominant Service Providers set out in any other Commission Statute or any exceptions to such obligations provided under the Telecoms Act or its Bylaws.

## 4.2. Non-discrimination

- (1) Dominant Service Providers must be obligated to non-discrimination in providing Access to Physical Facilities Services, according to the following:
  - a. Provide equivalent Access to Physical Facilities services in equivalent circumstances to other Service Providers, also including their own Affiliates or commercial partners, on the same terms and conditions regarding, in particular, information, timescales, price, quality and service level.
  - b. Provide Access to Physical Facilities to other Service Providers by means of the same systems and processes, in order to ensure equivalence of access.

## 4.3. Transparency

### 4.3.1. Publication of a Reference Offer (RO)

- (1) Dominant Service Providers with an obligation to publish standard terms and procedures for their Access to Physical Facilities services must do so in a Reference Offer ("RO").
- (2) The RO must include and provide details of a set of standard terms and conditions for the provision of Access to Physical Facilities to other Service Providers. The RO must

be used by a Dominant Service Provider to conclude individual Physical Access Agreements with other Service Providers.

- (3) A Dominant Service Provider may not use terms and conditions, that are different from those set out in the RO with regard to the same services for the grant of Access to Physical Facilities and Ancillary Access Services, until and unless these terms and conditions are included in the RO and offered to all other Service Providers receiving Access to Physical Facilities Services.
- (4) The prices specified in the reference offer should be considered as price ceilings. A Dominant Service Provider can offer prices below the specified ceiling, provided that they are offered to other Service Providers without discrimination, taking into account the quality and quantity of the services provided.
- (5) A Dominant Service Provider shall prepare a RO within 60 days of being so directed by the Commission and submit it to the Commission for approval. The Commission may request changes to the draft RO, which the Dominant Service Provider must incorporate within 15 days, and re-submit it to the Commission for its approval. If the Dominant Service Provider fails to incorporate in time, the Commission may extend the period or adopt and publish a decision ordering the Dominant Service Provider to provide Access to Physical Facilities services on the terms and conditions requested by the Commission and published in its decision.
- (6) A Dominant Service Provider shall periodically update its RO upon request by the Commission or, in any event, at least once every two years, to take account of changes to these Regulations or other Commission Statutes; new or modified services offered by the Dominant Service Provider; price terms; changes to the associated facilities, Ancillary Access Services, processes and systems; or any other regulatory requirements that may directly impact the terms and conditions of a RO. The updated RO must be approved by the Commission.
- (7) A Dominant Service Provider must publish its RO on its website within 15 days after approval by the Commission.

- (8) A Dominant Service Provider shall include in its RO an amendment procedure that describes how changes will be made to its terms and conditions. This amendment procedure must include:
- a. Specify how other Service Providers will be informed about proposed changes and the timeframe for such changes; and
  - b. Provide for submission to, and prior approval by, the Commission of the details of the proposed amendments.
- (9) The Commission may, at any time, require changes to a RO pursuant to Commission Statutes.
- (10) Upon a Dominant Service Provider's reasoned request, the Commission may accept the exclusion of certain confidential information from the RO's published version.
- (11) If so requested by the Commission, a Dominant Service Provider must combine Reference Offers required under this subsection 4.3.1 or any other Commission Statute in a single document. Any decision taken by the Commission under Articles 4.3.1 (5), (6) or (9) above may be applicable to the whole or part of such single document, as further determined in that decision.

#### 4.3.2. Content of the RO

- (1) Annex A includes an illustrative outline of an RO, and a description of its minimum content.
- (2) The RO must include a full list of Access to Physical Facilities and Ancillary Access Services the Dominant Service Provider is required to offer, as well as the associated terms and conditions, including tariffs and charges, for each service and component of such service. A description of these services is provided in Annex B.
- (3) The Commission may require Dominant Service Providers to include certain services in their RO other than the ones described in the aforementioned Annex B.

- (4) Key Performance Indicators (KPIs) for all operational processes must be clearly stated in the RO without prejudice to the effects of potential stop-clock events that may happen during the process. The RO must also clearly state stop-the-clock events and the effect on the computation of time of operational processes. Stop-the-clock events must refer exclusively to events or delays that are not due to the responsibility of the Dominant Service Provider, such as natural disaster situations.
- (5) The RO shall define clear penalties to be imposed on the Dominant Service Provider in case KPIs in provisioning or incident resolution processes are not met. Penalties will be proportional to additional delays in final provisioning time and to charges for providing such services. The RO may not impose caps on penalties. Penalties shall be either directly paid to Access Seekers or considered as a service credit in future wholesale invoices by deducting the penalty from the total amount charged for Access to Physical Facilities services.
- (6) Annex C includes a list of the minimum KPIs regarding Access to Physical Facilities service provisioning processes, which must be included in the RO, in addition to a list of KPIs that Dominant Service Providers must report quarterly to the Commission.

#### **4.4. Pricing Principles and Cost Orientation**

- (1) Where Dominant Service Providers are subject to a cost-orientation obligation under any Commission Statute, their charges for Access to Physical Facilities Services must be subject to the provisions of this subsection 4.4.
- (2) Dominant Service Providers may not pass any cost inefficiencies to other Service Providers through the tariffs or charges for Access to Physical Facilities or Ancillary Access Services.
- (3) Charges for Access to Physical Facilities and Ancillary Access must be free of any costs related to any universal service obligations of the Dominant Service Provider, and they should take into account any relevant subsidy granted by any governmental or other public authority in the Kingdom.

- (4) A Dominant Service Provider may provide volume discounts subject to compliance with its non-discrimination and transparency obligations under these Regulations and any Commission Statute.
- (5) Any new or amended tariffs, charges or other pricing conditions proposed by Dominant Service Providers for the RO must be approved by the Commission. If so requested by the Commission, Dominant Service Providers must provide the Commission with adequately detailed and documented cost studies supporting the proposed tariffs or charges, or their amendment. Those studies shall be based on causal cost allocation, including proper consideration of joint and common costs and a reasonable cost of capital, according to international best practice and the Commission's determinations.
- (6) In order to assess and approve any tariffs and charges proposed by a Dominant Service Provider, the Commission may adopt and apply a long run incremental cost (LRIC) approach, including proper consideration of joint and common costs, and a reasonable cost of capital, according to international best practice and the Commission's determinations. The Commission may apply or combine alternative approaches, such as relying on the costs that result from accounting separation systems or benchmarking of charges in other countries. If it so deems appropriate, the Commission may determine by decision, based on the above criteria, a Dominant Service Provider's applicable charges for access and interconnection services.
- (7) A Dominant Service Provider shall provide Access Seekers with the pricing terms and conditions applicable at the time of installing or adjusting any Physical Facilities or new infrastructures required to accommodate the request of the Access Seekers in question.

#### **4.5. Unbundling of Services**

- (1) Dominant Service Providers may not render the provision of their Access to Physical Facilities services conditional on their bundling with separate interconnection, access or other services that are not requested by the Access Seeker.

## 4.6. Amendments to Existing Services

- (1) Any material changes in the setup of existing Services of Dominant Service Providers must be agreed with the Access Seeker or within a multilateral working group (see section 5 below).
- (2) The Dominant Service Provider must allow sufficient time to any Access Seekers to make any necessary modifications or adjustments to their systems and networks in response to any planned amendments by the Dominant Service Provider. Unless otherwise agreed between the parties or allowed under the applicable RO approved by the Commission, this notice period shall be at least 60 days prior to the commencement of the implementation of the relevant amendments by Dominant Service Provider.

## **5. Joint Technical and Operational Committee and Multilateral Working Group**

### **5.1. Joint Technical and Operational Committee**

- (1) Service Providers shall establish a joint technical and operational committee. The joint technical and operational committee shall facilitate discussion to reach mutually acceptable agreements on technical, operational, planning, billing and other service aspects of Access to Physical Facilities services.
- (2) The composition of the joint technical and operational committee shall be agreed upon by the Service Providers and can be reconstituted as and when required. The Commission may join one or more of the meetings of this Committee, as an observer, if the Commission deems that appropriate.
- (3) The joint technical and operational committee shall meet at regular intervals with an agenda agreed in advance and may cover one or more of the following areas:
  - a. New access to physical facilities locations;
  - b. Collocation;
  - c. Service quality;
  - d. Capacity requirements and rollout plans;
  - e. Fault analysis;
  - f. Billing processes;
  - g. Network and/or service changes;
  - h. Any other technical and operational issues associated with Access to Physical Facilities services.
- (4) In the event of the Commission's participation, the Commission may take decisions based on the majority rule or in the public interest, in which case service providers shall be obligated to implement such a decision.

## 5.2. Multilateral Working Group

- (1) A multilateral working group for the purpose of facilitating services for Access to Physical Facilities may be established. All concerned Service Providers shall participate in such a multilateral working group. The working group shall establish terms and procedures. The multilateral working group, if initiated, shall hold periodic meetings at least quarterly. The Commission may participate in and chair such meetings.
  
- (2) The multilateral working group may establish several sub-groups which may consist of regulatory, operational or technical staff as required to address specific issues as they arise. Such working groups shall aim at establishing industry solutions, standards and procedures, including on issues such as:
  - a. Operations and maintenance processes;
  - b. Management of services;
  - c. Technical standards;
  - d. Joint construction and co-investment;
  - e. Spare capacity;
  - f. Migration issues;
  - g. Introduction of new services.
  
- (3) Consensus and results achieved in the working group shall be compiled in written form. Service Providers are to implement the agreed results and where appropriate to include them in their Reference Offers and/or Access to Physical Facilities arrangements and submit the revised documents to the Commission in accordance with the Statutes. Results, outcomes and meeting minutes must be made available to all members, other Service Providers and the Commission.

- (4) In the event of the Commission's participation, the Commission may take decisions based on the majority rule or in the public interest, in which case service providers shall be obligated to implement such a decision.

## 6. Dispute Resolution

- (1) Any disputes between two Service Providers on Access to Physical Facilities requests or agreements, a failure to reach to an agreement or its interpretation, or the rights and obligations of one of the parties may be referred to the Commission by either of the parties according to Chapter 6 of the Bylaw.
- (2) If the Parties cannot agree on a consensual resolution by the Commission, either party to the dispute may file an application with the Commission for a mandated resolution. When dealing with such disputes the Commission shall apply, in particular, the relevant provisions of the Telecom Bylaw on the procedure to be followed and those of these Regulations as regards the substance of the dispute.
- (3) A Dominant Service Provider shall include in its RO a clear procedure for resolving disputes including notification, meeting and response times, and the time limit for resolution before the dispute is escalated to the next level.
- (4) The dispute resolution procedure of a Dominant Service Provider shall include an escalation process through various levels:
  - a. Level 1: Resolution at the Operational Committee level;
  - b. Level 2: Referral of dispute to senior management level of the concerned Service Providers for resolution.
  - c. Level 3: Referral to the Commission in line with Chapter 6 of the Telecom Bylaw.
- (5) A Dominant Service Provider's RO may set out a faster timetable for the resolution of disputes.

## **7. Procedure and Principles for the Provision of Access to Physical Facilities services**

### **7.1. Procedure**

- (1) Annex D lays down the procedure Access Seekers and Access Providers must follow for the request for and provision of services under these Regulations.

### **7.2. Infrastructure Inventory**

- (1) Within 24 months from the entry into effect of these Regulations, Service Providers must create, and thereafter keep, an accurate and up to date “Infrastructure Inventory”, in electronic format, of all their Physical Facilities, also indicating available spare capacity to support Access to Physical Facilities by other Service Providers.
- (2) The Infrastructure Inventory’s records shall include as-built documentation, dates of installation and copies of related permits from the relevant authorities for the use of Rights-of-Way, public works, equipment installation and operation.
- (3) The above Infrastructure Inventory must also include regularly updated statistics on:
  - a. Number of information requests sent or received by the Service Provider relating to Access to Physical Facilities, the identity of the Service Providers concerned as Access Seekers or Access Providers as the case may be, and the days required each time to provide the requested information;
  - b. Number of Access Orders requests sent or received by the Service Provider relating to Access to Physical Facilities, the identity of the Service Providers concerned, number of Access Orders accepted or rejected and days required for the activation of Access to Physical Facilities in response to each Access Order.
- (4) Without prejudice to any other obligations of Dominant Service Providers set out in these Regulations or another Commission Statute and to the extent practicable, Access Providers should endeavor to provide information on their Physical Facilities through an online system, accessible by any actual or potential Access Seekers. This system should include sufficiently detailed, up-to-date and accurate information such as to allow Access Seekers to conduct a preliminary feasibility analysis that will help them focus and minimize their requests for information and reduce the percentage of Access Orders that are unfeasible.
- (5) Dominant Service Providers may limit online accessibility to information on their Physical Facilities to Service Providers only, and render it subject to a standard non-disclosure agreement with the Service Provider concerned, which should be approved in advance by the Commission, and may be valid for a reasonable defined period.

- (6) Service Providers must provide information to the Commission on a quarterly basis or, at the Commission's request, about their existing Physical Facilities. Such reports must include, at a minimum, information on any decommissioned Physical Facilities since the last report, any existing Physical Facilities that are subject to ongoing works and upgrades, any planned new Physical Facilities. The Commission may, at any time, verify the accuracy of the above reports, through information requests, inspections or any other means available.

### 7.3. Commercial Aspects of Prices and Other Conditions

- (1) Charges and other terms for Access to Physical Facilities and Ancillary Access Services provided by Access Providers shall:
- a. be based on commercial agreements and not exceed the annual self-providing cost of Physical Facility comparable in design and location. Such self-providing cost can be determined through a fair pricing mechanism by the Commission if the parties are unable to reach a commercial agreement within the required or agreed deadline;
  - b. be transparent, reasonable and cost-based whenever the Access Providers is designated as Dominant in a relevant market;
  - c. be cost-based if Access to Physical Facilities is requested to vital facilities designated as such by the Commission; and
  - d. be cost-based if the purpose of Access to Physical Facilities is to deploy FTTH in unserved areas and the Access Seeker provides to the Access Providers, with a copy to the Commission, relevant commitments, plans and details in this regard. This obligation aims to foster investment in Next Generation Networks and achieve the Kingdom's objectives to enable digital transformation and provide FTTH services to households;
- (2) The calculation of cost-based charges under the previous provision must include appropriate deductions from the relevant costs of any subsidies granted to the Access Provider that are associated to the Physical Facilities to which Access is provided.
- (3) Agreements must adhere to fair, reasonable and technically feasible conditions, including prices. The following conditions shall not be considered fair and reasonable, unless proven otherwise, to the Commission's satisfaction:

- a. An Access Providers' refusal to meet a request for Access to Physical Facilities, Access Order or the conclusion of a Physical Access Agreement, by invoking any temporary and geographically defined exemption granted by the Commission with regard to the Access Providers' obligations on Access to Physical Facilities. Such refusal shall be allowed, however, if the purpose of the requested Access to Physical Facilities is the provision, by the Access Seeker, of FTTX services to customers of the Access Providers in the geographical area in which the exemption applies;
  - b. Tariffs or charges that are materially higher than those imposed, under any Commission Statute, on regulated equivalent services by the same or another Service Provider;
  - c. Tariffs, charges or other conditions that materially discriminate between different Service Providers, except for objectively justified reasons, based on differences in supply conditions, including different costs or a shortage of available facilities or resources.
- (4) For dispute resolution on pricing, the Commission may decide to adopt various approaches, such as benchmarking of the access charges in other countries.
  - (5) Physical Access Agreements must specify transparent billing concepts and prices for the different services to be provided, without prejudice to possible exceptions for special, non-recurrent or optional services that may be subject to ad hoc budgets, pricing, and provisioning terms and conditions.
  - (6) Billing terms and agreements must reflect the usage of capacity in existing Physical Facilities.

#### 7.4. Physical Access Agreements

- (1) Access Seekers and Access Providers must negotiate in good faith and conclude a Physical Access Agreement within no later than 60 days upon either party's request.
- (2) A Physical Access Agreement can be in relation to an existing Access Order(s) or future Access Orders.
- (3) The absence of a Physical Access Agreement shall not relieve Access Seekers and Access Providers from any of their obligations under these Regulations. Access Seekers have the right to Request for Information and submit Access Orders, Access Providers are obliged to respond as per the procedure specified in these Regulations.
- (4) If the Commission decides that a Physical Access Agreement or other Access to Physical Facilities arrangement is not compliant with a Commission Statute, the Commission will notify the Service Providers concerned.



## 8. Building New Infrastructure for High Speed Telecommunications Networks

### 8.1. Safeguarding Availability of Access

- (1) When planning and building new Physical Facilities, all Service Providers shall ensure that such new infrastructure enables and supports Access to Physical Facilities by other Service Providers.
- (2) Service Providers shall not install Physical Facilities that unreasonably prevent or limit Access to Physical Facilities by other Service Providers.
- (3) Service Provider shall not install cables, equipment, or other Physical Facilities that do not correspond to the current or foreseeable needs for serving its customers and which, as a result of the undue excessive space occupation, prevent or limit access to the facilities by other Service Providers.
- (4) Any Service Provider installing new, or upgrading its existing, Physical Facilities must provide for spare capacity that will allow Access Seekers to be able to access, for future maintenance or augmentation works, any Physical Facilities they may install under a Physical Access Agreement or Arrangement with that Service Provider.

### 8.2. Infrastructure Planning

- (1) Before deciding to install new Physical Facilities, a Service Provider must endeavor to make use of available existing infrastructure and Physical Facilities controlled by other Service Providers, for which Access to Physical Facilities can be requested to meet design targets.
- (2) Service Providers shall provide to the Commission, on an annual basis, the following minimum information on any planned Physical Facilities to be installed or upgraded:
  - a. The location and type of works involved;
  - b. The Physical Facilities involved;
  - c. The additional or upgraded coverage expected to be obtained through these new or upgraded Physical Facilities;
  - d. The planned capacity of Physical Facilities for current, foreseeable, and Access to Physical Facilities needs; and
  - e. The estimated date for starting the works and duration.

- (3) Service Providers must immediately provide to the Commission updated information on any plan changes under subsection 8.1.
- (4) The Commission may, at any time, verify the accuracy of the information provided by Service Providers under articles (2) and (3) above, through information requests, inspections or any other means available.
- (5) The Commission may rely on the information provided under articles (2) and (3) above in order to support the coordination between Service Providers regarding joint constructions and civil works for new Public Telecommunications Network Infrastructure.
- (6) Public Networks Operators are encouraged to inform the Multilateral Working Group referred to in section 5.2 and the Commission about their planned rollout of any new network or Physical Facilities capable of supporting the deployment of High-Speed Telecommunications Networks, with the relevant geographic and technical details.

### **8.3. Safeguarding the Efficient Use of Ducts**

- (1) Service Providers must avoid direct burial of underground cables. Such cables must be installed in ducts, unless it is not economically or technically feasible to do so.
- (2) Any Service Provider installing its own new duct must reserve at least 50% of its total new installations (rounded up) for use by other Service Providers through Access to Physical Facilities. For example: Where the installing Service Provider installs 6 ducts, 3 ducts should be available for use by the installing Service Provider and 50% of 6 ducts = 3 ducts should be reserved for use by other Service Providers.
- (3) The first Service Provider requesting reserved duct capacity may not use more than 50% of the residual reserved capacity. Sub-ducts may be used to partition ducts. All subsequent Service Providers may use any or all of the residual reserved capacity.
- (4) If one or more Service Provider(s) join the installing Service Provider for joint construction, then each of the participating Service Providers must reserve at least 20% of the capacity of its new ducts.
- (5) After installing new infrastructure, any installing Service Provider may not use the duct capacity reserved for other Service Providers for a period of five years. After five years, the installing Service Provider may use this duct capacity on the same basis as any other Service Provider.
- (6) If a Service Provider does not meet its obligation to reserve capacity, with consequent unavailability of ducts or sub-ducts for other Service Providers, the Commission may order the Service Provider that did not meet its obligation to:

- a. Remove excess facilities if capacity is needed by other Service Providers;
- b. If the removal of such excess is not possible, order the use of the excess facilities by another Service Provider; or
- c. Offer dark fiber to requesting Service Provider(s).

## **Annex A. Illustrative Outline for a Reference Offer (RO)**

The outline for a RO given below is for illustrative purposes only. As long as the present Regulations are followed, the structure, format and arrangement of contents may vary.

### **A.1. Framework Agreement**

- a. Preamble, definitions and interpretation
- b. Commencement and duration
- c. Confidentiality and non-disclosure
- d. Intellectual Property rights
- e. Legal rights, protections and extent of liabilities
- f. Review, renewal rights and obligations
- g. Terms associated with breach, suspension and termination of the agreement
- h. Provisions for staff safety and systems protection
- i. Disputes and arbitration
- j. Force majeure, waiver and assignment
- k. Authorized representatives and notices
- l. Governing law and jurisdiction

### **A.2. Service Definition**

- a. Service definition and description
- b. Service configuration
- c. Service provisioning
- d. Technical characteristics

- e. Operational conditions

### A.3. Technical Aspects

- a. A description of the technical characteristics of all sharable Physical Facilities, including details on passive elements, types, sizes, materials or total available space to host network equipment.
- b. Specification of the process for measuring available space or capacity in existing Physical Facilities, and for the determination of the feasibility of providing Access to Physical Facilities
- c. Regulations concerning the allocation of space, if limited, including potential reservation of space for the Access Providers' own use.
- d. Terms and conditions to unblock existing infrastructures or remove unused cables or equipment from them in order to free additional space to be shared with Access Seekers.
- e. Technical and operational guidelines and procedures regarding Access to Physical Facilities, such as installation of cables, decongestion, enhancement or installation of new Physical Facilities connected to the Access Providers' network.
- f. Information on safety and security standards applicable to all equipment installed, as well as technical procedures to access, install, operate and maintain network equipment in the Access Providers premises.
- g. Technical aspects governing sharing of facilities between operators and guaranteeing the effective separation of their networks

### A.4. Service Level Agreement

- a. Quality and service level objectives
- b. Penalties for non-compliance with service level objectives

## A.5. Operational Processes

- a. Forecasts. Procedure and formats to submit forecasts. Limitations and compensation if forecasts are not met
- b. Access to information about existing infrastructures
- c. Certification of staff authorized to access shared facilities

## A.6. Provisioning processes

- a. Ordering procedures of access request and its processing
- b. Feasibility analysis, including potential rejection causes and cases where feasibility can be checked autonomously by certified staff from licensed operators
- c. Scheduling of a joint survey to check feasibility of deployments
- d. Reservation of Physical Facilities to be shared
- e. Procedure to follow in case a saturation in existing infrastructure is detected due to underused resources
- f. Conditions to provide alternative routes in case of saturation
- g. Conditions to increase the capacity of existing infrastructures
- h. Conditions to provide alternative dark fiber services if no infrastructures are available
- i. Conditions to share fiber
- j. Scheduling of installation works on shared Physical Facilities. Specification of cases where a descriptive memory of works to be performed by the operators is needed. Specification of contents of such descriptive memory
- k. Operations and maintenance processes

- l. Incident management during installation works, including cases of incidences informed by Access Provider and Access Seeker
- m. Escalation procedure
- n. 24x7 emergency channels
- o. Maintenance responsibilities, rights and obligations of both parties
- p. Co-maintenance conditions and cases where certified technical staff are able to autonomously manage faults or incidents
- q. Fault management
- r. Specification of preventive and corrective maintenance actions by the Access Provider
- s. Procedure to follow when modifications in the Access Provider network affect shared facilities. Service continuity conditions.
- t. Fault types and permissible KPIs and SLAs to solve them
- u. Safety standards
- v. Billing process
- w. Payment process
- x. Billing dispute resolution process

RO must include for all aforementioned processes:

- y. A process diagram and a timeline including KPIs and maximum permissible response time for both parties.
- z. Applicable penalties in case of no compliance with target KPIs, including any foreseeable limitation.

## A.7. Management of Access

- a. Services management
- b. Joint technical and operational committee
- c. Provision of information between Service Providers
  - o Network and facilities information
  - o Planned network and facilities changes
  - o Infrastructure and facilities database

## A.8. Dispute resolution

## A.9. Pricing

- a. Rates
- b. A description of the billing concept and procedures for each of the different services provided
- c. Prices or pricing calculations for each service, facility, feature and billing concept included
- d. Conditions regarding volume discounts, where applicable
- e. Description of a mechanism for the compensation of the Access Providers for any costs incurred in response to the Access Seeker's request, for adjustments to, or the enlargement of, the Physical Facilities to be shared
- f. Terms & conditions

## **Annex B. Access to Physical Facilities Services**

### **B.1. Overview**

The below list of services is not intended to be exhaustive. Further access services may be defined by the Commission at any time as deemed necessary.

- a. Collocation
- b. Ducts
- c. Vaults, Manholes and Handholes
- d. Towers and Masts
- e. Poles
- f. Dark Fiber
- g. Collocation in Cable Landing Station

### **B.2. Description**

In the following descriptions, party A is requesting a service (Access Seeker) and party B is offering the service (Access Providers).

#### **B.2.1 Collocation**

Collocation is a service where party B makes available space, infrastructure or telecom facilities to party A. party A typically has 24-hour by 7-day access to the collocation space or room to install, operate and maintain its own telecom transmission systems. Sites at which collocation for interconnection purposes is already established may also be used to accommodate equipment associated with Access to Physical Facilities Services.

Collocation at buildings and sites can take the following forms:

- 1) Dedicated collocation: where party B provides a custom-built, dedicated, segregated and secured space for the installation of party A's telecom equipment.

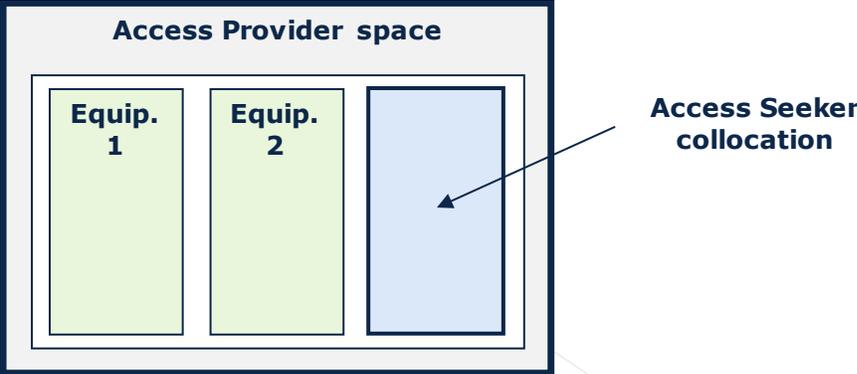


Figure 1: Diagram of 'Dedicated collocation'

- 2) Adjacent collocation: where party B provides space in an enclosed but separate structure within or near the site boundary of its existing structure.

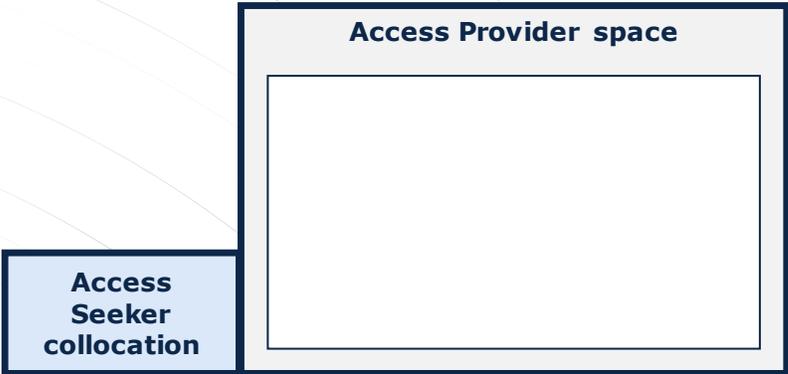


Figure 2: Diagram of 'Adjacent collocation'

- 3) Co-mingling: where party B provides floor space or space within a rack. Equipment belonging to the different Service Providers will be inter-mixed directly with each other on the floor and/or rack. Space may be filled sequentially by the different Service Providers.

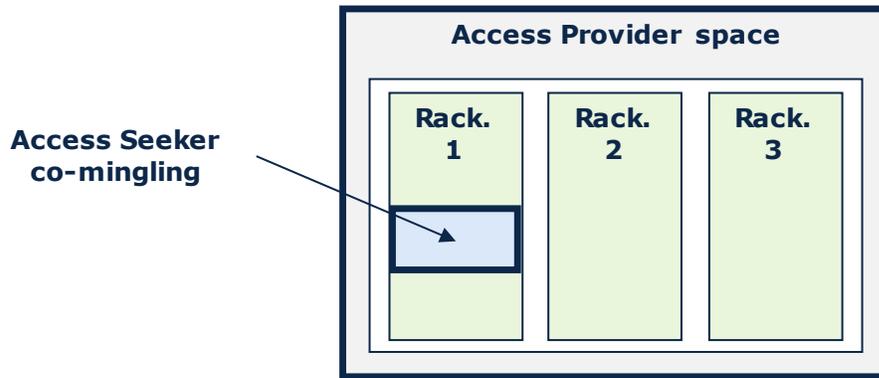


Figure 3: Diagram of 'Co-mingling'

- 4) Distant collocation: where party B provides space in an enclosed structure at some distance, but not adjacent, to its existing structure. The two locations are interconnected by external transmission facilities.



Figure 4: Diagram of 'Distant collocation'

- 5) Virtual collocation: where party B gives party A the ability to connect to party B's services without Access to Physical Facilities by its personnel to a collocation space. Party A provides its own transmission equipment or leases it from party B. Party B then handles the installation, maintenance, operation and repair of the equipment at party A's direction on a non-discriminatory basis. Party A does not have access to the virtual collocation space or the equipment but can electronically monitor and control its communications channels terminating in such equipment.

Dominant Service Providers must offer dedicated collocation services as first priority. In case dedicated collocation is not possible due to proven space restrictions, adjacent collocation services shall be offered by Dominant Service Providers as default. Where such collocation services are not economically feasible a Dominant Service Provider must, as an alternative, offer co-mingling and/or distant and/or virtual collocation.

Service Providers shall indicate the terms and conditions for provision of collocation services, including site access procedures and access to on site facilities such as air conditioning, lighting, and power.

### B.2.2 Ducts

Access to ducts is a service where party B provides access to its own ducts to party A for the installation of cables. "Duct" means an infrastructure (such as conduits or pipes) that encloses underground telecom cables to protect them and to enable pulling of additional cables into (empty) ducts without further digging. Ducts can be divided into sub-ducts. Such service could encompass access to other associated facilities such as manholes, handholes, etc.

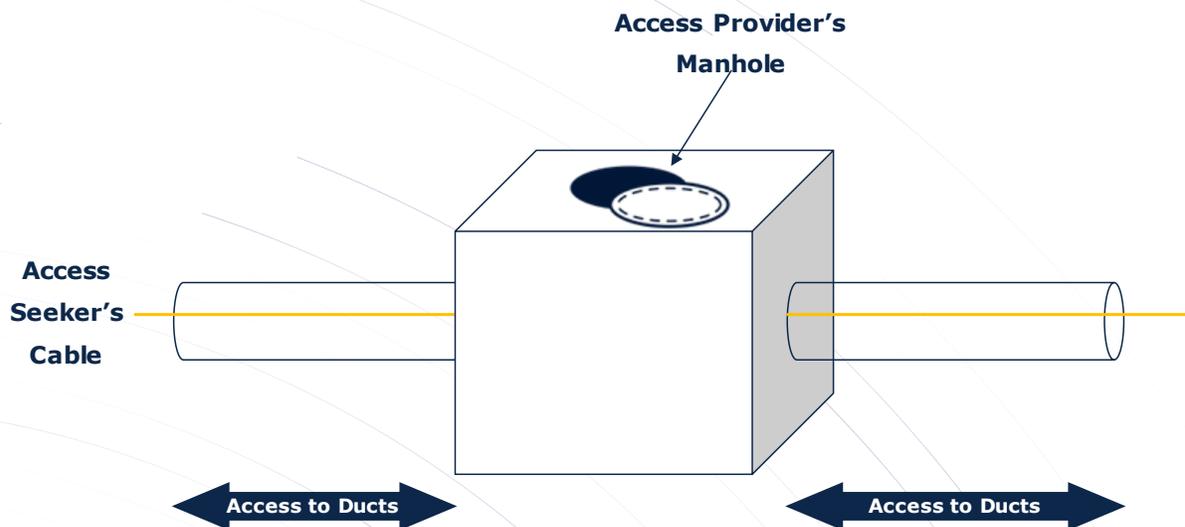


Figure 5: Diagram of 'Access to ducts'

### B.2.3 Vaults, Manholes and Handholes

Access to vaults, manholes or handholes is a service where party B provides party A with access to space at the cable entrance area for the purpose of deploying telecom cables and related structures. Such service could encompass access to other associated facilities such as power, air conditioning, etc.

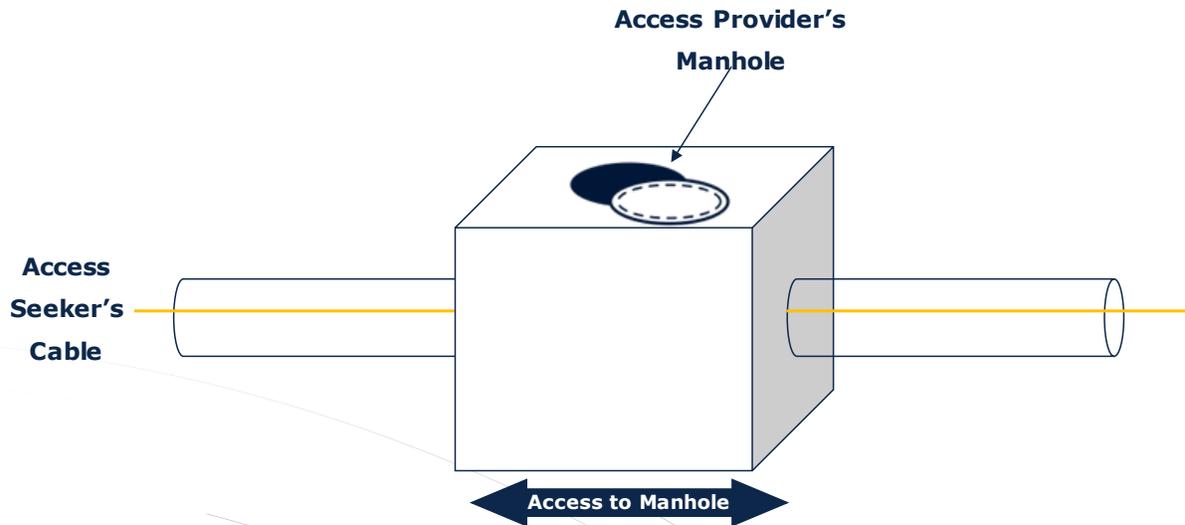


Figure 6: Diagram of 'Access to manholes'

#### B.2.4 Towers and Masts

Access to towers and masts is a service where party B provides party A with access to the use of towers, masts and similar infrastructures for the purpose of installing telecom equipment, such as cables and antennas. Such service could encompass access to other associated facilities such as buildings, sites, power, air conditioning, etc.

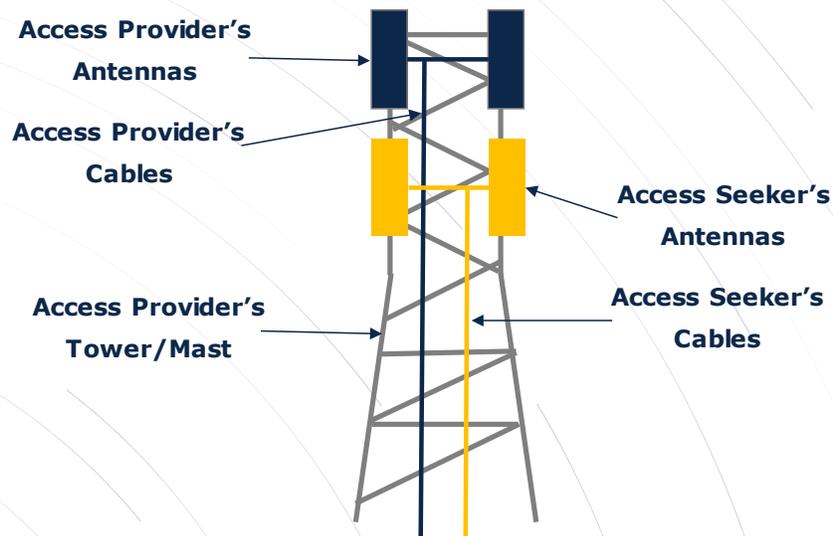


Figure 7: Diagram of 'Access to towers and masts'

### B.2.5 Poles

Access to poles is a service where party B provides party A with access to the use of poles for the purpose of installing aerial cables and ancillary telecom equipment to provide connectivity between different locations.

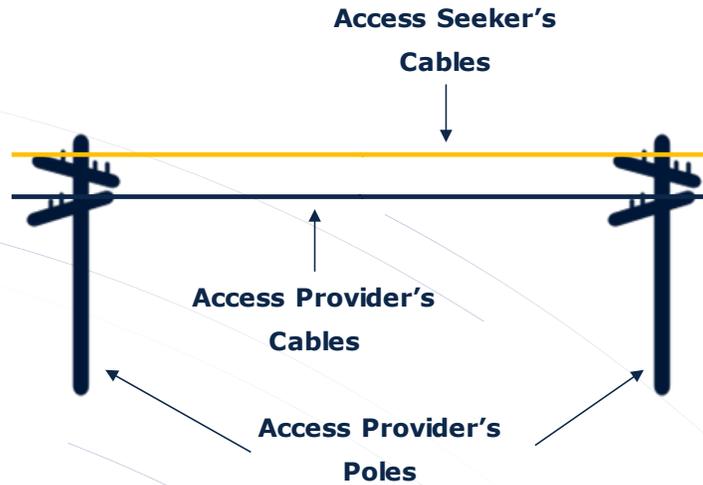


Figure 8: Diagram of 'Access to poles'

### B.2.6 Dark Fiber

Access to dark fiber is a service where party B leases to party A single fiber or a fiber pair which is not connected to transmission equipment. Dark fiber can be offered in all parts of the national network (backbone, backhaul, metro, feeder, access and distribution networks).

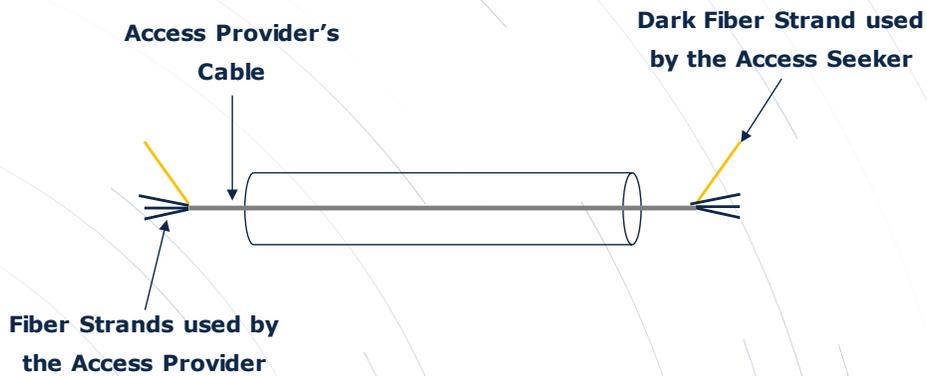


Figure 9: Diagram of 'Access to dark fiber'

### B.2.7 Collocation in Cable Landing Station

“Cable Landing Station” means the facilities at which a submarine cable landed in the Kingdom is or can be connected to a Telecommunications Network in the Kingdom, directly or through a backhaul circuit, including, but not limited to, the buildings, equipment and land necessary to establish and maintain such connection.

Collocation is a service where party B makes available space, power and air conditioning in a Cable Landing Station to party A for the installation of telecom equipment. Party A has 24-hour by 7-day access to the collocation space or room to install, operate and maintain its own telecom equipment. This service also encompasses the cross-connection between the equipment of the same premises.

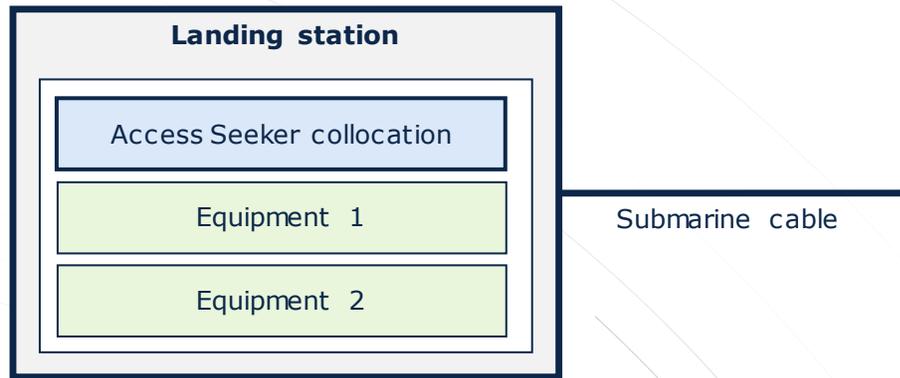


Figure 10: Diagram of 'Collocation in Landing Stations'

In the case that, due to justified technical reasons accepted by this Commission, it is not possible to provide collocation in the Cable Landing Station, party B should offer Distant Collocation services at the closest Physical Facilities available by party B.



Figure 11: Diagram of 'Distant Collocation in Landing Stations'

In the case of Distant Collocation in the Cable Landing Station, the party B should provide access to the relevant physical facilities to connect party A equipment with the International Cable Systems (dark fiber, ducts, vaults, handholes, manholes) as well as required cross-connection services.

Alternatively to the Distant Collocation, party B should also allow party A to access to the relevant physical facilities to connect party A equipment located within a party A Physical Facility with the International Cable Systems (dark fiber, ducts, vaults, handholes, manholes).

## **Annex C. KPIs**

### **C.1. Minimum Operational KPIs**

The RO shall specify at least the following minimum KPIs regarding Access to Physical Facilities service provisioning processes:

- (1) Maximum time to provide information on existing infrastructures and its usage once a request is received from an Access Seeker
- (2) Maximum time to validate an Access to Physical Facilities request
- (3) Maximum time to validate a request to amend the information about existing infrastructures
- (4) Maximum time to schedule and perform surveys after a request of access
- (5) Maximum time to conclude on a feasibility analysis after a request of access
- (6) Maximum time for an Access Seeker to report summaries of surveys done on existing infrastructures
- (7) Maximum time to provide alternative services (e.g. duct routes) to an Access Seeker in case there is no available capacity in existing requested Physical Facilities
- (8) Maximum time to validate alternative services proposed by the Access Seeker
- (9) Minimum time for Access Seeker to notify about the commencement of installation works
- (10) Maximum time to develop installation/maintenance works initiated by the Access Seeker
- (11) Maximum time to remove or redistribute unused existing networks (e.g. unused cables in existing ducts) that are causing unavailability in the existing Physical Facilities

- (12) Maximum time to replace, update or deploy new infrastructures (e.g. poles) in the network
- (13) Maximum time to increase Outside Plant (OSP) capacity in telecom buildings
- (14) Maximum time to solve incidences in the provisioning process (e.g. obstruction of ducts)
- (15) Maximum time to deploy authorized personnel to supervise maintenance works by other operators
- (16) Maximum time to repair faults reported, for the different types of faults and depending on their criticality of the fault

## C.2. Monitoring of Access to Physical Facilities and Ancillary Access Services

For the purpose of monitoring the effectiveness of RO and the achieved degree of sharing of physical infrastructures with other Service Providers, Dominant Service Providers are required to report quarterly to the Commission, on an individual basis for each Service Provider and on average for all Service Providers, at least the following KPIs:

- (1) Requests of information on existing infrastructures
  - a. Number of applications received to gather information about existing infrastructures
  - b. Number of applications answered
- (2) Surveys
  - a. Number of applications to perform a joint survey
  - b. Number of joint survey applications accepted
  - c. Number of applications to perform a survey by Access Seeker

- d. Number of autonomous survey applications accepted
  - e. Number of infrastructures visited (breakdown by type of infrastructure according to Access to Physical Facilities services as defined in Annex B)
- (3) Requests to share facilities (breakdown by Access to Physical Facilities service as defined in Annex B)
- a. Number of access applications received
  - b. Number of applications accepted
  - c. Average number of iterations required until acceptance / rejection
  - d. Number of new infrastructures installed
  - e. Number of alternative routes provided
  - f. Number of alternative routes proposed by Access Seeker
  - g. Percentage of alternative routes proposed by Access Seeker and approved by Dominant Service Provider
- (4) Shared facilities (breakdown by Access to Physical Facilities service as defined in Annex B)
- a. Number of Service Providers with Physical Access Agreement signed
  - b. Total number of shared facilities at the end of the period
- (5) Incidents regarding shared infrastructures (breakdown by Access to Physical Facilities service as defined in Annex B)
- a. Number of incidents registered during the period
  - b. Average time to repair
  - c. 90% percentile of time to repair

- d. Number of rejected trouble tickets
- e. Number of wrongful fault reports
- f. Number of avoidable trips to inspect / repair shared facilities

## Annex D. Procedure for the provision of services

### D.1. General Overview

The general procedure for the provision of Access to Physical Facilities under these Regulations should normally progress through the phases shown in the table below:

Action	Relevant provisions	Party responsible for the action	Timeline
Request for information	D.2	Access Seeker	Any time
Reply to the request for information	D.2	Access Provider	Within 10 days from request for information
Access Order	D.3	Access Seeker	Any time
Technical Feasibility Analysis	D.4	Access Provider	14 days from receipt of Access Order
Price Offer Approval or Rejection	D.6	Access Seeker	10 days from receipt of price offer
Order fulfilment	D.7	Access Provider	Depending on type of service and as defined in the agreement
Works by Access Seeker	D.8	Access Seeker; request to be accepted by Access Provider	Access Seeker should be provided access no later than 3 days from Access Seeker's works request

Action	Relevant provisions	Party responsible for the action	Timeline
Billing	D.9	Access Provider	Not before the Access Seeker is able to install his equipment in the Access Provider's Facility
Trouble Reports	D.10	Access Seeker	Any time during Access to Physical Facilities
Termination Order	D.11	Access Seeker	Any time during Access to Physical Facilities
Acceptance of Termination Order	C.11	Access Provider	10 days from receipt
Dismantling Work Order	C.11	Access Seeker	10 days from receipt of approval of Termination Order

Table 1: General procedure for the provision of services

### D.2. Request for Information

- (1) Access Seekers have the right to request and obtain certain information concerning existing Physical Facilities of any Service Provider (the Access Providers) unless such information is available to that Access Seeker.
- (2) The request referred to in article (1) may relate to the following information:
  - a. location, and route;
  - b. type, technical and physical characteristics and current use of the infrastructure;

- c. availability of spare capacity to be shared (e.g. available space in existing ducts, availability of space for new equipment in towers), at least on a preliminary basis to allow Access Seekers to plan their potential Access Orders; and
  - d. one or more contact points for follow up questions or to place potential future Access Orders.
- (3) To be valid, such a request for information by the Access Seeker must be transmitted in writing to the Access Providers with a copy to the Commission. In the request for information, the Access Seeker must:
- a. express the Access Seeker's commitment to take appropriate measures to ensure the respect of confidentiality of any information provided in response to the request and use it only (i) for the purpose stated in the request or (ii) any related procedure before the Commission; and
  - b. specify the area or the Physical Facilities for which information is requested, with a reference to a reasonable level of detail, commensurate to any pre-existing information available to the Access Seeker about the relevant Physical Facilities.
- (4) Service Providers may require that Requests for Information under this article make use of a specific template, once this has been made available online.
- (5) The Access Providers must provide the Access Seeker with a clear and complete reply in writing, within no more than 10 days from the receipt of the Request for Information, and provide a copy thereof to the Commission.
- (6) The Access Providers may not refuse the provision of information in response to a valid and complete request under article (3) above unless on duly justified, proportionate and reasonable grounds. Such access refusal must be in writing and be notified to the Access Seeker, with a copy to the Commission. An Access Providers refusing access to information shall bear the burden of proof that such refusal is justified, proportionate and reasonable.
- (7) Unless the refusal is accepted by the Access Seeker, the Commission may reject the Access Providers' refusal to provide such information as unjustified, disproportionate and/or unreasonable and request the provision of the whole or part of the information requested by the Access Seeker within a deadline defined by the Commission that shall not be longer than 10 days.
- (8) Access Providers must provide Access Seekers with a process to report inaccuracies in the information published or transmitted to Access Seekers about their Physical Facilities. Access Providers must verify such inaccuracies and must provide updated information to Access Seekers immediately upon a finding of any such inaccuracies.

- (9) Access Providers must provide, to the Access Seekers concerned, updated information on any material changes to their Physical Facilities that may reasonably impact any request for information, pending Access Order or existing Physical Access Agreement or other arrangement with those Access Seekers.
- (10) Access Providers may not charge any fees for their response to Requests for Information under this article, unless such requests are handled through an online system, accessible to all Access Seekers, which may be subject to a reasonable and non-discriminatory annual subscription fee, provided this has been approved by the Commission.
- (11) Information received from an Access Seeker shall be used only for the purposes for which it was supplied and not be disclosed to other departments, affiliates or persons to whom the information could provide a competitive advantage.

### D.3. Access Orders

- (1) A Service Provider seeking Access to Physical Facilities (the Access Seeker) must submit a written "Access Order" (or any equivalent online system) to the Access Providers, specifying:
  - a. a description, to the extent possible, of the network nodes or sites, and the Physical Facilities to which Access to Physical Facilities is requested;
  - b. the routes in which the Access Seeker envisages deploying elements of its Telecommunications Network;
  - c. any Ancillary Access Services required;
  - d. preferred timetable for the implementation of such Access to Physical Facilities; and
  - e. one or more contact persons.
- (2) Details on the content and format of an Access Order, and the procedure for its submission may be set out in a Physical Access Agreement concluded between the Access Seeker and the Access Providers. Nevertheless, the absence of such a Physical Access Agreement with an Access Seeker may not be invoked by the Access Providers as a ground for refusing or delaying its response to an Access Order by that Access Seeker or its implementation pursuant to these Regulations.
- (3) Access Providers may require that Access Orders be completed and transmitted only in a specific template, available electronically. If no such template exists, an Access Order following the template attached to these Regulations as Annex E shall be considered appropriate.

- (4) CITC has the right to define the mechanism and the procedures of the services requests \ orders and follow up process.

#### D.4. Technical Feasibility Analysis

- (1) In response to any Access Order, Access Providers must assess whether the provision of the Access concerned is technically feasible. The Access Seeker will bear the costs of carrying out the technical feasibility analysis for each Access Order, provided these are reasonable, proportionate and non-discriminatory. A technical feasibility analysis shall not be required if the Access Order concerns solely Access to Physical Facilities that have not been materially modified since the last technical feasibility analysis for Access to the same Physical Facilities carried out in response to an Access Order by the same or another Access Seeker.
- (2) If a physical survey is needed to assess the technical feasibility of an Access Order, the Access Providers must allow joint surveys with the Access Seeker or offering the possibility to carry out autonomous surveys by Access Seeker to increase the efficiency of the ordering process.
- (3) In the event of an Access Seeker carrying out autonomously the relevant physical survey, it will be his responsibility to:
- a. Make sure such physical survey is performed by accredited personnel, following the Access Providers procedures and any technical standards provided by the Access Providers;
  - b. Notify the Access Providers in advance of the commencement of the physical survey and identify any person(s) responsible for carrying it out;
  - c. Carry out any obligations under Applicable Laws, such as obtaining the required rights of way to reach existing Physical Facilities;
  - d. Be responsible for addressing any operational issues encountered during the survey work (such as but not limited to potential damage to existing cables, removing obstructive objects or handling the presence of gas or water in chambers) in coordination with the Access Providers;
  - e. Inform the Access Providers the progress of the survey work; and
  - f. provide the Access Providers with all the results of the survey work (e.g. plans, photographs, any extra works required to share facilities, such as cable removal, if needed) and any information required to maintain its Infrastructure Inventory up to date once the autonomous surveys are finished. The Access Providers is

responsible for updating its Infrastructure Inventory once the information is provided by the Access Seeker.

- (4) The Access Providers must inform the Access Seeker about the Technical Feasibility for Access to the requested Physical Facilities, in writing, within 14 days from the date of its receipt of the Access Order.
- (5) The Access Providers should perform any conditioning works on its existing Physical Facilities or remove unused equipment (e.g. unused copper cables in ducts, unused transmission equipment in towers) where this is necessary to make Access Orders feasible. The Access Seeker will bear the cost of such works unless agreed otherwise between both parties.
- (6) The Access Providers must propose the use of alternative Physical Facilities (e.g. alternative duct route) to the Access Seeker where this is necessary to make Access Orders feasible. The Access Providers shall bear the burden of showing that the route proposed by the Access Seeker is not feasible. Both parties must agree the terms and conditions, also including the price, of using the proposed alternative routes.
- (7) The Access Providers may not refuse an Access Order as technically unfeasible, if the Access Seeker is willing to undertake, at his own cost, any additional works, to render the Access Order technically feasible.
- (8) When informing the Access Seeker about the Technical Feasibility as described in article (4), above, the Access Providers should provide a price offer including the cost associated to potential conditioning works, required as per articles (5) and (7) above and the one-off and recurrent charges associated to the Access Order. Price offers should be aligned with the requirements set in these Regulations, including subsection 7.3.
- (9) In the event of an Access Seeker's withdrawal of a valid Access Order prior to its implementation, the Access Seeker shall bear all the costs incurred by both parties for the response to, and the fulfilment of, such Access Order.

#### D.5. Measurement of capacity

- (1) The Access Providers may consider the following units at the time of measuring capacity reserved for the different Access to Physical Facilities and Ancillary Access Services:
  - a. Square meters reserved in buildings, compounds or shelters for collocation services
  - b. Power supply (KWh) or required power (KW) for AC or DC power supply and conditioning in collocation services

- c. Units used in access to manholes, handholes or poles
  - d. Length of duct section used measured by (m x square cm) or (m x duct or sub-duct of a certain diameter) for access to ducts or vaults
  - e. Units of radio equipment installed / reserved for tower and mast sharing
  - f. Length (m) and number of fiber strands used in dark fiber services
  - g. Length (m) for new aerial cable or duct sections to be built
- (2) Surveys for Technical Feasibility analysis may be charged individually per request. In case the request of information is automated through an online system, charging may be done periodically using a subscription fee.
- (3) Other Ancillary Access Services and conditioning works may be budgeted and charged per hour of planned work.
- (4) Access Providers may require a fair and reasonable minimum sharing period, of not more than one year. Access Providers may propose a price discount in case Access Seeker commits to a longer period.
- (5) Without prejudice to any other obligations of Dominant Service Providers set out in these Regulations or another Commission Statute, Access Providers may offer volume discounts in case multiple Access to Physical Facilities services or high capacities are requested in a certain route or a building.
- (6) In the absence of a Physical Access Agreement providing otherwise, the Access Providers must inform the Access Seeker, in writing or email, within 10 days from the date of notifying the Access Seeker about the Technical Feasibility of the Access Order(s), about related prices, including the following:
- a. the price of any conditioning works on existing Physical Facilities necessary to make Access Orders feasible.
  - b. the price of Access to Physical Facilities services requested in the Access Order;
  - c. the price of Ancillary Access Services required to make Access to Physical Facilities feasible; and
  - d. any related terms and conditions.
- (7) The Access Seeker shall inform the Access Providers, in writing or e-mail, about the acceptance or rejection of the Access to Physical Facilities price offer, within 10 days from receiving the price information. The Access Seeker may request negotiations with Access Providers on this regard.

## D.6. Price Offer Approval

- (1) The Access Seeker must transmit a written or an e-mail of approval or rejection of the price offer to the Access Provider, within 10 days from the date of receipt of the Access Provider's price offer, with a copy to the Commission.
- (2) Upon approval of a price offer, the Access Providers must perform any conditioning works needed and reserve the requested Physical Facilities to be used by the Access Seeker. Unless agreed otherwise by the Parties, such conditioning works must be completed within no later than 15 days from the Access Order's approval by the Access Providers.

## D.7. Order fulfilment

- (1) Upon reservation of capacity in existing Physical Facilities, the Access Providers shall be responsible for updating his Infrastructure Inventory and notifying Access Seekers accordingly.
- (2) Once the Access Providers has reserved any existing Physical Facilities to be used by an Access Seeker, the latter will be entitled to request and perform any work to install its equipment and networks on the Access Providers' shared Physical Facilities.
- (3) Access Providers may reserve capacity in existing facilities for a maximum reservation period to be specified in the Physical Access Agreement or an Access Order approval. The Access Seeker must complete works in the reserved facilities prior to the expiry of the reservation period unless agreed otherwise. The Access Providers will have the right, upon previous notification to the Access Seeker no later than (15) days before the maximum reservation period has expired, of removing the reservation of Physical Facilities after the maximum reservation period has expired and no works have been completed by the Access Seeker holding such reservation.

## D.8. Works by the Access Seeker

- (1) Access Seekers have the right to carry out themselves installation or maintenance works on their equipment or other network facilities installed in the shared Physical Facilities. In such cases, Access Providers must consider in good faith:
  - a. allowing accredited personnel of the Access Seekers to perform such works, and
  - b. providing Access Seekers with any technical information, standards, Regulations and guidelines required to allow such accredited personnel to access the relevant Physical Facilities and perform the works in line with the safeguards followed by the staff or subcontractors of the Access Providers.

- (2) A request by an Access Seeker under article (1) above must be submitted reasonably in advance to allow the Access Providers to plan access for the works to such Physical Facilities in line with its normal procedures and available resources. The Access Providers must allow such access, within no more than 3 days from receiving works request.
- (3) When undertaking works related to Access to Physical Facilities, both Access Seekers and Access Providers must take any measures reasonably necessary to protect the safety of the public, of the personnel involved in the works or otherwise occupied in the premises, and of property. They must adhere to relevant security obligations, observing all relevant laws and industry standards as well as any Regulations, guidelines and standards issued by the Commission and/or other governmental authorities.
- (4) The Access Seeker will be responsible for any damage on the shared Physical Facilities occurred during the Access Seeker's autonomous works in the Access Providers' premises.
- (5) Access Providers may require the following from Access Seekers to ensure that security measures are followed when work is performed for the purposes of their Physical Access Agreement or other Access to Physical Facilities arrangement:
  - a. Performance of the work at the site only by qualified personnel, also including personnel of the Access Seeker in line with reasonable and non-discriminatory qualification or accreditation requirements;
  - b. Entrance controls and conduct of the work according to the guidelines provided by the Access Providers, pursuant to these Regulations;
  - c. Avoiding any changes resulting from the works that would compromise or risk compromising the security measures originally implemented by the owner of the facility; and
  - d. Covering any additional reasonable costs that may arise in order to re-establish security measures after completion of the construction work.
- (6) Access Seekers shall ensure that the design, planning and installation of their shared Physical Facilities shall be in accordance with best practices and any technical guidelines provided by the Access Providers pursuant to these Regulations, and that it shall comply with any applicable industry codes and/or standards set by governmental and/or other concerned authorities.
- (7) Regardless of the extent of Access to Physical Facilities, both Access Providers and Access Seekers must ensure that, at any point in time, the independent and proper operation of its Public Telecommunications Network is guaranteed.

- (8) Access Seekers must provide Access Providers with all the information needed to maintain their Infrastructure Inventory up to date once the above works are finished. The Access Providers is responsible for updating its Infrastructure Inventory once this information is provided.

## D.9. Billing

- (1) Billing may not start before the requested Physical Facilities have been reserved by the Access Providers and the Access Seeker is free to execute works to use them (e.g. billing may not start if the Physical Facilities are reserved but the Access Providers is still performing some conditioning works).
- (2) Prior to starting the billing process, the Access Providers must send a notification to the Access Seeker to inform him of the reservation of the requested Physical Facility and the billing starting date. Upon receipt of such notification, the Access Seeker must be able to submit work orders to install equipment in the Access Providers' Physical Facility, in line with his Access Order.

## D.10. Trouble Reports

- (1) Access Providers must provide Access Seekers with channels to report any trouble regarding the Access to Physical Facilities to any shared Physical Facilities.
- (2) Each party will be responsible for the operation and maintenance of its own infrastructures and networks, unless agreed otherwise between both parties.
- (3) Before reporting a trouble, the Access Seeker must make sure that the root cause of such incidence is a breakage, cut, or blocking of the Access Providers' infrastructure or other equipment.
- (4) In the event of reporting a trouble that eventually is shown to be under the responsibility of the Access Seeker, the Access Providers has the right to charge the Access Seeker any costs incurred in order to investigate the false trouble report.
- (5) In the event of the Access Seeker's withdrawal of an issued trouble ticket, the Access Providers has the right to charge the Access Seeker any costs incurred to manage such trouble report.
- (6) Access Providers will inform Access Seekers reasonably in advance of any operation and maintenance works that need to be performed on shared Physical Facilities if these may affect the operation of the Access Seeker's Public Telecommunications Network. The parties must agree on a solution for operation and maintenance works suitable to minimize any impact on all installed networks or equipment that may be potentially affected.

- (7) Access Providers must provide transparency on any process and service performance KPIs in order to ensure that Access to Physical Facilities services is provided according to the agreed terms and conditions. As a reference, and unless agreed otherwise, the parties may use the terms, conditions and KPIs specified for Dominant Service Providers in any Commission Statutes related to interconnection and access services.

## D.11. Termination

- (1) Access Providers must provide channels for Access Seeker to request, through a “Termination Order”, the termination of any existing Access to the Access Providers’ Physical Facilities. The Termination Order must clearly specify the Physical Facilities and Ancillary Access Services to which access is requested to be terminated.
- (2) The Access Providers must accept the Termination Order not later than 10 days from its receipt. A rejection of the Termination Order by the Access Providers is allowed only if the Termination Order is infringing the provisions of the Parties’ Physical Access Agreement or a minimum commitment provided by the Access Seeker.
- (3) Upon issuance of a Termination Order, the Access Seeker shall be responsible for dismantling any network or equipment installed on the Access Providers’ Physical Facilities. For that purpose, the Access Seeker must submit a “Dismantling Work Order” to the Access Providers, within 10 days from receipt of the Termination Order’s approval by the Access Providers.
- (4) The Access Providers may charge for the use of any reserved Physical Facility until all network equipment of the Access Seeker has been removed and the space is available for the Access Providers’ or other Access Seekers’ use.

## Annex E. Template for Access Orders

### TEMPLATE FOR ACCESS ORDERS

#### CONTACT INFORMATION OF THE ACCESS SEEKER

Entity name:

Address:

#### CONTACT PERSON OF THE ACCESS SEEKER

Name:

Position:

Telephone:

E-mail:

#### OVERVIEW OF REQUESTED SERVICES (select as many services as needed):

- Access to buildings
- Access to manholes
- Access to cabinets
- Access to radio sites
- Access to pipes
- Access to ducts
- Access to towers
- Access to masts
- Access to dark fiber
- Collocation in Cable Landing Stations
- Ancillary services (air conditioning, power supply, etc.)
- Others (please specify)

DESCRIPTION OF THE REQUESTED SERVICES (provide individual descriptions for each of the selected services)

## TEMPLATE FOR ACCESS ORDERS

Detailed description and location of the routes in which the Access Seeker envisages deploying elements of its Public Telecommunications Network (provide diagrams as needed):

Detailed description and location of the Access to Physical Facilities Services requested from the Access Providers (provide diagrams as needed):

- Detailed description of the service:
- Location of the facilities:
  - Region:
  - Municipality:
  - Address:
  - Coordinates of the facility:

Detailed description and location of the Ancillary Access Services requested from the Access Providers (provide diagrams as needed):

- Detailed description of the service:
- Location of the facilities:
  - Region:
  - Municipality:
  - Address:
  - Coordinates of the facility:

## TEMPLATE FOR ACCESS ORDERS

Detailed preferred timetable (duration) for the implementation of the Access to Physical Facilities Services and Ancillary Access Services:

- Start date:
- Finish date:

ADDITIONAL INFORMATION (IF ANY):

SIGNATURE:

DATE:



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