



JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM THE EUROPEAN UNION

The following communication, dated 12 July 2018, is being circulated at the request of the delegation of the European Union.

EXPLORATORY WORK TOWARDS A REVISION OF WTO RULES IN THE FIELD OF TELECOMMUNICATIONS SERVICES

In this communication, the European Union proposes to carry out exploratory work towards future WTO negotiations on a set of obligations and principles in the field of telecommunications services, building upon the existing GATS Telecommunications Reference Paper and taking into account significant developments in this sector over the last two decades. This communication is without prejudice to the negotiating position of the EU.

1 INTRODUCTION

1.1. Telecommunications services are key enablers of electronic commerce. It is therefore crucial to ensure that the international regulatory framework applying to this sector supports the development of electronic commerce and encourages online activity by both businesses and consumers.

1.2. The regulatory framework for telecommunications services agreed in the GATS Telecommunications Reference Paper (Reference Paper) deals with six regulatory principles, including competitive safeguards, interconnection, universal service, licensing, allocation and use of scarce resources and the existence of an independent regulator. To date more than 100 WTO Members have committed to fully or partially implementing the disciplines in the paper. The EU considers that all interested Members participating in the Joint Statement initiative on Electronic Commerce should commit to fully implementing the existing Reference Paper, which is an important complement to the market access commitments in this sector.

1.3. The EU also sees a clear benefit in all interested Members discussing how to upgrade and extend the disciplines in the Reference Paper – that were devised in the 1990's – to reflect the developments that have occurred and continue to occur in the sector as well as the reality of today's internet ecosystem. The telecommunications sector has experienced a significant transformation since the development of the Reference Paper, headlined by the fact that the internet has become the most relevant part of the sector and is today an enabling technology for most economic activities. At the time of the development of the Reference Paper, the number of internet users was less than 1 per cent of the world's population (0.75 per cent in late 1995¹). Nowadays, the internet is used by more than half of the world's population, and it is arguably the most important means of communication, enabler of transactions and overall driver of innovation in the world. As such, the EU considers that the WTO rules on Telecommunications Services should apply to internet access services, which are today the main means of communication used by businesses and consumers.

¹ International Telecommunication Union, World Telecommunication/ICT Development Report and database.

1.4. Ensuring a global regulatory benchmark in telecommunications services will result in beneficial outcomes for both developed and developing Members alike. A fair, predictable and competitive environment for the provision of telecommunications services can contribute to increasing the confidence of the business community, opening the door to innovation in services offered over telecommunications networks and leading to an increased ability of Members to attract foreign direct investment both in the telecommunications sector as well as in sectors that are enabled by telecommunications networks and services.

EU PROPOSAL

1.5. The European Union proposes that Members engage in exploratory work towards possible improvements of the provisions contained in the Reference Paper, as well as in discussions on a complementary set of provisions pertaining to telecommunications services that are relevant for today's electronic commerce landscape.

1.6. Altogether, the EU proposes to carry out exploratory work on a set of provisions that cater for the objectives presented below, without prejudging the legal form of the negotiated outcome, in particular whether negotiated provisions would constitute a replacement of or an addition to the existing Reference Paper. These elements could be part of the cross-cutting discussions on how to deliver the eventual outcomes of the Joint Statement initiative on Electronic Commerce.

2 EFFECTIVE AND TRANSPARENT REGULATION OF THE TELECOMMUNICATIONS SECTOR

Objective: to promote effective and predictable regulation of the sector, by strengthening the position of regulatory bodies and ensuring transparency in the way the sector is regulated.

2.1. Effective regulation of the telecommunications sector is crucial to ensure that it develops for the benefit of businesses and consumers alike. This is best achieved by ensuring a competitive environment where providers of telecommunications services can develop their business under fair and non-discriminatory conditions.

2.2. The role of the regulator is to guarantee that the market functions effectively and that no player is given unfair competitive advantage. This can only be achieved via independent bodies that have no direct or indirect connection to market players, who are assigned a clear set of regulatory tasks in a transparent manner, who have the power to perform such tasks independently without being influenced by specific interests, and who act in a transparent manner towards market players and the public in general.

The Reference Paper already contains provisions ensuring a degree of impartiality and independence of regulatory bodies from suppliers of telecommunications services. Discussions in the e-commerce Joint Statement initiative could focus on extending such provisions, namely with a view to:

- Ensuring a higher level of independence for the regulatory bodies, that they have sufficient power to regulate the sector, and that there is the possibility for recourse against their decisions; and
- Ensuring a higher level of transparency concerning sector regulation and how it is enforced by the regulatory bodies.

3 EFFECTIVE COMPETITION IN TELECOMMUNICATIONS MARKETS

Objective: to promote effective competition in telecommunications markets, by putting in place enhanced competitive safeguards on the behaviour of suppliers with significant market power and disciplining interconnection with and access to the networks of such suppliers.

3.1. In a sector which was traditionally characterised by monopolistic market structures, regulators should nowadays ensure that there is effective competition, namely by preventing suppliers with significant market power in a specific market from exploiting their position to the detriment of their competitors or end-users.

3.2. An important part of promoting competition in telecommunications markets is to guarantee that barriers to entry are low. To that end, it is imperative that telecommunication service providers, especially small players, are able to interconnect their networks. It is also important to ensure that the control of essential infrastructure by a given supplier cannot be used to limit competition in the market.

The Reference Paper already contains provisions dealing with competitive safeguards and interconnection that apply to suppliers with significant market power. Discussions in the Joint Statement initiative could focus on improving such provisions, namely with a view to:

- Developing safeguards that prevent discrimination by suppliers with significant market power between their affiliates and subsidiaries and other suppliers; and
- Ensuring that suppliers with significant market power do not use their control over essential infrastructure to create barriers to entry in the relevant markets so as to hinder competition in those markets.

4 LEGAL CERTAINTY AND PREDICTABILITY FOR SUPPLIERS

Objective: to provide legal certainty and predictability for suppliers to plan and develop their business, by ensuring that conditions and procedures for obtaining, amending or withdrawing licences, including for the use of scarce resources, are fair and transparent, and that suppliers can access effective dispute resolution mechanisms.

4.1. The provision of telecommunications services is often subject to licensing or authorisation procedures that require operators to fulfil a set of conditions and to abide by a set of obligations. Such authorisation procedures should not create obstacles that prevent or unduly delay suppliers from providing their services. Regulators should be transparent about licensing or authorisation procedures and requirements, and should process applications in a timely and transparent manner. Any conditions and obligations linked to an authorisation or license should be reasonable and non-discriminatory. Furthermore, licensing fees should not be overly burdensome, especially for smaller players, and should be connected to the costs of administering the licences. Any significant amendment or the withdrawal of an authorisation or licence should follow transparent procedures.

4.2. Allocation of frequencies is among the regulatory actions that can have the greatest impact on the development of modern telecommunications services. Such allocations should be done in a transparent and objective manner and following market-based mechanisms to ensure that they do not hamper the provision of advanced services and that they do not cause market distortions.

4.3. The ability for suppliers of telecommunications services to access fair, transparent and effective dispute resolution mechanisms, namely those provided by regulatory bodies, can bring certainty to suppliers and act as an important factor to attract investment in the sector.

The Reference Paper already contains provisions dealing with licensing and the allocation of scarce resources. Exploratory work could focus on improving such provisions and on addressing issues relating to dispute resolution, namely with a view to:

- Ensuring that authorisation and licensing regimes are fully transparent, reasonable, non-discriminatory, not overly burdensome for suppliers and do not result in undue delays before services can be supplied;
- Promoting allocation of frequencies through market-based mechanisms; and
- Ensuring that suppliers of telecommunications services have access to a fair, transparent and effective dispute resolution mechanism provided by the regulatory bodies.

5 OPEN AND NEUTRAL INTERNET

Objective: to empower consumers and businesses to access and use an open and neutral internet, by ensuring that businesses and consumers can use internet access services under fair and non-discriminatory terms in order to develop and carry out their activities, and by endorsing the principle of network neutrality for all internet users.

5.1. Access to the internet is a basic condition without which neither businesses nor consumers can engage in electronic commerce. Beyond that, the internet has become fundamental in virtually all economic sectors, and it is used in nearly all trade activities. As such, the internet is nowadays a fundamental infrastructure and, for that reason, internet access should be considered a public telecommunications service that all businesses should be able to access and use in fair and non-discriminatory terms.

5.2. Furthermore, and without prejudice to measures necessary to safeguard the proper operation of networks, it is important to ensure that internet users, consumers and businesses alike, are able to engage in electronic commerce and, more generally, in any type of lawful activity that they wish to pursue using the internet, without being discriminated against based on commercial interests.

Not all WTO Members currently consider internet access as being a public telecommunications service, and the Reference Paper does not contain disciplines addressing openness and neutrality of the internet. Discussions could focus on devising WTO provisions with a view to:

- Recognising that internet access is a key enabler for electronic commerce and that, as such, it is considered a basic public telecommunications service that all businesses should be able to access and use in fair and non-discriminatory terms for their lawful activities; and
- Endorsing the principle of an open and neutral internet, whereby users of internet access services can access an open internet without being discriminated against based on commercial interests.

6 SAFETY NET OF TELECOMMUNICATIONS SERVICES

Objective: to ensure that access to a safety net of telecommunications services for those parts of the population that would not be reached otherwise is done through fair and competition-neutral universal service policies that promote the deployment of telecommunications networks.

6.1. Universal service policies are very important tools for Members to guarantee that those parts of the population for which there are not enough commercial incentives to provide telecommunications services are not excluded from accessing and using such services. This is particularly important for electronic commerce, for which internet access is an indispensable condition. At the same time, such policies should be devised in ways that are not market distortive and that do not give undue advantages to some suppliers.

The Reference Paper already contains provisions establishing the conditions under which universal service policies will not be regarded as anti-competitive. Discussions could focus on extending such provisions, namely with a view to:

- Ensuring that all suppliers in the market have the opportunity to apply for being designated as universal service suppliers; and
- Ensuring that, where compensation mechanisms for the provision of universal services exist, such compensation does not result in unfair advantage for specific suppliers in the market.

6.2. With these objectives in mind, the European Union invites interested WTO Members to carry out exploratory talks towards negotiations of enhanced WTO rules on Telecommunication Services in the context of the Joint Statement initiative on Electronic Commerce.