

The Consumer Voice in Europe

ANALYSIS OF THE TISA TELECOM ANNEX & RECOMMENDATIONS TO THE NEGOTIATORS

TiSA leaks, September 2016



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Disclaimer

This analysis is based on a TiSA leaked annex published on 15 September 2016 by Wikileaks. The draft annex is dated back from 8 June 2016. Its content might have evolved since but as the current official version is not available to the public, the analysis of this leak is relevant to better understand what is on the table. Obviously this leaked annex is not a final version and might change during the negotiations. This analysis will explain the content of this leaked annex to the general public. It also contains BEUC's recommendations to better consider the consumer interest.

General comments

General comment #1: Telecom regulations are an added value for TiSA, not an obstacle to trade

The leak shows that some countries participating in the TiSA talks propose rules which would discourage their trade partners from regulating the telecom market, notably when it comes to competition rules. Indeed, some countries seem to consider that a regulated telecom market is bad for business. The European Union (EU) experience has demonstrated the contrary: **its telecommunications framework has contributed to more competition which in turn can lead to lower prices and increased choice while boosting innovation.** Well designed regulations help the creation of competitive markets. For instance, regulating roaming fees has created more demand in the EU as prices decreased. Therefore it is **crucial for TiSA Parties to keep their ability to regulate to ensure access to high quality service, affordable prices and wider choice to consumers.**

General comment #2: The need for a more consumer friendly telecom market

It is positive to see that TiSA Parties are willing to promote reasonable and transparent **roaming fees.** We encourage them to go even further by committing to make phone calls more and more affordable in the future. This is key to deliver tangible benefits to consumers through TiSA. The same goes for **call and text prices.** Moreover, the provisions on **number portability** must remain clear to ensure free, swift and effective number portability in the EU.

Detailed analysis by articles

BEUC does not work on all the topics covered by the annex. This analysis only covers the most relevant articles for consumers. For further information we invite you to read previous analysis done by other public interest organisations¹.

¹ See 2015 analysis on WikiLeaks https://wikileaks.org/tisa/analysis/Analysis-of-201504_Annex-on-Telecommunications-Services/Analysis-of-201504_Annex-on-Telecommunications-Services.pdf

Article 3. Telecommunications regulatory body

It is paramount in this article to guarantee the **independence and the impartiality** of the telecommunications regulatory bodies. The US proposal for paragraph 6 clearly goes against this principle and should therefore be opposed by the other Parties. Curtailing the independence of regulatory bodies would be detrimental for consumers.

Article 5. Regulatory flexibility

This article illustrates our general comment #1 on the relevance of a regulated telecom market. Indeed, the leak shows that the US are tabling proposals that would **put a stick in the wheel of regulated telecom markets** and favour the option of only relying on market forces. The contrary is true. A well-designed framework is important for the creation of competitive telecom markets and to prevent oligopolistic and monopolistic markets. The leak also shows that proposals made by New Zealand suggest that enforcement of regulation is not necessary for the protection of consumer. Such proposals are problematic because they reinforce a deregulatory tendency in TiSA, which is definitely **not in the consumer interest**. These kind of provisions, if agreed in TiSA, could in the long run create a 'regulatory chilling effect' and limit necessary governmental interventions.

Article 7. Transparency

The concept of transparency here is about making information about regulations public. It is normal for service providers and for consumers to be aware of the regulatory framework. However, this article also shows the effort of some Parties to **push for a 'notice and comment system'**. The notice and comment system is notably used in the US. It is problematic because it can paralyse the regulatory process by making it impossible for regulators to regulate. NGOs in the US have warned about this problem².

In the EU, public consultations which are open to all interested persons (meaning anybody) take place to give the opportunity to citizens and organisations to comment on regulatory options. The difference with notably the US style notice and comment system is the **absence of an obligation to reply to the comments received**. It prevents delays in the regulatory process and the institutionalisation of lobbying. In paragraph 2 of this article, the US are proposing that the TiSA Parties commit to reply to comments received from any interested persons. This would change the EU system and could create a regulatory chilling effect. We are reassured to see in the leak that the EU and 7 other countries are opposing this proposal. We urge all TiSA parties to oppose this kind of proposals, in all parts of TiSA. This is a **red line for consumers (as well as for the European Parliament³)**.

Article 9. Access to and use of public telecommunications services

Some proposals in this article are tackling the issue of free flow of data. According to BEUC, it is impossible to address the issue of data flows in a trade agreement when the data protection regimes between several TiSA countries and the EU are starkly different and unbalanced. Without adequate oversight and transparency, any attempts to include data flows, and thus data protection⁴, in the TiSA negotiations could easily result in a significant weakening of consumer protections. **Privacy and data protection are fundamental**

² See the analysis of Public Citizen: <https://www.citizen.org/documents/oira-delays-regulatory-reform-report.pdf>

³ European Parliament, [Resolution](#) of 3 February 2016 containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement (TiSA) (2015/2233(INI) para. (g). xi

⁴ It is almost impossible to differentiate in data flows personal data from non-personal data. Therefore, by including data flows in trade negotiations like TiSA, Parties per se will touch upon the issue of data protection.

rights, as established in the EU Charter of Fundamental Rights and the EU General Data Protection Regulation⁵. **Trade must comply with fundamental rights, not the other way around**, as some proposals in this article seem to imply.

We recommend to change in paragraph 4 “ensure the security and confidentiality of *messages*” by “ensure the security and confidentiality of *communications*”.

Article 11. Interconnection obligations relating to all suppliers

This article is about commercial agreements between providers and tackles the issue of commercially sensitive information. In this respect, paragraph b is going in the right direction but it **needs to be reinforced to better protect consumer’s fundamental rights**. We recommend to add the following wording: “any transfer of data needs to respect domestic rules on data protection and confidentiality of communication”.

Article 12. Resale

This article is about the long term protection of end-users’ investments. This is certainly important but we urge negotiators not to forget about the **short term interest of end-users: affordability**. It is important to find a balance between the two. This should be further addressed in this article to ensure a global consumer friendly telecom market.

Article 15. Competitive safeguards

This article aims at preventing **anti-competitive practices**. It matters to consumers because they benefit from competitive markets that bring them wider choices, lower prices and boost innovations. On the other hand, anti-competitive practices are detrimental to consumers as they lead to less consumer friendly market (oligopolistic and monopolistic markets). This article is positive but not ambitious enough yet and **needs to be reinforced**. One way of improving it would be to **list more examples** of anti-competitive practices in paragraph 2.

Article 19. Allocation and use of scarce resources (number portability)

This article addresses the issue of number portability, meaning the possibility for a consumer to switch from one telecommunications provider to another with the possibility to keep its current telephone number. This is a basic consumer benefit that must be preserved in the EU. Therefore, provisions in TiSA must remain clear to **ensure free, swift and effective number portability**.

Article 20. International Mobile Roaming

Roaming costs matter to consumers because mobile phones and frequent cross-border travel have become almost commonplace for consumers in the EU. Unfortunately prices for calling, texting or more recently downloading data by phone when abroad was so high as to be prohibitive.

It is positive to see in this leak that TiSA Parties are willing to promote “reasonable and transparent” roaming fees. We encourage them to go even further by committing to make phone calls more and more **affordable** in the future. This is key to deliver tangible benefits to consumers through TiSA. The same goes for **call and text prices**.

⁵ The General data protection Regulation (GDPR) will be applicable as of May 2018, replacing the 1995 Data Protection Directive



For more information about BEUC
position on TiSA and trade:

- [Factsheet on TiSA](#)
- [Position Paper on TiSA](#)
- [Factsheet on consumers and modern trade](#)



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