

To: DG Trade

European Commission

BT is pleased to submit summary thoughts on this consultation. We strongly support efforts to build deeper transatlantic economic integration to help boost jobs, competitiveness and innovation on both continents, and – through this - with Japan, the BRICS and other markets. This Working group presents a unique opportunity to accelerate change. 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.

### **Scale of the opportunity**

The EU Single Market is worth c.\$16 trillion and serves over 500m people. The US national market is worth c.\$15 trillion and serves over 310m people. Combined global GDP on a purchasing parity basis is over 41%, or around 50% nominal. The transatlantic economy generates around \$5 trillion in commercial sales per annum and employs over fifteen million workers in mutually 'on-shored' jobs according to Hamilton & Quinlan. Around 60% of US FDI typically flows into Europe. This is broadly mirrored in the reverse direction. Trade flows exhibit similar sorts of scale and trends. Boosting those bilateral flows, and easing both-way flows into third markets, must be good things. Services reform and liberalisation should be at the heart of that.

### **The timing is right**

The recent European Council (30 January 2012) took steps to re-invigorate the Single Market building on Commissioner Barnier's positive Single Market Act initiative. The EU/US Summit last November agreed a High Level Working Group on growths and jobs with what some see as a fast-track agenda towards a transatlantic economic agreement - going well beyond the valuable work of the Transatlantic Economic Council (TEC) - within the next year or two.

### **Key suggested action areas**

Several inter-locking actions could help drive things forward:

- \* genuine ambition in the planned EU/US market dialogue, across tariff issues and on non-tariff barriers. This should encompass early moves to harmonise proportionate rules and regulations and standards in emerging new technology areas, such as cloud computing, nanotechnology, electric vehicles, ICT and internet services, green energy solutions, smart grids, data privacy and cyber-security;

- \* agreement on joint positions at the level of principles in key business and policy areas - as was done in the ICT sector in 2011 - for joint EU/US advocacy with third nations (e.g. BRICS and Japan) in trade or other global governance fora. These need not be Treaty or MRA-based, but rather could be joint agreements to implement and espouse common principles;

- \* strengthen enforcement and implementation resource (and if possible, powers), be it EU27 Single Market, or transatlantic, or at WTO level. Those committing to do things must be called to account. And those implementing must not hide behind very different judicial systems, appellate approaches and/or regulatory proceedings to delay or to obfuscate;

- \* forensic focus on completing the digital EU Single Market and the digital market within the USA. This covers continued disparities on wholesale network access terms as well as facilitating e-commerce services and ensuring a fair deal across the EU and the USA for public procurement;

\* new regulatory measures particularly in these difficult times - whether of financial services, data protection or the like - must pass tests of real consumer need and real enhancement of jobs and growth, within a pro-competitiveness framework. Regulation must also be seen holistically (for cumulative impact) and not through narrowly based impact assessments.

### **Specific thoughts on Electronic Communications Services**

Although the US market for electronic communications services is de jure open, there are important areas to address – just as there are (in some EU27 nations) areas of the EU Communications Framework measures to implement and enforce . In the USA, this issue is due to the absence of pro-competitive regulation in the electronic communications sector. Unlike in the EU, competitors and new market entrants 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 broad-band networks at non-discriminatory, transparent and cost-oriented terms. See, for example, the deregulation of leased line access services (called ‘Special Access’ in the US) in many of the metropolitan areas in the USA and the deregulation of Ethernet services. Nor does there appear to be anti-trust remedies available in the USA on margin squeeze aspects in this context, unlike in the EU.

The United States deregulated ‘Special Access services’ around 2000 by granting the incumbent companies pricing flexibility. Since pricing flexibility was introduced, Special Access prices have increased instead of decreased, as would be expected in a competitive market. Current studies show the incumbents make anywhere from 60% to 170% rate of return on special access products. This is in stark contrast to the US regulator’s last authorized rate of return which was 11.25%. The lack of procompetitive regulation is not only a barrier to new entrants and competitors inside the US market, but also leads to a distortion of competition in the global market for electronic communications services, which are provided to global enterprise customers. An electronic communications services company in the market for such services cannot provide affordably e.g. core IP-VPN, business voice services, customer relations management services (CRM), cloud-based services, video-conferencing, data centre and other network services without reliable, competitively-priced, non-discriminatory fixed access in the countries where the customer’s offices are located. Furthermore, as access to customer premises of multi-national companies in the USA is key for most such global contracts, European operators cannot compete on the same terms in the US as the players dominant in the US can compete in the EU for the same type of enterprise customers.

A similar problem exists with Ethernet access services which the US regulator deregulated without conducting an adequate competition-based, data-backed analysis of competition in the Ethernet access markets in the US.

Innovative and affordable electronic communications services are a key enabler of the modern economy. The US should take the appropriate regulatory action to reduce Special Access and Ethernet access rates and ban the anti-competitive terms and conditions that prevent competition and artificially inflate prices.

BT Group plc

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