6.

TiSA AND TELECOMMU-NICATIONS

TiSA is not about creating a level playing field: it is about allowing the transnational corporations from the affluent North (and in particular the dominant Internet players such as Google) to have access on favourable conditions to publicly-funded telecommunications infrastructure, especially in the global South. The telecom and Internet giants will continue to dominate their home markets even if TiSA rules force them to grant access and interconnection to potential competitors. They will be the major beneficiaries of rules that promise unfettered rights of cross-border supply and foreign investment and access to essential infrastructure, including connecting to undersea and terrestrial cables. They have the resources and technology to dominate markets, such as resale of services, the market allocation of spectrum and transfer of numbers, and the use of technologies of choice.

Box 6.1 Objectives for TiSA on Telecoms

The main proposals affecting telecoms would ensure:

- separate regimes for regulating telecommunications and not regulating the Internet;
- offshore provision of telecom services is unrestricted;
- requirements for an offshore supplier to have a local presence are prohibited;
- no restriction on transferring or holding data offshore;
- unlimited foreign investment in telecoms;
- access for all firms (not just telcos) to networks and services;
- access for all firms to essential public telecom infrastructure, while minimising the price they pay;
- major public telcos, primarily in the global South, must give competitors access to attach terminals and connect leased circuits;
- unrestricted rights to resell services;
- unbundling the network so competitors only pay major telcos for the parts they want to use;
- major, usually state-owned, suppliers and taxpayers carry the cost of maintaining whole networks;
- state-owned telcos must act like private businesses, beyond a limited public mandate;
- the universal service obligation is limited, firms can compete to supply it, and all get the benefits;
- terms like ‘reasonable’, ‘impartial’, ‘objective’ provide grounds to challenge regulatory decisions;
- regulatory bodies must enforce the annex as part of domestic law;
- foreign firms have rights to comment in advance on proposed laws, regulations and decisions;
- the International Telecommunications Union is marginalised as the standard-setter for telecoms.

Industry demands

The top telecommunications firms are dominated by the US, but China is now contesting that position. One website listed the top 10 in 2016 as [1]: 1. China Mobile (China); 2. Verizon (US); 3. AT&T (US); 4. Vodafone (US); 5. Nippon Telegraph and Telephone Corp (Japan); 6. Softback Group (Japan); 7. Deutsche Telecom (Germany); 8. Telefonica (Spain); 9. America Movil (Mexico); 10 China Telecom.

Most have large home markets which they dominate. The US Telecommunications Industry Association (TIA) put the value of the global telecoms market in 2012 at USD4.9 trillion, about a quarter of which was located inside the US.[2] The growth areas for industry investment were wireless and fixed broadband networks, driven by the need to create greater capacity to accommodate growing digital data transmission demands.

The TIA treats the Internet and telecommunications and an integrated whole. As Box 5.2 shows, its objectives for the digital economy include standard demands for liberalisation and expansion of telecoms markets, non-discriminatory and market-based regulation, regulators that are independent of domestic telcos (especially public telcos), and the technological neutrality of scheduled commitments so they apply to all new technologies. It also wants any localisation requirements removed and prohibited, in particular for cross-border operators to establish a local presence or manufacture technology locally, and to transfer technology.

Box 6.2 US Telecommunications Industry Association (TIA) demands

In setting its trade priorities for the digital economy the TIA proposed three principles:[3]

1. Enhancing trade liberalisation and expanding markets:

- trade liberalisation of tariffs and non-tariff barriers;
- market-based approaches to regulation;
- technological neutrality so commitments continue to apply to all new technologies;
- regulatory authorities should be transparent and independent;
- foreign suppliers must be protected against discrimination.

2. Combating protectionism and localization barriers:

- enforce existing WTO and FTA commitments;
- prohibit requirements to manufacture locally as a condition of accessing markets;
- remove and prevent localisation barriers that limit access to best technologies and products available in the global supply chain.

3. Ensure free flow of cross-border data:

- encourage common approaches to data privacy to allow interoperability;
- preserve the current multi-stakeholder approach to Internet governance;
- oppose efforts to put Internet governance under the control of a multi-national body.

Other voices from the digital industry want to ensure that telecom rules meet the infrastructural and commercial needs. The industry-sponsored International Digital Economy Alliance (IDEA) stressed the

1 Melissa Parrieti, 'The World's top 10 Telecommunications Companies', Investopedia, 2 March 2016, http://www.investopedia.com/articles/markets/030216/worlds-top-10-telecommunications-companies.asp

2 Telecommunications Industry Association, 'Trade Priorities to Advance the Global Digital Economy', 2013

3 Ibid, 2013

need for trade agreements to cover privately managed networks as well as the publically accessible Internet, and ensure that ISPs that serve the private market can resell their excess bandwidth on new physical infrastructure for the provision of public Internet connectivity.[4]

TiSA on telecommunications services

As with finance and delivery services, TiSA impacts on telecommunications in numerous ways. Government will be asked to schedule commitments not to restrict market access (how many? how big? through joint ventures? is there an unmet need?) or discriminate (in favour of locals and between different countries) on telecom services provided across the border or through foreign investments. 'Transparency' would give TiSA states and telcos the right to comment on proposed regulations. Other annexes on domestic regulation, state-owned enterprises, e-commerce, professional services, and labour mobility would impose new rules.

Unlimited foreign investment and cross-border supply of telecoms

A number of TiSA countries say all parties should be *required* to make commitments on foreign investment and cross-border provision of telecom services.[5] That would deny governments the ability to protect their telecoms from the core rules on market access and national treatment in their schedules of commitments.

Foreign investment: A number of countries[6] want no restrictions on participation of foreign capital in a country's telecom sector or requirements to enter through a joint venture. The US opposes this, as it restricts foreign investment in telecommunications!

Cross-border*:* A group of countries[7] also want no limits on the ability of firms from other TiSA countries to supply telecom services from across the border, either by

- limiting access to the country's market (restricting the number of providers, requiring them to show an unmet need (an economic need test, etc) or
- discriminating in favour of locals (eg subsidies only to local firms, excluding foreigners from supplying certain services, preferential access for locals to the spectrum, etc).

They also want to prohibit a requirement that cross-border telecom suppliers have a local presence in the country where they deliver the service, although the EU dilutes this to 'endeavour not to require' a local presence. There is a further proposal from the EU, Switzerland, Norway and others that governments cannot limit the number of available licenses, except for assigning frequencies and other scarce resources.

These restrictions on regulating cross-border telecom services are opposed by a significant number of countries. The US has not stated a position.

4 International Digital Economy Alliance, 'The Trillion Dollar Question. How trade agreements can maximise the economic potential of data in the networked economy and support the Internet as the world's trading platform', 2013, fn 2.

5 TiSA, untitled proposal, Annex on Telecommunications, dated November 2016, p.34

6 EU, Iceland, Mauritius, Norway and Switzerland

7 EU, Iceland, Japan and Norway

The Annex on Telecommunications Services

The most significant part of TiSA is the proposed Annex on Telecommunications Services, which aims to impose additional limits on government regulation, building on the GATS Annex on Telecommunications and the voluntary Reference Paper on Basic Telecommunications, the Trans-Pacific Partnership Agreement (TPP), as well as US FTAs.

Consistent with Team TiSA's objectives, the telecom annex places obligations on *major suppliers of public telecommunications services*, while it guarantees entitlements to *telecommunications services suppliers* and sometimes firms in other sectors. A 'major supplier' is defined as one that can materially affect the terms of participation in the relevant market for public telecoms through its control over essential facilities or the use of its position in the market – a definition targeted at developing countries, as the giant telcos will argue that they do not control essential facilities and they can't materially affect participation in the market because anti-trust laws ensure competition.[8]

The rules in the annex serve five functions:

i. Deregulation and access to services and networks for telecom suppliers;

ii. Requiring that major telcos facilitate competition;

iii. Undermining telecoms as a public service;

iv. Providing minimal consumer rights and protections;

v. Securing compliance through institutional regulatory frameworks.

Appendix 6 provides a detailed analysis of the TiSA telecoms rules.

What this means for UNI's affiliates and workers

- Increased offshore supply of public telecoms kills local jobs.
- Exposing public sector telcos to increased competition from private and foreign firms, inside and outside the country, means pressures on labour costs, workload, safety standards and social rights, such as pensions and healthcare.
- New technologies, including satellites and mobile networks, shrink the traditional land-line market and associated jobs.
- Allowing private suppliers of telecom services to cherry-pick the lucrative parts of the market increase pressure on the major, especially public, operators to minimise costs while maintaining networks.
- Fracturing of state-owned monopolies, especially through unbundling, promotes privatisation and contracting out.
- Requiring state-owned telcos to run like private businesses, often followed by privatisation, means redundancies, private sector conditions, contracting and outsourcing.
- When professional telecom workers and technicians become competitive short-term contractors, the work is deprofessionalised and the public telecom network loses essential institutional knowledge and expertise.
- The transfer of servicing roles to call centres and online chats, often offshore, undermines local jobs, pay and conditions, and fosters exploitation of a feminised workforce.
- Fracturing of the domestic telecom market and corporatisation and privatisation of state-owned telcos, makes it hard to organise, maintain unionisation, bargain collectively, and take industrial action.
- Jobs move to un-unionised contractors and offshore labour on inferior conditions.

8 TiSA, Article 23 Definitions, Annex on Telecommunications Services, dated November 2016.