

## BT

### General

BT is committed to a European Single Market based on principles of openness, fair competition, a level playing-field, and encouragement of innovation. The UK has been a leading force in shaping the EU on these policy lines and should continue to engage fully in their support.

We do not take a formal position on the optimal Institutional arrangements, and are opposed to a number of EU legislative proposals. We believe however that the current '*acquis*', and the role played by the Commission in its enforcement, are vitally important for UK (as well as other EU) companies, and for the ICT sector. We would be concerned if the benefits - particularly in terms of market access and competitiveness, and valuable EU level action on trade and competition policy, and the single market - were to be jeopardised by a re-negotiation of competences where this substantially risked unravelling the existing balance.

There are number of areas of EU policy-making that give cause for concern. We believe these are probably best tackled by more effective and consistent enforcement of existing rules, and a more selective and evidence-based approach to any new legislation rather than a radical change to existing Institutional or Treaty relationships. The areas of pensions and some employment legislation may however be best dealt with as national competencies constitutionally.

### Policy considerations

- **Trade Policy** is an area which must remain at EU-level. The EU plays a vital role opening market access world-wide, with far greater leverage (for example into Asian markets) than could be obtained by nations acting individually. We support the Commission's deepening trade policy efforts on plurilateral trade agreements such as on services (TISA) and government procurement and on IT equipment, and on bilateral EU trade and investment agreements with the USA, Japan, Vietnam, India, Mercosur etc building on the work on the Korea and Singapore and imminent Canadian deals. BT's summary views on the EU-US T-TIP negotiations scope are attached. Whilst we would ideally like to see effective multilateral/global action through the WTO, such as via the Doha Round, it is important to maintain progression in trade relationships to foster economic growth and to help stay nascent protectionist tendencies;
- **Investment:** it may be that FDI in the UK would be negatively impacted by moves to leave the EU. Empirical evidence on this seems scant but this view is being expressed by some third country governments and business federations;
- **Trade promotion:** the work of UKTI and the commercial diplomacy teams is strong and improving, with additional resources being

deployed to growth markets. There is good and improving connection with business generally and by sector. This sits very comfortably with EU level trade agreement negotiation and trade defence negotiation;

- **Better coordination:** a continuing strategic review of the overlaps and interdependencies between EC directorates and between EU institutions, with Member State input, may also help to drive efficiencies in policy making and to avoid 'a thousand flowers blooming' through the EC right of initiative particularly at a time of economic difficulty where focus on the 'vital few' is needed. Similarly, improving impact assessments per initiative should also seek to address the cumulative impact of a measure taken with the effect of other measures in hand or in place.

### **Towards a US-EU T-TIP agreement: EU level trade leadership matters in a global context**

- the EU-US trade negotiations (TTIP) which commenced formally in July 2013 have had an unusual weight of political and business consensus across the Atlantic. This seems to have been a mixture of: (a) the need to drive jobs and growth; (b) the failure of Doha and the resulting gap; and (c) the importance of maintaining transatlantic competitiveness with the BRICs, Indonesia, Mexico etc;
- the prize is substantial potentially. The transatlantic market is about 50% of global GDP, and about 30% of world trade. Daily trade is at nearly \$3bn. Conservative EU estimates put the growth from a deal in two years' time at about 0.5-1.0% of combined GDP. A recent UK Government study quoted an annual uplift of c£10bn annually in GDP.
- there are another prizes from an EU-US deal. One might be to 're-boot' the WTO into more focused and forensic trade action under its new leadership. Otherwise it may, beyond trade dispute work, become a repository for the web of bilateral and sectoral deals. Such a complex web brings challenges of coherence and comprehensibility for the trading system of course, and could too impact on the status of the WTO as an institution;
- perhaps more significantly, a transatlantic accord may well spur creative activity in other trade relationships and 'kick-start' real both way activity on tariff and non-tariff barriers. EU-Japan has been launched (part prompted by the EU-Korea deal) and so too EU-Vietnam and EU-Thailand. EU-India and EU-Mercosur may get a new lease of life; and the multilateral TTP dialogue has attracted Japan now. All this is also causing Brazil and especially China to think very hard about their positioning and engagement on trade negotiations, especially as economic growth slows;
- the EU-US deal with focus on Non-Tariff Barriers. It is likely to try to set norms and standards and principles for forward-looking high technology and growth areas. This might include some or all of: life sciences; nanotech; ICT services and cloud computing; cyber-security; transborder data flows; smart grids; e-mobility (vehicles); IPRs. This

could give the transatlantic partners the chance to set rules and standards in emerging areas which the world may have global resonance. Challenges will be heavy on getting independent regulatory agencies to work rapidly and smartly within the framework;

- in the ICT sector, there is a strong correlation between greater trade flows and greater communications flows and business. The EU-US principles on ICT policy and regulation agreed under TEC auspices in 2011, and facilitating joint EU-US advocacy in the area in WTO and bilateral dialogues, are an interesting instrument also in other forward-looking technology areas perhaps under TTIP. The US-Japan ICT principles flowed from this in 2012 for example. They allow progress short of formal standards or MRAs possibly.

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2 August 2013



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.