



ETNO position paper on a revision of WTO rules in the field of telecommunications and other digital services / e-commerce

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The digital transformation is fundamentally changing societies and economies, including international trade. Digital trade creates tremendous opportunities for inclusive economic growth and societal advancement. At the same time, digitally enabled trade in goods and services has given rise to new regulatory challenges. Therefore, we are convinced that the digital economy should be an important element of bilateral and multilateral trade policy. Already in July 2016, ETNO called for an update of trade policy to reflect new realities of the digital economy.¹

In light of the above, we welcome and support the Joint Statement initiative on Electronic Commerce that was launched during the Buenos Aires WTO Ministerial in 2017.² In this context, it makes sense for the European Commission to publish a Communication³ proposing exploratory work towards a revision of WTO rules in the field of telecommunications services.

The Communication contains a set of proposals to update the GATS Telecommunications Reference Paper from 1998, with the intention *“to reflect the developments that have occurred and continue to occur in the sector as well as the reality of today’s internet ecosystem”*. We fully support and encourage this objective, as the penetration of and interaction with telecommunications and other digital services have radically changed over the last two decades. Nowadays, more than half of the world’s population use the internet, and more than half of all internet users are active users⁴ of social platforms and internet-distributed audio-visual content.

The Joint Statement on e-commerce should take a wider look at the digital economy than just “e-commerce” as such. Time is ripe to define a new framework for global disciplines embracing the whole digital ecosystem of business-to-consumer (B2C) and business-to-business (B2B) transactions. This paper comments on both EU Communications⁵ and makes several proposals to amend or define new provisions aimed at taking full account of the significant developments in digital trade.

¹ ETNO Reflection Document #434

https://etno.eu/datas/positions-papers/2016/RDs/RD434_ETNO_trade%20negotiations.pdf

² WTO doc 17-6874; WT/MIN(17)/60

³ WTO doc 18-4373; JOB/GC/194

⁴ Internet World Stats, <https://www.internetworldstats.com/facebook.htm>, June 2017

⁵ - Submission on “EXPLORATORY WORK TOWARDS A REVISION OF WTO RULES IN THE FIELD OF TELECOMMUNICATIONS SERVICES” http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157456.pdf

- Submission on “ESTABLISHING AN ENABLING ENVIRONMENT FOR ELECTRONIC COMMERCE”
http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157457.pdf



a. Communication on Electronic Commerce

ETNO supports the ideas listed in the Communication. It is important to ensure that the new e-commerce requirements cover both B2C and B2B digital transactions. We believe that the consumer protection elements of the Communication should be applicable only to B2C transactions, i.e. involving individual consumers and SMEs using consumer products and services, while excluding services dedicated to business customers that normally are provided based on an individually negotiated contract.

ETNO would welcome provisions on cross-border data flows that are compatible with EU rules to be part of the future agreement.

We support taking the WTO Reference Paper on Telecommunication Services as a model as a way forward. Even though it would be more practical for the negotiations and adoption to have two reference papers – one on e-commerce and one for the revised Telecommunications rules – we think they should be seen as two elements facilitating digital trade.

b. Communication on Telecommunications

Scope

The EU proposes to ensure *“that the WTO rules on Telecommunications Services [...] apply to internet access services, which are today the main means of communication used by businesses and consumers”*.

One new issue proposed by the EU, beyond those already included in the Reference Paper, is “open and neutral internet” – abridged to the narrow concept of network neutrality. In our view, this does not hold up to the objective of the EU Communication. While internet access services are a necessary prerequisite for digital trade, it is the content, services and applications on top that shape the internet and its use as a tool for enabling digital transactions for trade in goods and services. Therefore, WTO rules should take a holistic view of the entire value chain.

More specifically, new WTO rules on telecommunications and other digital services should facilitate digital trade by ensuring equal conditions for market access along the value chain. Twenty years ago, the WTO Reference Paper on Telecommunications was a milestone in promoting the concept of good regulatory principles, transparency and competition in the telecommunications sector. Now it is time to review and improve them. To this end, a new provision should ensure that competitive safeguards are in place to prevent major suppliers of digital services from engaging in anti-competitive practices. We believe this to be in line with the European approach to control abuse in the digital age under general competition law.

Furthermore, we encourage the EU to promote the principle of subjecting similar services to similar rules, which can be difficult but is especially important in the context of digital services with close substitutes.



Domestically, this challenge has been well identified by the European Electronic Communications Code (hereafter EECC)⁶.

Proposal #1: Effective and transparent regulation of the telecommunications sector

We support the proposal to strengthen the independence and impartiality of regulators by ensuring they have sufficient power and resources to regulate. In particular, there should be higher political independence of regulators, which the current rules do not address sufficiently. We also welcome the idea for recourse against regulatory decisions and introducing provisions that would ensure a higher level of transparency of sector regulation and its enforcement by regulators.

Regulation that is justified has to be effective, predictable and transparent. To this end, we also stress the need of promoting the long-term interests of consumers and businesses by ensuring that regulatory decision-making promote both investment and competition, as laid down in EU law⁷. Further EU proposals should include references to equally foster competition, investments and innovation.

Proposal #2: Effective competition in telecommunications markets

While the overall objective to promote effective competition is desirable, the proposal fails to acknowledge market reality. Only focusing – as in the 1998 Reference Paper – on setting competitive safeguards on telecommunications network suppliers is overly narrow and sets aside the opportunity to tackle and develop safeguards against the anti-competitive behaviour of all actors in the digital value chain. This is a missed opportunity to align this review with market reality.

Moreover, the proposal regarding the imposition of non-discrimination obligations on suppliers with significant market power should be in line with the EECC. The EECC specifically provides for discretion for regulatory bodies in deciding (based on a market analysis) on whether or not it is necessary to impose obligations on suppliers with significant market power in light of all general objectives of telecommunications regulation to avoid market failure and abuse.⁸

Proposal #3: Legal certainty and predictability for suppliers

We fully support this proposal and its objective. Our only suggestion is to emphasize the importance of adding a provision that prevents governments from misusing spectrum allocations to increase State revenues. In many countries, we experience that the processes for spectrum allocation artificially increase fees and costs,

⁶ Recital 15, Directive 2018/1972

⁷ Art. 3 (2), Directive 2018/1972

⁸ Art. 68 (2), Directive 2018/1972



thereby diverting capital that would be better used to invest in networks. It is widely accepted that high spectrum costs impact negatively on network investment.⁹

Proposal #4: Open and neutral internet

ETNO members support the objective of empowering consumers and businesses to access and use an open and neutral internet. But there is more than network access to an open and neutral internet experience, including network access, user devices, operating systems, application stores, applications and web-based platforms. Therefore, we suggest taking into account transparency and non-discrimination as important principles in the provision of various internet services and to consider the need to ensure adherence to these principles by dominant gatekeepers.

Proposal #5: Safety net of telecommunications services

ETNO members fully support the objective of setting up fair and competition-neutral universal service policies. However, often the reality is that universal service schemes do not imply an advantage for a given supplier, but in fact a real burden. Therefore, we request a reformulation of the language to ensure that the conditions and objectives of the provision of universal services do not constitute an unfair burden for designated suppliers.

We appreciate the EU's efforts in modernising the Reference Paper and establishing rules on digital trade/electronic commerce. ETNO stands ready to assist and support any endeavour to establish WTO rules that reflect the reality of today's internet ecosystem in support of digital trade.

⁹ "The Impact of High Spectrum Costs on Mobile Network Investment and Consumer Prices"; Nera Economic Consulting https://www.nera.com/content/dam/nera/publications/2017/PUB_High_Spectrum_Costs_0517.pdf



About ETNO

ETNO has been the voice of Europe's telecommunication network operators since 1992 and has become the principal policy group for European electronic communications network operators. Its 39 members and observers from Europe and beyond are the backbone of Europe's digital progress. They are the main drivers of broadband and are committed to its continual growth in Europe.

ETNO members are pan-European operators that also hold new entrant positions outside their national markets. ETNO brings together the main investors in innovative and high-quality e-communications platforms and services, representing 70% of total sector investment.

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