

BUSINESSEUROPE



DIGITALEUROPE 



Karel De Gucht
Commissioner for Trade
European Commission
200, Rue de la Loi
Brussels - Belgium

Brussels, 20 December 2012

Subject: India Preferential Market Access in public procurement

Dear Commissioner De Gucht,

The European business community is highly concerned about the recent Preferential Market Access (PMA) Policy issued by the Government of India (GOI). It constitutes obstructive and excessive intervention by the GOI into the competitive market environment and the operations of European companies. The Policy will severely restrict the market participation opportunities for foreign companies in key sectors of the Indian economy. We urge the European Commission to take all the necessary steps to ensure that European companies are able in the future to compete fairly for business in this critical market.

Earlier this year the GOI issued a “Preferential Market Access Policy” requiring local content requirements for procurements of electronic products. Importantly, the policy requires certain domestic content percentages in public procurement contracts and in commercial transactions where electronic products raise security concerns. In July, the GOI’s Department of Electronics and Information Technology issued draft guidelines that contained more implementing detail, but the extent of their application on the private sector was still undefined.

However, in October 2012 the Indian Department of Telecommunications issued draft guidelines that applies the PMA Policy to a long list of specific telecom products in all private sector procurements by telecom companies due to alleged security reasons those products raise. Moreover, GOI officials have confirmed that other Departments may soon be issuing similar guidelines applying these local content requirements to other sectors. These developments are of serious concern to all our members, not only those from the ICT sector but from all manufacturing and services sectors that trade internationally.

If the October 2012 Guidelines are finalized as drafted, they would represent an unprecedented interference in the operations of private companies, create enormous disruptions in key sectors of the Indian economy, and significantly undermine the ability of multinational companies to compete fairly in India.

We strongly urge you to request the GOI to halt the implementation of the PMA Mandate for private sector procurements, specifically the October 2012 telecom notification. Applying PMA to private sector procurements would constitute an unprecedented interference in the private sector and calls into question India's fundamental WTO commitments to not discriminate against foreign products.¹

We support efforts to increase manufacturing and innovation in India, particularly through market-based policies, such as infrastructure development and economic incentives that will contribute to drive growth in the Indian ICT sector, along with other sectors of the Indian economy. However, we are convinced that the practical effect of imposing WTO-inconsistent local content mandates on private companies will in fact not only seriously undermine international competitors in the Indian ICT market, but will also reduce competitiveness and innovation within India's own ICT sector in the middle term by being artificially protected. It will thus most likely have a negative impact on the Indian economy and its citizens. Secondly, boosting manufacturing and enhancing security are two different and separate issues which require different approaches. Using security concerns as a basis to promote local manufacturing is a coercive approach, which distorts the market and India's investment environment.

Moreover, these policies carry with them the potential for a contagion effect, encouraging other governments to implement similar, restrictive policies. Indian companies that export their goods could find themselves unable to compete fairly in other key markets, undermining India's global competitiveness.

¹ See The General Agreement on Tariffs and Trade, Article III.5 ("No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources.")

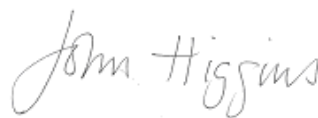
We are confident that the Commission will give an adequate response to the Indian Government's PMA initiatives and take necessary steps to prevent further discrimination of foreign companies and defend the long-term interest of the European industry against such discriminatory measures.

Yours faithfully,



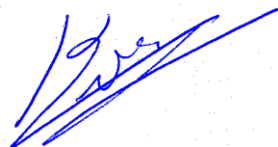
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CC: Commissioner Kroes and Commissioner Tajani