

3 April 2013

## **Open Letter from the International Telecommunications Users Group**

Dear Vice President Kroes,

At our meetings in your offices you have encouraged INTUG to contact you directly if a serious issue arises which you can assist in resolving. We are writing to you now, therefore, concerning an ongoing competitive imbalance between US and EU regulations for non-discriminatory access to communications services, which is putting the EU at a distinct and unfair disadvantage in trade terms. Whilst INTUG welcomes the February 2013 announcement by US President Barack Obama and EC President José Manuel Barroso, to begin negotiations on a Transatlantic Trade and Investment Partnership (TTIP), we are concerned that the start point is far from satisfactory.

We have therefore summarised below INTUG's thoughts on elements of the proposed trade agreement.

The EU and the US have the largest bilateral trade relationship in the world, with the combined economies accounting for about half world GDP and nearly a third of world trade flows, but real opportunities for continued and increased growth remain. Specifically, INTUG believes that the TTIP negotiations provide an opportunity for the US and the EU to address a behind-the-border barrier that exists in the supply of business access services in the US electronic communications sector.

In the EU, regulation is designed to ensure that, in the absence of other competitive constraints, dominant operators provide their competitors with access to broadband networks at non-discriminatory, transparent, and cost-based terms. This has not been 100% successful, since variable implementation has resulted in

a less than perfect structure, especially in mobile, but significant progress has been made towards achieving the goal of increased competition within the EU. In the US, however, competitors and new entrants do not benefit from equivalent wholesale access regulation. Widespread premature deregulation of business access services has led to elimination of competition and protection for consumers and competitors. In addition, the US has no viable anti-trust remedies for abuses of market control and anti-competitive behaviour by incumbents. This results in a behind-the-border barrier that exists due to an absence of pro-competitive regulation.

International business users in the private, government and public sectors rely on open connectivity for networks in support of online business processes, especially those linking extended supply chains, where multiple service providers from different countries are involved. As a result, it is essential that broadband service providers and businesses throughout the economy can obtain business access services at a reasonable price, to ensure competition, innovation, broadband deployment, jobs and growth. In the US, over 90% of last mile business access services is controlled by incumbents, who enjoy profit margins of 60-170%, compared to the US regulator's last authorized rate of return of just 11.25%.

Lack of pro-competitive regulation in the US also leads to a distortion of competition in the global market for electronic communications services. As a result of ex-ante regulation in the EU's electronic communications framework, as well as effective competition oversight, US players in the business communications market can compete in Europe. However, EU players face serious barriers due to the lack of regulation for business access products and lack of intervention by competition authorities in the US. An electronic communications services company cannot affordably provide service to global enterprise customers without reliable, competitively-priced, non-discriminatory fixed access in countries where those customers are located. As access to customer premises of multi-national companies in the US is key for most global contracts, EU operators cannot compete on the same terms in the US as players dominant in the US competing in the EU for the same type of enterprise customers. This regulatory divergence results in an unbalanced playing field that negatively impacts EU carriers operating in the US, whereas US incumbents are able to use their supra-normal earnings in the US to invest more aggressively in the EU market.



INTUG supports a trade partnership between the EU and the US, but this must address the substantial competitive imbalance detailed above, which stifles prospects for improved economic growth and job creation. Fair access to a competitive market for high-capacity business broadband services should be equally available on both sides of the Atlantic.

Yours sincerely

Nick White  
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International Telecommunications Users Group