

DOSSIER

Sir Leon Brittan
Vice-President
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 3rd May 1999

Subject : **ESN Position Paper on GATS Horizontal Issue:
GATS Disciplines for Domestic Regulation and the Development of
Pro-Competitive Regulatory Principles**

Dear Sir Leon,

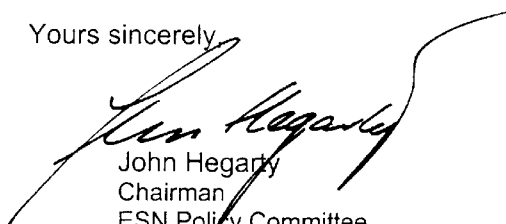
The GATS has developed disciplines on domestic regulation as part of the 1994 Marrakech agreements. One of the key issues of the "Millennium" round for WTO Members will be to respect these disciplines but also to go further and establish pro-competitive regulatory principles.

The European service industries are keen to see governments and regulatory authorities actively commit to pro-competitive principles, which critically affect trade and foreign investments. Even though the pro-competitive regulatory principles are horizontal, a sector by sector analysis will be necessary to achieve concrete progress. These improvements should appear as additional commitments taken by Members to end arbitrary regulatory obstacles and guarantee the shape of future regulation.

Please find enclosed a first contribution of ESN on this very important subject.

The list of ESN Members supporting the Position Paper is attached.

Yours sincerely,



John Hegarty
Chairman
ESN Policy Committee

Cc: H.D. Beseler, Director General, DGI; M. P. Carl, Deputy Director General, DGI; R. Madelin, Director, DGI/M

The European Services Network comprises 50 major European service companies, represented by their CEOs in the European Service Leaders Group, and 30 European service federations, representing 22 services sectors.

ESN POSITION PAPER ON

GATS DISCIPLINES FOR DOMESTIC REGULATION
AND THE DEVELOPMENT OF
PRO-COMPETITIVE REGULATORY PRINCIPLES

Final version – April 23, 1999

The GATS has developed disciplines on domestic regulation as part of the 1994 Marrakech agreements. One of the key issues of the “Millennium” round for WTO Members will be to respect these disciplines but also to go further and establish pro-competitive regulatory principles. The European private sector is keen to see governments and regulatory authorities actively commit to pro-competitive principles, which critically affect trade and foreign investments. Even though the pro-competitive regulatory principles are horizontal, a sector by sector analysis is necessary to achieve concrete progress. These improvements should appear as additional commitments taken by Members to end arbitrary regulatory obstacles and guarantee the shape of future regulation.

I. Preliminary statement

1.1 The case for domestic regulation

GATS recognizes the right of member governments to regulate their domestic services. Many services are regulated by governments to ensure consumer protection and guarantee the supply of services to consumers. These fundamentals are not disputed by the European private sector, although there are different ways of ensuring such fundamental goals through regulation. Some of these ways will be more restrictive on competition than others. Regulations must be justified by an objective and clearly identified need, which could not be satisfied without the regulation in question.

The private sector's concern is to identify aspects of domestic regulation that particularly affect international trade in services, discriminate between foreigners or between nationals and foreigners, and limit product availability.

1.2 Difficulties in identifying regulatory obstacles

It is a difficult task to draw a clear line between market access issues, national treatment concerns and domestic regulation principles. Countries may disguise market access issues, such as restricting new products, under domestic regulatory arguments, such as consumer protection. It is the role of the private sector to assist European negotiators in assessing market situations, identifying protectionism and discriminatory regulations, and persuading countries to commit to pro-competitive regulatory principles.

1.3 The need for a sector by sector analysis

General horizontal principles on pro-competitive regulation can be defined at the ESN level. However concrete progress will not be made unless each sector conducts its own in depth analysis of the specific meaning and implications of these principles. The ultimate goal of the private sector is to go beyond the disciplines of domestic regulation defined by the GATS and promote pro-competitive regulatory principles sector by sector.

Major WTO Members made additional commitments in 1997 on financial services and basic telecommunications. These represent a real breakthrough in domestic regulatory disciplines and become benchmarks for those sectors.

The European financial services and telecommunications sectors will have to build on this progress in the next round. Other sectors may use the same wording of these additional commitments, when applicable, as a reference point.

II. Principles of pro-competitive regulation

2.1 Enforce the existing disciplines on domestic regulation

In addition to the provisions on National Treatment and Market Access, the GATS establishes in Article VI, basic principles on domestic regulation. These principles imply that domestic regulations which apply to foreign service suppliers in Member countries must be reasonable, objective and impartial.

Pro-competitive regulatory principles are based on the same objectives:

- to avoid unreasonable or disproportionate burdens on foreign and domestic companies, limiting market liberalization ;
- to maintain and develop fair and objective rules ensuring fair competition among all services suppliers.

2.2 Emphasise the importance of transparency

Transparency is an essential element of pro-competitive regulatory principles. The European private sector requests governments to be transparent in their decision processes in order to identify new (or existing) restrictions, to avoid protectionist decisions, to adopt the least trade restrictive option in their new regulation, when necessary, and to achieve market liberalisation.

According to Article III of the GATS, “all relevant measures of general application which pertain to or affect the operation of the GATS should be published” by Members “at the latest by the time of their entry into force”.

GATS principles on transparency aim at establishing obligations of prompt publication, notification, maintenance of inquiry points and provision of fair legal processes. Furthermore, WTO Members have to inform the Council for Trade in Services of the introduction of a new law, regulation or administrative guideline affecting sectors or sub-sectors covered by the GATS. Under the GATS, Governments committed to “respond promptly to all requests for specific information by other governments”.

2.3 Ability to react in advance to domestic rules and request to be consulted

As existing and future regulations should be made public and available to consumers and businesses, foreign services suppliers should be able to discuss regulatory changes with governments and challenge administrative decisions.

New rules should be published in advance of formal promulgation with adequate time for Member countries to respond and provide comments. Domestic private sector businesses, including domiciled foreign companies, should be allowed to discuss with and to be consulted by governments before the rules are adopted.

Where the supply of a service requires official approval, administrative decisions should be made within a reasonable timeframe, respecting the principle of fair and transparent domestic regulation.

2.4 Favour the introduction of new products

By following unfair and non-transparent principles, some regulatory bodies restrict consumers' access to new products at lower cost offered by foreign service suppliers. Indeed, unjustified delays by regulatory authorities in the approval of new services can limit or delay the availability of new services.

Companies should be allowed to innovate by introducing new products. Governments control or prior-approval procedures should be fair and should not restrict consumers' access to new products offered by domestic or foreign suppliers.

2.5 Establish reasonable qualification procedures and standards

The existence of rigid regulatory mechanisms, in qualification procedures or pricing for example, is incompatible with consumers' demands and the goal of a liberalised market.

Regulatory enforcement should ensure the quality of the service, and avoid a restriction on the supply of service. It should be consistent and should not discriminate between companies.

Governments should also support a homogeneous and harmonized process of regulatory reform in the different countries.

The private sector will ensure that qualification requirements and procedures will not represent barriers limiting trade in services.

2.6 Licensing Requirements

Licensing requirements should not be introduced unless they are justified by an objective and clearly identified need which cannot be satisfied otherwise. Moreover, complex, time-consuming, arbitrary or discriminatory licensing requirements constitute barriers to market access and must be avoided. It is imperative that a licensing system does not become a source of revenue for governments and that it does not exceed the cost of the administrative service provided to grant the license.

Licensing procedures in the different sectors should be harmonised among WTO members. The WTO should play a role in achieving this goal, notably through mutual recognition agreements.

The private sector is prepared to assist regulators and supervisors in emerging markets and markets in transition to set appropriate regulatory standards, where it has been established that these standards are necessary. Many sectors have already undertaken significant work in training regulators and local managers in overseas markets, providing them with the necessary materials and guidelines upon request.

2.7 Enhance the status and role of regulatory authorities

The status and the role of regulatory authorities should be clearly defined and rationalised in order to avoid unjustified procedures and burdensome requirements.

Independent regulatory authorities are necessary in some sectors in order to develop objective and transparent decision mechanisms.

2.8 Reform the regulation of remaining monopolies

In many sectors, governments have reduced legal monopolies and introduced competition. Market liberalisation requires the removal of state monopolies. Those legal monopolies that remain should be appropriately regulated to ensure fair competition with new entrants competing in the liberalised areas. In particular, old state monopolies should be prevented from abusing their market power.

Also, services providers which have been granted a legal monopoly should maintain separate accounts for those services falling within the monopoly and those that do not. Monopolies should be prohibited from cross-subsidising competitive services with revenue obtained from monopoly activities.

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LIST OF ESN MEMBERS SUPPORTING THE POSITION PAPER
ON GATS DISCIPLINES FOR DOMESTIC REGULATION AND
THE DEVELOPMENT OF PRO-COMPETITIVE REGULATORY PRINCIPLES

INSURANCE

Allianz Aktiengesellschaft

Guardian Royal Exchange

Hibernian Insurance Company Limited

BARC Versicherungs Holdings AG

AXA Group

Comité Européen des Assurances - CEA

Bureau International des Producteurs d'Assurances & de Réassurances – BIPAR

FINANCIAL SERVICES

Barclays PLC

Commerzbank AG

ABN AMRO

National Bank of Greece

Banque Paribas

DIT Deutscher Investment-Trust

Fédération Bancaire de l'Union européenne – FBE

European Federation of Investment Funds and Companies - FEFSI

European Security Transport Association – ESTA

TELECOMMUNICATIONS

British Telecommunications plc

Telefónica

France Telecom

Deutsche Telekom AG

European Public Telecommunication Network Operators' Association - ETNO

POSTAL & EXPRESS DELIVERY SERVICES

Sweden Post

Deutsche Post AG

DHL Worldwide Network SA

The European Express Organisation – EEO

AVIATION

Alitalia

Association of European Airlines – AEA

European Community's Independent Airlines Association – ECIAA/ACE

SHIPPING

AP Møller

European Community Shipowners' Association – ECSA

TOURISM

Acentro Turismo SpA

Sol Melia Hotels

Touristik Union International GmbH

Groupement des Unions Nationales des Agences et Organismes de Voyages de l'UE – ECTAA

Confédération des Associations Nationales de l'Hôtellerie et de la Restauration de la CE - HOTREC

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PricewaterhouseCoopers

Arthur Andersen

Fédération des Experts Comptables Européens – FEE

PROFESSIONAL SERVICES - SURVEYORS

The European Society of Chartered Surveyors

PROFESSIONAL SERVICES - ARCHITECTS

JDR Asociados

Kraemer Architekt BDA

Architects' Council of Europe - ACE

ENGINEERING & CONSTRUCTION

Ove Arup & Partners

BESIX SA

European Federation of Engineering Consultancy Associations - EFCA

European Council of Civil Engineers – ECCE

European International Contractors - EIC

Fédération de l'Industrie Européenne de la Construction – FIEC

COMPUTER & IT SERVICES

Sema Group plc

IBM Europe, Middle East & Africa

AUDIO VISUAL

Compagnie Luxembourgeoise de Télédiffusion - CLT

UGC

EMI Europe

Eurocinéma

Fédération Européenne des Réalisateur de l'Audiovisuel – FERA

European Film Companies Alliance – EFCA

International Federation of the phonographic industry - IFPI

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Bertelsmann

Telegraph Group Limited

Federation of Associations of Periodical Publishers in the EC – FAEP

ADVERTISING & MARKETING

European Marketing Confederation - EMC

ENERGY SERVICES

Imatran Voima Oy

National Power PLC

Eurelectric

CONTRACT CATERERS

Van Hecke BV

Fédération Européenne de la Restauration Collective – FERCO

ENVIRONMENTAL SERVICES / UTILITIES

Vivendi

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