



May 10, 2013

**BT**

**Submission to the Office of the U.S. Trade Representative on the proposed Transatlantic Trade and Investment Partnership**

BT strongly supports deeper transatlantic integration. For BT, the U.S. market is the most important national market outside the UK and comes second after the EU as a whole. We have made considerable investment in the U.S., where we employ over 2600 people.

We warmly welcome proposals for an ambitious and proximate EU-U.S. trade and investment agreement. A comprehensive trade deal focused on non-tariff barriers (given existing very low tariff barriers) and regulatory alignment and mutual recognition in key areas would drive growth and jobs across many sectors including ICT. BT summary views are set out below.

**A. Innovation agenda**

1. Higher economic and jobs growth across the Atlantic will be best served by a relentless focus on ensuring a common and pro-innovation approach to regulation in emerging new areas. Regulation should be based on 'light touch' principles capable of implementation in a similar or mutually compatible way in the EU and the U.S. These core principles (such as those between the EU and U.S., and U.S. and Japan, on ICT policies and ICT regulatory principles) would obviate the need for long term major harmonisation or treaty-based efforts. This will help boost jobs, competitiveness, and innovation on both continents, and – through this – with Japan, the BRICS, and other markets. Jobs and growth will only come from open markets and from new business and technology innovations. Policy makers need to address both areas in tandem.

The innovation areas which seem most suitable for such a mutual effort include:

- Nanotechnology and related areas
  - Cloud computing norms, data privacy and transborder data flows
  - Smart grid and e-mobility norms
  - Cyber security
  - Communications services
2. The EU and U.S. should also try to address material existing problems of regulatory or standards divergence, particularly in the high tech area, which are causing substantial competitive imbalances between EU and U.S. businesses. Specifically this includes aligning the U.S. approach to business access regulation ('special access' and other relevant bottleneck wholesale access products where re-regulation is necessary) with the EU approach to wholesale access regulation. Remedying the imbalance by effectively regulating access bottlenecks would cut the costs of ICT to businesses in the U.S. and EU, and promote competition, innovation, jobs and growth.

Behind the border barriers exist not always because of existing regulation, but also due to the absence of pro-competitive regulation in one of the two markets. There are barriers and distortions which particularly affect the enterprise market segment and which often risk being overlooked by policy makers and regulators. Although the U.S. market for electronic communications services is de jure open, it is de facto a closed market at the infrastructure level. Unlike in the EU, competitors and new market entrants in the U.S. do not benefit from wholesale access regulation, which oblige in the absence of other competitive constraints the dominant operators to provide their competitors access to broadband networks and business access services at non-discriminatory, transparent and cost-based rates, terms and conditions. Nor do there appear to be anti-trust remedies available in the U.S. on anticompetitive behavior relating to the pricing of telecommunications, unlike in the EU. Rules for electronic communications services should follow the EU model of technology neutrality and regulating market power, which is not the case with regulation of communications services in the U.S.

The lack of Business Access regulation leads to:

- Competitive distortion in the U.S. to the detriment of U.S. and foreign new entrants in the electronic communications services market.
  - Inhibits competition, innovation, growth and job creation in the U.S.
  - Results in less choice and innovation in ICT business services and in higher costs for EU and U.S. enterprise customers due to supranormal prices for business access services. For enhanced reliability, speed, and security, ICT business services run over managed IP networks and not the public internet.
  - Has distorting consequences at the level of the European and global managed network services market, due to the importance of the U.S. market for global ICT based enterprise solutions.
3. Divergences of approach in the EU and U.S. in the key regulatory area of data protection and data privacy may have a chilling effect on innovation and on new business models. The draft EU Data Protection Regulation is particularly worrisome and needs careful thought and attention. Whilst the draft Regulation has worthy harmonisation aims, the 'devil is in the detail' and the global market for data and transborder data flows means that this is an area which must be subject to a joint approach by the EU and U.S. (which has global impact) rather than precipitate effort on one side or the other.
  4. Public and government procurement both within the EU Single Market and at U.S. federal and state levels should be a focus, to ensure fair reciprocal access to contracts and business generally to the benefit of citizens and competition.

## **B. Governance and institutional agenda**

The U.S. and EU should work together to improve transatlantic and global governance in at least the following areas:

- To an extent consistent with existing Treaty obligations, the EU (DG Trade) and USTR should set up a joint trade policy task force to work on common approaches to developing enhanced trade opportunities in BRICS, Mexico and elsewhere. This should build in explicit business consultation.
- The existing high level regulatory cooperation dialogue and the TEC process should be more transparent and more long-term in planning and in agenda-setting. It suffers from lack of strategic and secretariat resource on both sides of the Atlantic.

- All measures of transatlantic regulatory significance agreed under the new accord must be capable of passing tests of (a) the net impact of the measure, taken alone and cumulatively with related sector or horizontal measures, must be pro-competitive and enhancing of jobs and growth; and (b) unless explicitly not relevant, the measure must be drafted and implemented so as to be 'e-commerce friendly' or 'internet ready'.
- The EU and U.S. should reaffirm their joint commitment to the current multistakeholder arrangement for internet governance (ICANN, IGF, etc.) and ensure that the internet ecosystem remains open to innovation and commerce globally, and that any constraints (such as on grounds of national or global security, or for the protection of children, or the detection of crime) are 'minimum necessary' measures and ideally harmonised as between U.S. and EU at least on a principles level basis.