



Trade in Services Agreement (TiSA) Annex on Competitive Delivery Services (April 2014)

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Description

This is the secret April 2014 draft of the Trade in Services Agreement (TiSA) Annex on Competitive Delivery Services, including negotiating positions. TiSA is currently under negotiation between the United States, the European Union and 23 other countries. The Agreement creates an international legal regime which aims to deregulate and privatize the supply of services - which account for the majority of the economy across TiSA countries. The draft Annex concentrates on curbing regulatory intervention in mail and other delivery services, obliging states to rein in and limit the scope of their "monopolies", i.e. domestic postal services, in order to create an environment in which private postal companies can compete. This text dates from shortly before the 6th round of TiSA negotiations held 28 April - 2 May 2014 in Geneva, Switzerland.

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**TRADE IN SERVICES AGREEMENT
(TISA)**

Annex on Competitive Delivery Services

April 16, 2014

Reason: 1.4(b)

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Trade In Services Agreement

Annex on Competitive Delivery Services

Scope

[The following obligations apply to all] [EU: This Annex applies to measures affecting the supply of] delivery services supplied on a competitive or commercial basis. Unless otherwise indicated, this Annex does not distinguish among service suppliers.

1. For the purposes of this Agreement:

Competitive delivery services means the collection, [EU/TR: sorting,] transport, and delivery of documents, printed matter, parcels, goods, or other items in competition with one or more service suppliers. Competitive delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.

Express delivery services means the supply of a competitive delivery service on an expedited basis while tracking and maintaining control of the items throughout the supply of the service.]

Postal monopoly means the exclusive supply of [specified collection, [TR: sorting,] transport, and delivery services] [EU: specified delivery services] within a Party's territory pursuant to a measure by the Party.

Regulatory Transparency and Independence

2. Each Party that maintains a postal monopoly [EU:, as identified in its schedule of specific commitments] shall define the scope of the monopoly [TR: with regard to items of correspondence] on the basis of objective criteria, including quantitative criteria such as price and/or weight thresholds.

3. Each Party shall ensure that any authority responsible for regulating [competitive delivery services] [EU: delivery services] is separate from, and not accountable to, any supplier of competitive delivery services [EU: or the postal monopoly], [and that the] [EU: the] decisions and procedures that these authorities adopt [are] [EU: shall be] impartial, non-discriminatory, and transparent with respect to all [competitive] delivery service suppliers in its territory.

Abuse of Monopoly

4. Each Party shall ensure that any supplier of services covered under a postal monopoly does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises the Party or the service supplier owns, in anticompetitive practices in a non-monopolized market in its territory that adversely affect the supply of competitive delivery services by as service supplier of another Party.

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Cross-subsidization

5. No Party may allow a supplier of services covered by a postal monopoly to cross-subsidize its own, or any other supplier's competitive delivery services, with revenues derived from monopoly postal services.]

[EU: Abuse of Monopoly and Cross-subsidization

4. Parties shall ensure appropriate measures for the purpose of preventing suppliers who, alone or together, have the ability to affect the terms of participation in the markets for delivery services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- a) engaging in anti-competitive cross-subsidization, such as for example using revenues of postal monopoly to cross-finance competitive delivery services; and
- b) discrimination and lack of transparency, such as for example unjustified differentiation in relation to the special tariffs and/or the associated conditions for services provided to big senders, bulk mailers or consolidators.

5. Each Party shall ensure that there is no unjustified preferential treatment of competitive delivery services of any service provider.]

Universal Service

[EU: 6. The universal service obligation will not be regarded as anti-competitive per se, provided it is administered in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party.

7. The universal service obligation shall be limited and proportional to the actual needs of the users that are not met by the market forces. In particular, the universal service obligation shall not include express delivery services.]

6. [No Party may require the supply of universal services as a condition for an authorization or license to supply non-universal, competitive delivery services, or assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.]

[TR: Each Party has the right to set the rules with regard to universal postal services. However, no Party may require the supply of universal services as a condition for an authorization or license to supply non-universal, competitive delivery services.]

Network Access

[Additional provisions are under consideration to address network access issues.]

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Use of Agents

9. No Party may require a supplier of competitive delivery services to contract, or prevent them from contracting, with [an agent] [EU: a service supplier] to supply a segment of the service.

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