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Trade agreements: an opportunity for the European Digital Economy

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GATS commitments and traditional templates for trade agreements need a review_

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WTO's General Agreement on Trade in Services (GATS) entered into force back in 1995, as a result of the Uruguay Round negotiations.

The Reference Paper on telecommunication services was drafted in the era of state-owned monopolies, with the objective of opening the telecom markets:

- Competitive safeguards
- Obligations to major suppliers
- Interconnection
- Universal Service
- Licensing criteria
- Independence of regulators
- Allocation of scarce resources



Today's challenges are completely different:

- ✓ To ensure an scenario where all players in the digital value chain are subject to equivalent rules.
- ✓ To promote competition, strengthening consumer rights.

This model has been used as template for EU's trade agreements in the last decade and until now.

Trade negotiations represent an enormous opportunity to re-balance the Digital Economy landscape_

2

The regulatory component is key for delivering results in modern Trade negotiations



- The reality of convergence needs to be reflected on trade negotiations, developing **one comprehensive chapter for the Digital Economy sector**.
- The sector needs a “**same services, same rules**” approach.
- Ex-post monitoring of the markets, addressing any potential **abuse of dominant positions** that could have a trade restrictive effect **at any stage of the value chain**.



- Different regulatory frameworks in the EU and the USA, have shaped the sector into **different realities**.
- There is a chance to analyze the outcomes of each model and **set the right path** for future regulations, with less focus on the use of incumbent's legacy networks through regulated access and more emphasis on investment and innovation.

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The reality of converged services should be reflected in the TTIP negotiations_

3

Telecommunication
Services

Computer Services

E-commerce



“Digital Economy”

1. Integration of information society services and electronic communication services to ensure a **“same services, same rules”** approach **among all actors of the value chain**. Different obligations between providers of comparable services that may lead to a competitive disadvantage between actors in the digital economy value chain should be avoided.
2. Call to include reciprocal commitments to regulatory principles and practices such as:
 - maximum **reliance on competitive forces** and ex-post examination of the markets;
 - forbearance from **unnecessary** economic regulation; and
 - **technological neutrality** that ensures that the integration of telecom and IT services does not place a telecom service provider at a disadvantage

Trans-border data flows: the strategic importance of getting it right

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Trade agreements must promote cross-border trade in services by recognizing the **key role of data flows** in the normal functioning of 21st century global economy. An important share of these data flows are **personal and private data**.

Consumer's trust is the main driver for Digital Services adoption



1. Robust data protection standards help to **enhance trust** of users of services and thereby increase the international trade in services.
2. Trade Agreements shall guarantee that cross-border data flows **are compliant with data protection rules** in force in the country of residence of the data subjects.
3. Data protection should **not be considered a protectionist measure** to discriminate against foreign providers or lead to a competitive disadvantage between actors in the value chain.
4. Localization measures or other protectionist obligations shall be **avoided**.

Data protection is significant, both for consumers' trust and for the competitiveness of European enterprises across all sectors. EU's Trade Policy shall set up mechanisms to ensure a "same services, same rules" environment between European and foreign companies: all service providers, regardless where they store data, shall fully respect the rights of European residents, complying with EU laws related to data protection and data security.

Digital Economy topics that are currently discussed in Trade Negotiations (1/3)_

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Open Internet

It is of outmost importance to assure that **neither player in the digital value chain** enters in anti-competitive discrimination, while allowing space for agreements and the development of innovative business models between the players of the Digital Economy value chain.

A chapter covering this issue shall include customer oriented provisions such as allowing access and use of services and applications, allowing customers to connect their choice of devices, and promoting the interoperability of services. At the same time, those provisions shall be balanced with permission for network operators to carry out network management.

Digital Life Interoperability

Due to a lack of interoperability and to a lack of portability of content and data, consumers are suffering from bottlenecks in accessing one's "digital life" from different platforms, or in switching platforms. These **market barriers** hamper the use of digital services and competition, to the benefit of the well-established global platforms. In this context, it is important to:

- ✓ ensure open access for Internet services and end users;
- ✓ remove barriers which prevent users from switching Operating Systems without losing their applications and data;
- ✓ improve consumer's freedom and increase competition.

Digital Economy topics that are currently discussed in Trade Negotiations (2/3)

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Localization requirements

We are witnessing the proliferation of localization requirements in many countries. While these practices are justified under industrial policies, economic analysis demonstrates that they harm innovation, competition and consumer welfare.

Local establishment: We support the elimination of obligations to establish or maintain a commercial presence, or to be resident in a given territory, as a condition to supply services.

Local Content: We support the elimination of obligations related to local content; if achieved, it shall be done with a **technologically neutral approach** (digitally transmitted content and broadcasting should be treated equally); otherwise, regulations will be *picking winners*.

Local Technology: We support the elimination of obligations to purchase local

EU's Trade Policy shall seek the commitment of its trade partners to refrain from imposing blanket localization requirements on all companies and all services. Openness achieved in this field must treat equally all players.

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Digital Economy topics that are currently discussed in Trade Negotiations (3/3)_

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Roaming

It is important to **enhance transparency** towards the customers, ensuring that information on voice, data and messaging rates are easy accessible. Beyond that, to include additional commitments on mobile roaming may be **beyond the scope** of a trade agreement, because they are mere contractual arrangements between private companies.

Foreign equity caps

Limitations to ownership or obligations to partner with a local entity limit the ability to take full control of a business or develop an activity with fully independence. In many cases, these measures result in the strategic decision to avoid a given market. EU's Trade Policy shall pursue full **elimination of foreign equity caps** and other kind of limitations to full ownership and control of investments.

Investment Protection

There is a crucial need that the EU companies benefit of a strong investment protection when we invest abroad, and also need for a strong investment protection to ensure that the EU will continue to attract FDI.

Investors in the services industries are **very concerned** about the latest developments on investment Protection. We feel a **significant lose of protection**, compared to the BITs.

The current EU proposal will set up a system that will make literally impossible “except in rare circumstances” for investors to ever win a case in a claim alleging indirect expropriation.

- The definition of “investment” is not appropriate.
- The text is more about protecting EU Governments from claims, than about protecting EU investors abroad.
- The “right to regulate” article lacks a commitment to exercise it in a non-discriminatory way.
- The definition of “fair and equitable treatment” might lead to a significant narrowing of the protection.

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