



# **ETNO Reflection Document in response to the European Commission Questionnaire on new Free Trade Agreements**

**May 2007**

## **Executive Summary**

ETNO welcomes the effort of the EU Commission to launch free trade negotiations with a set of key regions and countries to the extent that they grant EU telecoms operators an additional layer of market access and juridical security to the one that might hopefully be achieved in the WTO Doha Round. The elimination of foreign equity restrictions and the ability to provide fixed and mobile telecom services, including convergent services, on an equal footing with local operators as well as transparency and regulatory predictability through full application of the Reference Paper, a better rule of law in general and the approach towards classification are the main issues at stake for ETNO members in these negotiations.

## **Introduction**

ETNO wishes to thank the European Commission for the questionnaire on the negotiation of new Free Trade Agreements.

ETNO represents the voice of 41 of Europe's largest telecommunications operators from 34 countries, providing, on a world-wide basis, services ranging from traditional fixed line telecommunications to mobile telecommunications, content provision, broadcasting and internet services.

Considering that the questionnaire addresses concerns related to a specific list of regions/countries where not all its members have commercial operations, ETNO welcomes this opportunity to state its position on some horizontal issues related to the negotiations on telecommunications services in FTAs. ETNO members may prepare responses on an individual basis targeted to the barriers they encounter on those specific regions/countries where they are present.

## **Positive view of Free Trade Agreements**

ETNO welcomes the approach of the *Global Europe Communication* and the launch of negotiations of bi-regional/bilateral free trade agreements with key trading partners as complementary to the ongoing WTO negotiations.

ETNO would like to urge the Commission to avoid in the new FTA negotiations those deadlocks that are currently affecting services negotiations in the WTO, mainly based on the fact of services negotiations being delayed by negotiations on agriculture and NAMA. ETNO also encourages the Commission to prioritise progress in those areas/sectors with the highest impact on innovation, productivity growth, jobs and competitiveness in both developed and developing countries, such as the Telecoms sector. Services liberalisation creates growth and jobs and telecommunications services, being in itself an important contributor to economic growth, is also a facilitator for growth in other sectors of the economy. In many emerging markets, the penetration of fixed and mobile telecom services is strongly correlated with economic growth and social benefits.

ETNO believes bi-regional/bilateral FTAs might be useful for EU telecommunications industry in obtaining a preferential framework for its international operations in those markets, going beyond the potential benefits of the Doha Round in terms of market access and juridical security and therefore accomplishing the "GATS +" objective that should inspire all FTA negotiations in the services area.

## **Trade in Telecoms Services and Investment and the issue of Convergence**

The main barriers that ETNO members face when operating in non EU countries are limitations on ownership of capital for the provision of telecommunications services. Deleting all foreign ownership restrictions related to telecommunications services in FTAs is crucial for ETNO members to be able to compete on equal footing with national operators. For ETNO members the main concern is the application of basic tools to ensure real and effective liberalisation of basic telecommunications services together with the possibility of developing quadruple play strategies based on the convergent provision of voice, data, video and mobile services.

In this context, it should be noted that the advent of convergence has reshaped the telecoms industry, blurring the boundaries between telecoms and audiovisual services. Therefore, in order for the EU Commission to ensure no foreign ownership limitations for EU telecoms operators exist in the provision of convergent services, the Commission should review its trade policy accordingly. The Commission should take into consideration the interest of some EU telecoms operators in having safeguards against foreign ownership restrictions for the provision of content-based services in third country markets.

The debate on the Audiovisual Media Services Directive within the EU could lead to the exclusion from its final scope of certain non-linear audiovisual services (i.e. video on demand, streaming), which may rather be considered information society services and which therefore would be subject to a lighter regulatory regime based on the provisions of the e-Commerce Directive. ETNO considers that the EU Commission should carefully take into account this debate and seek a way to reflect its final approach in the new FTAs. The EU Commission should reflect the potential distinction between traditional broadcasting and non-linear/unicast services in the FTAs to ensure that EU counterparts do not limit the provision of these non-linear services by EU telecoms operators.

## **Achieving a Predictable Regulatory Framework for the Provision of Telecoms Services**

As it was mentioned before, the main barriers that ETNO members face when operating in non EU countries are limitations on foreign ownership for the provision of telecommunications services. Deleting all foreign ownership restrictions related to telecommunications services in the FTAs is crucial to eliminate the single most effective market entry barrier on many markets.

From the broader perspective of the regime of foreign direct investments, ETNO members would be interested in the inclusion of a chapter on Investment within the EU Bilateral/Bi-regional Association Agreements in order to ensure the rights of EU investors, namely national treatment for foreign investors: non-discriminatory access to government funds and development programs, and free movement of capital for all transactions related to foreign investment, specially dividend repatriation.

Together with no foreign ownership restrictions for the provision of services in general, and telecommunications services in particular, ETNO members need an effective, proportionate and predictable regulatory framework. The new FTAs can be an outstanding tool to foster the conditions for an adequate regulatory framework and create the necessary level playing field, regulatory predictability and legal certainty required by telecoms services' providers. The FTAs need to commit both parties to substantial free trade commitments in terms of market access, national treatment provisions and domestic regulations.

A successful outcome for ETNO members require that the parties commit to effectively liberalise the telecoms markets based on the principles of the Telecommunications Reference Paper for basic telecommunications. To introduce effective competition on the market, which is a prerequisite for growth, the agreements need to include provisions that ensure independent regulators, provisions regulating major suppliers, basic interconnect regulations and rules to ensure that scarce resources are allocated in an objective, non-discriminatory and transparent manner.

Regarding the general principles, the text of the new FTAs may contain the following provisions to ensure certainty in the provision of telecoms services:

- Where relevant, requiring previous consensus between both parties for any modification of the schedules of commitments
- Enhancing the importance of transparency<sup>1</sup>, non discrimination and rule of law.
- Market access under non discriminatory conditions, also in the area of government procurement
- Limiting exceptions to the application of the provisions of the Agreement to those admitted under the GATS

Regarding the schedules of commitments, they should help to promote liberalisation and create legal certainty according to the following principles:

- Elimination of all foreign equity limits on basic telecom services and value added services. They remain the single most significant entry barrier for our sector in many countries
- Transparent and streamlined application and granting processes for all types of licences and the deletion of any requirements of governmental authorisations that subject the provision of a service to the discretionary power of the administration
- Avoiding governmental prerogatives to limit foreign capital participation in a given sector at any time in the future
- Ensure through specific commitments that the existing levels of autonomous liberalisation are maintained
- Fully adopting the provisions of the Reference Paper on Basic Telecommunications Services in the additional commitments section of the schedules of commitments.

In this sense, when entering into FTA negotiations, the EU Commission should decide upon the approach towards the scheduling of commitments and the classification of services within the telecoms sector. Considering the scope of the Reference Paper, limited to basic telecoms services, ETNO believes the schedules of commitments in new FTAs must respect the existing GATS classification<sup>1</sup> in order to avoid confusion on the scope of the services subject to regulatory provisions. This will give a clear sign to EU counterparts as to the importance of not unduly extending the scope of regulation and of respecting commercially negotiated arrangements in competitive markets, such as the international internet connectivity. Deleting the distinction between basic and value added services poses the risk of extending the provisions of the Reference Paper to all telecoms services. This could imply for instance the obligation of applying cost oriented interconnection models intended for traditional circuit-switched based communications to other types of interconnection such as IP interconnection, which would go beyond the EU regulatory framework.

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<sup>1</sup> BT and TDC however support the European Commission's proposal to adopt a new approach to classification, in the interest of achieving a more readily understood and technologically neutral schedule of commitments.

ETNO members would like to highlight the importance of applying uniformly these criteria of classification of telecoms services and of the full adoption of the provisions of the Reference Paper related to basic telecoms services regardless of the instrument under which the negotiations are conducted (Interregional Association Agreement, Bilateral FTA, Economic Partnership Agreement etc).

## **Conclusion**

ETNO welcomes the effort of the EU Commission to launch free trade negotiations with a set of key regions and countries to the extent that they grant EU telecoms operators an additional layer of market access and juridical security to the one that might hopefully be achieved in the WTO Doha Round. The elimination of foreign equity restrictions and the ability to provide fixed and mobile telecom services, including convergent services, on an equal footing with local operators as well as transparency and regulatory predictability through full application of the Reference Paper, a better rule of law in general and the approach towards classification are the main issues at stake for ETNO members in these negotiations.

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<sup>i</sup> Transparency, not only in the sense of facilitating access to regulatory provisions that affect the content of the Agreement but also providing for consultations with all interested parties prior to the enactment of such a new law or regulation, is crucial to ensure predictability.