

H.E. Cecilia Malmström  
European Commissioner for Trade  
European Commission  
Rue de la Loi 200  
1049 Brussels, Belgium

Brussels, 13th October, 2016

**Re: Making TiSA an ambitious digital trade agreement is a European top priority**

Dear Commissioner Malmström,

We urge you to seize the historical opportunity to achieve an ambitious trade agreement in services matching the needs of the modern, global economy, which today is digital. As negotiations on the Trade in Services Agreement (TiSA) now enter into their final phase, we specifically encourage you to support the following binding and enforceable commitments in TiSA:

**Make TiSA technologically future-proof by including new services.**

Future-proofing the scope of TiSA is essential for the rapidly evolving digital economy. A modern digital trade agreement must not favor old technologies over new ones. Including a future-proof approach will moreover make it more difficult for third countries, which might later join the TiSA commitments, to favor domestic services by discriminating against European services.

**Create robust intermediary liability protection rules.**

TiSA should include intermediary liability protections for the digital economy recognised in EU legislation long ago and implemented in a number of current and pending EU trade agreements. Due to the extraordinary volume of communications processed by online services, it makes little sense to hold these intermediaries responsible for users' misconduct. Specifically, policies should prevent liability exposure for information stored, processed, or distributed by Internet intermediaries, provided these intermediaries have no knowledge of illegal activity or information. Such intermediaries should have no general obligation to monitor their users. Where possible, international coordination and harmonization of notice-and-takedown procedures should be promoted to limit legal uncertainty, without prejudice to the core principles of intermediary liability protection. Extending long-established European protections of intermediaries in TiSA would strengthen freedom of speech and freedom to information globally.

**Promote cross-border data flows while respecting data protection rules.**

TiSA should support Europe's leadership as an exporter of digitally-enabled services, an area in which Europe maintains a trade surplus of over €135 billion. European services export are increasingly relying on data flows, and will continue to do so with connected cars and the Internet of Things as many products actually are sold as a service. It is therefore in Europe's

offensive interest to ensure that all data can flow freely to our trading partners and by all sectors. Any text should be subject to existing GATS exceptions and be consistent with the EU's strong data protection rules. TiSA is an opportunity to avoid third countries erecting protectionist walls to keep out European digitally delivered services.

**Avoid forced localisation of data, network infrastructure, technology transfer, or investments.**

European companies increasingly face trade barriers such as forced localisation of data in third country markets. Current and future TiSA parties should pledge not to impose local data storage, infrastructure, technology transfer or investment obligations as a condition for access to local markets. As a general principle, governments should be prohibited from taking actions that curtail the choices of commercial actors in the physical provision of hardware, software or services that impact the network's performance, security or resiliency. Purchasing decisions should be technology-neutral and not subject to undue technology mandates.

**Prevent discrimination in access to communications networks.**

The EU's liberalised telecoms market has provided us with competitive communications services, one of the key ingredients for a vibrant digital economy. In an era where business information speeds across corporate networks—including Cloud platforms and the sensor-driven Internet of Things—we need to ensure unfettered, cross-border movement of proprietary corporate information. Despite current agreements, some countries let dominant providers of wholesale transmission capacity exploit their market positions to drive up prices for business communications and IT services and often forces business users de facto to use local suppliers. This harms everyone. TiSA should additionally ensure the true independence of regulators in the sector, their ability to assess effectively whether markets are competitive and to regulate accordingly, and it should eliminate equity caps in this sector as in all others.

We thank you for your continued support for an ambitious digital services trade agreement. We remain at your disposal to discuss these issues further.

Sincerely,

[Art. 4.1 b]

John Higgins

Director General, DIGITALEUROPE

**DIGITALEUROPE** 

[Art. 4.1 b]

Lenard Koschwitz  
Director European Affairs, Allied for Startups



[Art. 4.1 b]

James Waterworth  
Vice-President, Computer & Communications Industry Association (CCIA Europe)



cc.

Vice President Andrus Ansip  
Commissioner Günther Oettinger  
Commissioner Věra Jourová  
Director-General Jean-Luc Demarty  
Director-General Roberto Viola  
Director-General Tiina Astola  
Director Ignacio Garcia Bercero  
Ambassador Marc Vanheukelen  
Head of Cabinet Maria Åsenius  
Head of Cabinet Michael Hager  
Head of Cabinet Renate Nikolay