

M. Pascal Lamy
Trade Commissioner
DG Trade
European Commission
Rue de la Loi, 170
1049 BRUSSELS

Brussels, 20th May 2003

Subject : ESF Call for Progress Towards a Multilateral Agreement on Trade and Competition

Dear Mr. Lamy,

The European Services Forum believes that common principles of competition policy should be established within the WTO framework. The ESF submitted a Position Paper on trade and competition policy in November 1999, which set out the reasons why we believe competition is an essential element of a world trading system, and we would like to reiterate our position that progress on this issue is necessary.

We believe that agreement on competition principles is particularly important in the services sector. Certain sectors of the services industries are particularly highly regulated at a national level, generally more so than non-services industries. While we believe that domestic regulation is essential, it also has the potential to operate in anti-competitive ways. A multilateral competition agreement could help to ensure that national regulation does not create unnecessary barriers to trade in services. We would stress that we are not seeking the establishment of a supra-national competition authority but rather agreement on a simple set of general principles, which should underlie domestic competition frameworks. Indeed, we would not expect the WTO to become involved in individual competition cases.

Trade and competition is, of course, a 'Singapore issue' and we are aware that a working group has been studying this since 1997, in preparation for a decision to be taken at the Fifth ministerial conference in Mexico, on the launch of negotiations on setting up a multilateral framework agreement. Such an agreement would set out fundamental principles of competition, including those of transparency, non-discrimination and procedural fairness, and would also address the issue of hard core cartels, as well as measures for closer co-operation between competition authorities and special and differential treatment. These core principles are widely supported in a number of recent Communications from WTO members.

We would like to express our support for the work of this working group on the interaction between trade and competition policy, as described in its report to the General Council on 9 December 2002 (WT/WGTCP/6), and for the principle of a multilateral agreement on trade and competition. We share the WTO Secretariat's view that "the effective application of competition law complements and reinforces the process of trade liberalization in important ways"¹.

The aim of the GATS negotiations is to reduce trade barriers and to create a structure within which barriers can be addressed in an international forum. However, there is a risk that the lowering of barriers itself could lead to an increase in anti-competitive practices on the part of market participants subjected to increased foreign competition as a result. Successive GATT and GATS rounds have increased competitive pressure across the world. The point of these negotiations would be defeated and their purpose undermined if market participants were able to agree to share markets, not to compete with each other, to form cartels or adopt practices in abusive market power. At the same time, the existence of common, internationally agreed principles of competition law should give countries greater confidence to open their markets.

Many WTO members have firmly established competition authorities which enable market participants to rely on directly enforceable rights. While these systems, such as those developed in the European Union and the United States, are highly developed and generally effective, the world trade arena requires a more coherent and general approach. Divergence in national competition policies and a lack of co-operation between competition authorities create their own barriers to international trade in uncertainty, complexity and excessive costs.

While a world-wide system of directly enforceable rights may be a desirable long term objective, we believe that a more pragmatic approach is necessary at this point. We support the efforts of the WTO working party to develop a basic set of competition standards to be respected by national systems of competition law. Such standards could be used as a benchmark against which the activities of national or supra-national competition authorities in existing systems could be assessed: they will also be useful for countries lacking such systems in the development of new national competition policies.

From a global business perspective, we believe it is of vital importance that, as multilateral action through the WTO is taken to ensure that WTO members adopt and apply basic common standards on competition law, progress is also made towards harmonisation and convergence of the best elements of different national/regional competition policies. We therefore support attempts to address the increasing need for convergence in the application of competition law and policy to world-wide business activities through appropriate bilateral/plurilateral arrangements, in particular between the EU and the United States.

The ESF believes that initiatives to this end can best be taken by the large developed countries/regions with mature and sophisticated competition systems. The ESF notes that a framework has already been established with the EU/US agreement on co-operation between the competition authorities, and that steps have been taken towards greater bilateral and multi-lateral co-operation among a number of competition authorities. The ESF supports such co-operative approaches, and would like to see more exchanges of information and experience with other authorities. We strongly endorse, however, the widespread concern of business that confidential business information should not be exchanged between competition authorities, whether this is within a multilateral, bilateral or plurilateral context, without the full consent of the relevant business.

In order for a WTO Agreement on competition to be effective, it must:

¹ (Para. 27, Background Note by the Secretariat on Core Principles, WT/WGTCP/W/209).

- Affirm the core principles in sufficient detail to provide genuine guidance and a degree of certainty.
- Define the core principles to sufficiently high standards so as to avoid an anodyne, 'lowest common denominator' approach.
- Provide that national regulation must be transparent and in accordance with the core principles.
- Set out basic standards for the protection of commercially confidential information.
- Provide for due process, including access to independent review of competition decisions.
- Provide for minimum restrictions on hardcore cartels.
- Require competition authorities to operate at arm's length from political or ministerial influences.
- Allow for existing and future differences in national competition regimes.
- Provide for enforcement of the core principles.

The ESF calls for further progress to be made in this area, with a view to the commencement of substantive negotiations on a Multilateral Agreement on Trade and Competition at the Fifth Ministerial Conference in Cancun in September. We assure you of our interest in this issue, and our desire to contribute to the debate as it develops.

Yours sincerely

A handwritten signature in black ink, appearing to read "Iain Vallance". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sir Iain Vallance
Chairman
European Services Forum



List of ESF Members Supporting the Position Paper on Trade & Competition 2003

Accenture	Federation Européenne des Fonds et Sociétés d'Investissement - FEFSI
Architects' Council of Europe –ACE	Fédération de l'Industrie Européenne de la Construction – FIEC
Association of Commercial Televisions - ACT	Federation of Professional Industry and Services Organisations in Italy - FITA
Association of European Airlines – AEA	France Telecom
ARD	Free and Fair Post Initiative
Arup Group Ltd	Gide Loyrette Nouel
AVIVA (CGNU)	Herbert Smith
AXA	International Air Carrier Association - IACA/ACE
British Telecommunications plc	IBM Europe, Middle East & Africa
Bundesverband des Freien Berufe – BFB	International Federation of the Phonographic Industry – IFPI
Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR	International Financial Services, London - IFSL
Comité Européen des Assurances - C.E.A.	KPMG
European Council of the Liberal Professions – CEPLIS	La Poste
Clifford Chance	Lloyd's of London
Comité de Liaison des Géomètres Européens – CLGE	Marks & Spencer plc
Commerzbank AG	Metro AG
Deutsche Telekom AG	Microsoft Europe, Middle East & Africa
DHL Worldwide Network SA	National Bank of Greece
EDS Europe, Middle East & Africa	H-J Pohl . Dr J. Bauer – Rechanwälte
Ernst & Young	Posten AB
Espacio y Entorno (Architect)	PostEurop
Eurelectric - Union of the Electricity Industry	Poste Italiane S.p.A.
EuroCinéma	PricewaterhouseCoopers
EuroCommerce	PT - Palvelutyöntajat ry - Employers' Confederation of Service Industries, Finland
European Association of Cooperative Banks – EACB	Royal Ahold NV
European Banking Federation – FBE	Royal Bank of Scotland – RBS
European Broadcasting Union – EBU	Siemens AG.
European Community Shipowners' Association – ESCA	Société des Auteurs et Compositeurs Dramatiques – SACD
European Express Association – EEA	Suez
European Federation of Engineering and Consultancy Association – EFCA	Svenskt Näringsliv (Confederation of Swedish Enterprise)
European Film GATS Steering Group	Telefónica SA
European International Contractors - EIC	TPG
European Public Telecom Network – ETNO	TUI A.G.
European Retail Round Table – ERRT	Universal Music International
European Savings Banks Group – ESBG	UNIQA Versicherungen AG
Federation of European Consultancies Associations - FEACO	Veolia Environnement
Fédération des Experts Comptables Européens – FEE	White & Case LLP
	Züblin