DIGITALEUROPE

DIGITALEUROPE position for a positive EU-India Cooperation on Information and Communication Technologies (ICT)

Brussels, October 2015

We would like to express our congratulations to the Indian Government for launching many good initiatives such as "Digital India", "100 Smart Cities" and "Make in India". The Government of India has shown great vision and leadership in launching the "Make in India" Campaign along with "Digital India" and "100 Smart Cities" launch. The Tech Industry in Europe is very much aligned with the vision and believe that these three campaigns are interlinked with each other and would define India's growth in the ICT sector in next five years.

Last year, the European Commission (EC) with the lead of President Jean-Claude Juncker and the Government of India with Prime Minister Modi both decided to make the digital economy a priority of their respective working programme: the "Digital Single Market strategy" in the EU; and "Digital India" on the other side. The European Union (EU) and India share several objectives through an "umbrella" programme and a single vision: enable change and a new Industry, digitisation of society and businesses, digital inclusion and eSkills, job creation, Smart cities, and IT services.

The European ICT Industry has been operating in India since many decades, some EU companies for more than a century and is committed to continue playing an active role in the country. Therefore, we believe a dialogue between the EU and India is crucial to create more business-friendly environment, notably by keeping existing operations and attracting new ICT investments in the country in order to achieve digital inclusion. Both partners should work hand in hand to share the best practices and avoid unnecessary barriers to ICT development.

DIGITALEUROPE is appreciative of excellent initiatives of the current Indian Government towards financial inclusion. The "Jan Dhan Yojana" scheme of Modi Government is providing a very effective path for an ICT enabled inclusion of unbanked population into the Indian banking system. DIGITALEUROPE is very optimistic on the larger "Skill India" initiative of the Indian Government, which will further strengthen India's position as a hub for ICT skill sets. The capacity building initiatives will definitely go a long way in developing an ICT culture in the country. The unprecedented roll out of India's national identity scheme "Adhaar" is another feather to the cap. We see a big role for citizen ID enablement of Government service delivery to ensure transparency and efficiency.

The ICT industry is an inherently global industry, and policies that attempt to artificially segment the manufacturing process will not necessarily lead to increased manufacturing of ICT products domestically. We also strongly recommend to adopt global/internationally recognised standards for initiatives such as 5G, Smart Cities and Internet of Things and to resist adopting local content measures such as the localisation of cloud servers or data in-country as it could have strong impact not only on the local ICT producers which are often suppliers of global tech companies, but also on the whole Indian economy which strongly relies on services and the free flows of data.

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Rather it is the broader policy approach affecting the commercial environment in India under which global and domestic ICT companies operate that will have the most significant impact on enhancing India's ICT base and foreign direct investment.

The "2nd Telecom Revolution of India" with ICT will be a key enabler: the vision of the present Government in terms of telecom sector in India is expected to manifest itself via a range ICT application that will enable public sector reforms across Government. Thereby creating customer-centric transformation, sharing processes, infrastructures and resources; and developing integrated multi-channels for service delivery, with special emphasis on mobilising demand for online services and monitoring their adoption and use. Globally standardised and harmonised policies on Spectrum, Cloud, Security, Internet of Things (IoT)/Machine to Machine (M2M), Intellectual Property Rights (IPR), Mobile devices, Big data and Analytics will be the new tools for sector transformation.

DIGITALEUROPE stands ready to work with the new government to address the legacy issues and current legislative solutions which could discourage global companies from manufacturing and operating in India. We trust the new Modi Government pro-business approach.

1. India and the Information and Technology Agreement (ITA)

Global ICT industry encourages the Government of India to consider joining the Information Technology Agreement expansion, agreed in July this year by the negotiating parties. The original ITA from 1996 (of which India is a signatory) has triggered rapid growth in trade in information technologies and communications products and services, especially the later was observed in India. Lowering the price of key inputs, the ITA has helped development of burgeoning ICT software and services industries; India becoming its leader on the global market. Expanding the ITA will further benefit the economy by lowering the cost of ICT products that are critical inputs for making manufacturing and services sectors more competitive. Availability of the modern ICT technologies also fosters innovation and thus plays a major role in spurring economic and employment growth.

The opportunity to join the expanded ITA should be considered against ambitious goals of "Digital India". Lowering tariffs would facilitate diffusion and adoption of affordable ICT products and services which boosts productivity. According to an OECD report "The Information and Communications Technology Sector in India: Performance, Growth, and Key Challenges", India's ICT sector "has acted as a catalyst for growth across the Indian economy, including in areas such as real estate, automobiles, travel and tourism, railway, and mortgage banking industries." It could be further supported by the new ITA.

2. Tariffs, customs duties

We ask the Government of India to review duty structure of specified Telecommunication Equipment falling under chapter 8517. Because of the tariff changes announced in the budget 2014-2015, basic customs duties (BCD) at the rate of 10% has been added on significant proportion of telecom goods, imported or manufactured locally in Special Economic Zones, thereby making them highly uncompetitive in domestic market.

We urge the government to recall those tariffs and bring back duty free treatment which would support digital inclusiveness in India. An amendment has been made in serial no. 13 of *Notification No. 24/2005 – Cus* dated 01 March 2005 by *Notification no. 11/2014 – Cus* dated 11 July 2014 ("Custom Notification").

BCD of 10% has been levied on goods classified under HSN code 85176290 and 85176990. Accordingly, BCD of 10% has been levied on the import of following products:

- Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers;
- Optical transport equipment, combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network(OTN) products, and IP Radios;
- Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products;
- Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) products.

Those products, as key elements of modern telecom networks, are covered by the ITA to which India is a signatory. Introduction of 10% duty is therefore in breach of India's WTO commitments. Moreover, this tariff discriminates not only foreign imports, but also some of the local production. A supply of goods from special Economic Zone to a customer located in India is considered as imports and subject to duties of Customs as specified in Customs Tariff Act, 1975. European ICT companies have heavily invested in India, setting up manufacturing of telecom equipment in Special Economic Zones. This production is now discriminated against manufacturing located elsewhere in India. It might have an impact on attractiveness of future investments.

Moreover, the import duty on broadband equipment will act as a deterrent against local production if products manufactured in India are also covered by this new duty. Additionally, equipment required for roll-out of 3G and LTE (Long Term Evolution) services are imported and hence will lead to cost burden on telecom operators as well as the companies involved in manufacturing in India and increased price burden on end consumers in India.

Finally, as argued in the introductory comments on the ITA p.2, higher tariffs on modern ICT/telecom products slow down the adoption of the technology in the country and its input to other productive sectors of the economy.

3. Taxation

India's tax policies remain problematic for global companies operating in India as demonstrated by targeting foreign companies with operations and investment in India by tax authorities. There are instances of tax policies that are retroactively applied to global companies, as well as an increased scrutiny of alleged tax liabilities with no apparent rationale. This needs an urgent review and rationalisation.

While India is one of the fastest growing economies in the world, it yet ranks among the lowest in the World Bank's rankings on "Ease of doing Business 2014". The high potential of the Indian market driven by an emerging middle class, cost competitiveness and a huge pool of talent makes India one of the most attractive investment destinations.

The lack of transparency and administrative burdens associated with this when companies attempt to dispute allegations of additional tax liabilities is further nurturing the problem.

The dual taxation of electronic supplies/downloads (such as software) as goods and services due to ambiguity in law remains a major concern. The dual taxation continues despite repeated representations by trade and industry. Software companies are compelled to collect both service tax and sales tax on software license sales. This leads to high cost of ownership of software products and impacts the demand and growth of software products.

It is heartening to note the implementation plans of Indian Government on the comprehensive "Goods and Service Tax" (GST) by April 1, 2016. GST implementation is expected to ease out many concerns. The ICT companies in India need to be prepared well in advance to ensure successful migration of the existing software applications to the GST domain. This will ensure ease of meeting the deadline of April 1, 2016. We expect that the GST processes and guidelines are made available early for the ICT and business companies to be ready from IT application perspective well in advance before the GST roll out. Currently, the same is not ready.

Implementation of GST simplification of procedures and an independent redress grievance cell are critical to India's success story on investment attractiveness. Multinational Companies across sectors face issues and challenges with respect to dividend tax regime and transfer pricing regulations. Specific to the ICT sector, most face challenges with respect to the taxability of payments made to multinationals for supply of network equipment and access to data services located outside India. Companies also face challenges with respect to withholding tax obligations on interservice transactions like the use of passive infrastructure, network management services, etc.

Several countries have reduced tax rates and these changes have brought concrete results. Some economies that have simplified tax payments and reduced rates have witnessed a rise in tax revenues.

Taxation in India needs structural, operational and administrative reforms; the burden of tax compliance should be reduced besides enabling e-filling of all taxes and allowing self-compliance certifications. An investment-linked tax incentive is a better regime with offset policy benefits for the Telecom and IT sector with a profit-linked tax holiday to continue with its growth trajectory. Currently, due to the differential tax structure manufacturing units cannot engage in repair activities in the same premises. They are required to segregate these areas of operations. If the Government allows manufacturing and repair operations to co-exist in the same premises, companies can benefit from Capex and Opex sharing (area, equipment, and resources) that will make overall cost of such services cheaper due to operational efficiency.

Companies expect that manufacturing set up should be allowed to carry out repairing activities without any additional formalities and documentation. Raw material used in Repair should have the same exemptions as in Manufacturing so that a common set up can be used. It is suggested that this anomaly be reviewed and rectified when drafting GST rules and ensure speedy implementation of GST. Most importantly, it is suggested that the Government treat global repairs (import and re-export) at par with normal export, as this generates Foreign exchange for the country.

Review and rationalisation of tax policies could help maintain existing level of investments in India and is a prerequisite to create business friendly environment.

4. Standards

DIGITALEUROPE advocates a clear statement in trade agreements that when governments regulate, they should prefer Global Standards/Specifications. Global Standards/Specifications must be developed based on the principles recognised by the World Trade Organisation (WTO) in the field of standardisation as fully endorsed by the European Union (Regulation (EU) 1025/2012 on European standardisation), namely coherence, transparency, openness, consensus, voluntary application, independence from special interests and efficiency ('the founding principles').

When such standards are not available, governments should use Conforming Standards/Specifications that are consistent with the following principles, which are based on the WTO TBT Committee decision: openness; transparency; non-discrimination; consensus; avoidance of unjustified conflict or duplication with Global Standards/Specifications; relevance; impartiality; and due process.

5. Compulsory registration & Safety Testing

DIGITALEUROPE in collaboration with other international and local industry bodies have been collectively striving to work together with DeitY and the Bureau of Indian Standards (BIS) to ensure the Compulsory Registration Order on product safety is refined to meet the needs of both the regulators, consumer and manufactures ensuring safe reliable product is available to the market in a timely manner.

In the past 24 months there has been many collaborations and discussions with the private sector on the challenges faced by the industry with significant delay to the market resulting from this regulation. The industry has suggested many subtle changes to align the regulation with Geo norms that work well in ensuring safe traceable product are only placed on the market. We would like to bring to your attention a number of areas that still require implementation and clarification. The issues were highlighted in the past and some indications were given of promised reform in these areas but it's yet to materialise:

- **e-labelling** as an alternative option to embossed/engraving the compliance marking on the products that are accompanied with a display as this has now been adapted and successfully implemented in many geo markets. The purpose of e-labelling is to allow manufacturers to electronically display conformity marking or other relevant information on radio or other ICT equipment on an integral

screen, rather than affixing this information on the product. DeitY and BIS have considered this and it's understood that indications were given that this could be adopted but it's yet to be notified to Industry.

- **BIS logo** to replace the long self declaration BIS statement was also promised to be rolled out in April of 2015 however this is yet to be notified to Industry. Currently there are limitations on the large BIS self-declaration statement. The industry is challenged for small products where space is constrained to maintain the minimum font size.

- **Brand registration** was requested by the industry to avoid multiple factories each applying for registration on products simultaneous duplicating unnecessary efforts for minimal benefit. These multiple factory facilities have the same line configuration layout, follow the same set of build specifications, quality assurance criteria, bill of materials, product build and test procedures. Simplifying this to a brand registration model will significantly reduce the amount of duplicate testing and applications filing within BIS, along with continuing to provide the same level of Regulation enforcement.

- **Recognition of International accredited test reports under the IECEE CB scheme** was sought for as India is a signatory of IECEE CB Scheme. Due to the lack of recognition Indian destined product must continue to have repeated testing to the same international standard(s) that BIS has adopted. Whereas if BIS allows international Labs to be accredited their standard would be globally recognised and build on greater confidence in the BIS Brand name. It would also allow a faster compliance cycle for products.

- BIS had introduced a **fast track** expedited route **to grant approvals** within a 10 days turnaround, this option has now been discontinued. We encourage putting adequate measures in place to ensure registration filings can be issued within a consistent short processing window of less than 10 days. This shall minimize impact to the industry allowing them to serve the Indian market in a timely manner.

- BIS introduced an **online registration system**. This could be redundant as all applications must be both filed electronically and then submitted by hard copy format: the hardcopy is processed while the electronic filings is only used for records. Confidentiality and security are compromised when hardcopy requirement is still mandatory.

- Currently the industry is challenged to obtain accurate information from BIS on the **progress status** of where their **application file** is at during the registration cycle. We encourage BIS to establish a better mechanism for businesses to monitor their application.

6. Intellectual Property Rights (IPRs)

6.1. Patents:

The ICT industry faces unacceptably long delays when getting an indication of patentability, and even longer in obtaining patent grant in India. It is acknowledged that these delays are mainly due to backlogs of years at the Indian Patent Office.

However, ICT is different to other technical sectors, such as the pharmaceutical industry. This is because the backlogs have a stronger impact for ICT technologies as the product development and life cycle is comparatively much shorter, from months to a few years.

Moreover, this issue is important for both domestic and foreign companies, especially the ones that are involved in developing the technologies which immensely help in performance of standards. Patents that cover such technologies are named as Standard Essential Patents (SEPs). These SEPs are FRAND (Fair, Reasonable and Non-Discriminatory) encumbered, wherein the SEP holder has to give a declaration to ensure wider 'ACCESS' of these technologies. Thus, while ACCESS is a goal, licensing is a means to acheive that goal. Delays and an excessive backlog of pending patent applications at the Indian Patent Office (IPO) have been an issue of serious concern and would ultimately hamper innovation and investments in Research.

We acknowledge that there are already suggestions under consideration to improve efficiency, such as the recommendations put forward in the National IPR Strategy. We very much hope that the Indian government will implement those suggestions as soon as possible, in order to improve the Indian Patent Office's speed and efficiency as quickly as possible. Specific suggestions for improving efficiency include :

- providing more financial and logistical supporting resources;
- expanding the workforce of the patent office to a level comparable with other patent offices facing the same workload;
- encouraging retention of skilled and competent employees through appropiate measures;
- initiating and fully implementing work sharing and collaboration programmes with other patent offices that provide a high quality and efficient examination process. In particular, DIGITALEUROPE would welcome India entering into a Patent Prosecution Highway Partnership with the European Patent Office;
- providing a variety of routes for the acceleration of individual patent applications in the patent application process, so that applicants can select and prioritise applications of interest, whilst also saving the resources of the Indian Patent Office from examining applications in the queue in a fixed order which are of less interest.

To reduce red tape as regards formal aspects, DIGITALEUROPE would welcome India joining WIPOs Patent Law Treaty. This is also applicable to other IPRs: DIGITALEUROPE would welcome India joining World Intellectual Property Organisation (WIPO)'s Singapore Treaty on the Law of Trademarks. Design patent protection would be simplified if India joined WIPO's Hague Agreement on international designs. Copyright protection would be modernised if India joined the WIPO Copyright Treaty.

Further, we request the Indian Government to consider lowering the burden for both patent applicant and patent office. In particular, the burden imposed by the Working Statement for granted patents.

It is understood that the objective behind seeking information on Form 27 from applicant, in terms of commercial aspects of patents U/S 146 (working statement), is to ensure that patents are worked out for the benefit of consumers at large. The said Form, in its existing state, equates one patent per product and does not seem to give any due consideration to the dynamics of the ICT industry where multiple patents are involved in covering various products and where portfolio licensing is a norm. Such ICT patents run into huge numbers which makes it significantly difficult for patent applicant to comply with such requirements, in spite of willingness of the patentee to comply with it. Ease and simplification of Form 27 U/S 146 of the Indian patents Act is desirable to ensure that its objectives are met.

6.2. IP ecosystem

DIGITALEUROPE also supports the establishment of an ideal IP ecosystem: IPR forms a buzz word and has gained much relevance in today's highly competitive knowledge-driven economy. It has been an endeavour of major economies to make a mark in recording its name in the Index of Innovation. India is treading on the right path by having launched "Make in India: Zero defect, Zero Effect" initiative, which aims at establishing the image of "Brand India – Made in India". It is well understood that Make in India" cannot be looked at in isolation from "Innovate in India". As a result importance of IPRs cannot be denied. In the long run, for India to continue to remain an attractive destination for large scale manufacturing and inward FDI, IPRs must be respected. There has to be a larger push given by the Indian Government to secure adequate protection and enforcement of IPRs. Especially, in ICT domain, India has been able to witness enhanced competition, employment generation and new business registration, as a result of manufacturing of standard compliant end user devices. This has been possible because of the easy ACCESS to such technologies that contribute immensely to the performance of standards, which are claimed under the Standard Essential Patents. While SEP holders have ensured ACCESS to such technologies on FRAND basis however, there is a challenge faced with respect to be able to receive reasonable remuneration from the users/implementers of such technologies (Device manufacturers). We look forward to receiving Government of India's commitment in creating an IP ecosystem where IPRs are respected at every section of the society and where misappropriation of IP is taken with heavy hands.

As regards patentability of technical inventions that may be implemented using software, it is important to stress that the Indian patent act only excludes software per se. There is thus no reason for India to refrain from granting patents for technical inventions that are new and non-obvious as a result of technical features listed in the claims, in line with Article 27 of the WTO TRIPs Agreements that specifies that patents shall be granted for inventions in all fields of technology, without discrimination as to the field of technology, provided that they are new, non-obvious and industrially applicable.

Finally, DIGITALEUROPE appreciates the separate guidelines for examination of computer related inventions brought out by the Controller General of Patents, Designs and Trademarks in India. We are hopeful that such steps will definitely lead to increased efficiency of Indian patent office.

7. In-country telecom security assurance testing

Since 2011, India's Department of Telecom (DoT) has sought to mandate in-country security testing of ICT/telecom equipment introduced into Indian telecom networks, issuing deadlines and then extending them due to lack of domestic lab capacity. The implementation of the requirement to test in India should be prepared in a way to avoid major supply chain disruptions, and not to obstruct the goal of tele-density intended by the Indian government.

We understand and support a security rationale. Telecommunications networks enable and link important systems and assets so any potential vulnerability in networks impact whole economic systems. Hence, network security and critical infrastructure protection aspects must be at the centre of any IT and telecommunications policy debate.

Cybersecurity is a high priority for DIGITALEUROPE; in that respect we offer to work in partnership and to present recommendations to leverage best available solutions globally and allow for constant innovation. ICT suppliers have every incentive to sell the latest network technologies and to implement the highest security standards in India. We take great responsibility for the development and implementation of appropriate security policies as the sustainability of the business is dependent on a safe and secure network provided.

Telecom security space is dynamic. The latest and most relevant technologies and services can provide solutions that are more secure and often eliminate the need for regulation. Any regulation in the field should be flexible to accommodate those solutions and performance based whenever possible, and avoid prescribing design elements that can quickly become outdated.

A certification from accredited/recognised laboratories conducting testing that is in line with globally accepted test specifications and parameters should be acceptable. The location of such internationally accredited labs should not have any bearing on the recognition of the tests. While in some cases it may be desirable for a vendor to test its product in a laboratory located in India, it may be inefficient when the same product is already being tested and a security certificate is obtained from another internationally accredited laboratory. Providing flexibility in terms of where products are tested is critical for maintaining a trusted global market for ICT products.

Decisions about what products/services or where to test them are best left to telecom operators which purchase them. Vulnerability checks should be carried out in critical network elements, instead of all network elements. Batch/sample based testing for each supply would be particularly detrimental for Indian telecommunications ecosystem; testing once per product per major release would satisfy the ambition of the security policy while limiting negative impact on supply chains.

Bilateral or multilateral dialogue is needed to enable sustainable cooperation, deliver responses to a number of issues and to ensure interoperability in telecom networks. DoT should use international standards whenever effective and appropriate to avoid duplication and since those include algorithms that have been reviewed by international experts for robustness and security assurance.

In particular work of 3GPP on security of ICT networks is relevant. Any recommended tests have to be in line with 3GPP defined test specifications / parameters. It is recommendable to postpone the implementation of the testing requirement until the specifications for security are defined by 3GPP

We have requested DoT to allow minimum four months heads up before any security testing guidelines are implemented. If implemented on short notice, this may result in major supply chain disruptions and increased costs for telecom operators and their vendors, which will in turn affect consumer pricing. This can cause strong supply chain disruptions.

8. Preferential Market Access (PMA)

The European business community has been strongly concerned these last years about the Preferential Market Access Policy issued by the Government of India. Indeed, this policy restricts the market participation opportunities for foreign companies in key sectors of the Indian economy in public procurement. The PMA Policy requires certain domestic content percentages in public procurement contracts of electronics, undermining the ability of multinational companies to compete fairly in India.

We are very committed to 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 local content mandates 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.

We wish to work closely with the Government for an effective and successful implementation of the Preferential Market Access Policy for Government Procurement. The PMA scope should not apply to products offered by limited number of vendors since it would undermine competition. Also products for which it is not viable to manufacture in multiple locations should be excluded from the PMA scope to ensure government operators get competitive pricing. There are complex value addition criteria being introduced for local manufacturing. The component, raw material and silicone ecosystem is nonexistent in India and manufacturers have to rely on imports of such critical components and chipsets.

Government should focus on creating favourable conditions for component/ raw material/ silicone manufacturing in India and till such those are available locally, it should be considered a part of local value addition. We also respectfully recommend joining the WTO Government Procurement Agreement.

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 competiveness**.**

9. Re-import of used spares for warranty

The Ministry of Environment and the Forest (MOEF) and Directorate General of Foreign Trade created a policy to demand approvals for importing second hand equipment in India. Recently, MoEF issued new guidelines which restricts import of used telecom equipments older than 3 years, applicable even for capital goods. These restrictions are extremely deterrent to the ongoing businesses for both spares and R&D equipments.

Regarding spare parts, it will be impossible to meet the three years limit considering the nature of telecommunication networks - operators use equipment which is often older than ten years, typically phased out by vendors and could only be serviced/repaired in centralised inventory at single global location. Global ICT companies import spares which are used for regular maintenance of the IT/telecom networks. Some of the networks have old and obsolete equipment still in use; usually those are phased out over several years. New spares for such network are not available since manufacturing was stopped long ago. Hence to support such networks vendors import spares, possibly from other operators where such equipments may have become redundant. However import of such spares require approvals from MoEF, which in turn forwards the application to DGFT for one more level of check before the final No Objection Certificate (NOC) or approval is given. This is a very long and cumbersome process (3-4 months).

This Policy has also an impact on R&D activities as global companies increased R&D investment in India by moving projects from other global labs. This has generated several job opportunities for local engineers. However, the consolidation of R&D centres and labs in India requires to relocate all the capital equipments used for testing purposes from other labs to India R&D centre. Such testing capital equipment which will be used for internal R&D purposes is being treated as second hand equipment. These equipments are for purely R&D purposes, there is no commercial sale involved. Therefore limiting possibility to import older electronic equipment restraints R&D investments in India. Typically R&D projects cycle for development lasts 6-8 months and in case of lack of approvals or delays, projects would rather be transferred to China or elsewhere.

DIGITALEUROPE member companies do not import these components and parts to be dumped as waste in India. They are used solely to repair and refurbish installed hardware that have been sold to Indian customers. If member companies are unable to perform this routine maintenance, Indian clients will be forced to scrap their IT machines and purchase costly new equipment. This not only raises overall IT costs for Indian companies and government ministries, but will only add to India's e-waste volume as large IT systems are scrapped.

The Ministry needs to take rationale call on clearances for capital equipment for internal testing and R&D purposes and spares requirement for critical network maintenance. Such approvals need to be granted from a single window and faster. Delays restrict the investment opportunities in ICT sector in India.

10. India and services

10.1. Open Source / Technology Neutrality in Procurement

We note with interest and appreciation the policy on open source software in Government. The European Commission brought out its own open source policy in 2000, which has been modified many times in tune with changing requirements and industry feedback.

Openness is a key strategic element of many IT companies development efforts. The European ICT players extensively use open source components in their products and solutions with an objective to build open solutions as well as provide the benefits of the latest community innovations to their customers. We are extremely supportive of all innovative products and solutions helping in effective implementation of software solutions.

A robust and neutral procurement process encouraging innovation and competition is a must for the IT industry to flourish. The Open source policy brought out by the Department of electronics and Information Technology, shifts the focus of procurement away from the merits of the technology, total cost of ownership, suitability of the technology for a particular requirement, to pre-determining the type of technology to be used for Government IT projects. Free and fair competition is the prerequisite for building a thriving, innovation-driven IT ecosystem in India. Minimal government regulation has been the underlying reason for a thriving Indian IT Industry and this has been very well stated by the Government. The world is increasing moving to a mixed source environment where the best components, proprietary or open source comingle on the cloud. The end user is focused only on getting the best product at the best value for a given project scenario We recommend that government procurement should consider all forms of technologies and take the final decision based on outcomes desired.

Open source software1 is seeing explosive growth around the world. It is fundamentally altering the information technology landscape in much the same way as the Internet has over the last decade. They are an important source of innovation because it brings together people from different backgrounds and perspectives to work on and solve common business and IT problems. It is a popular tool for the research community. And, its use is exploding within the university community, which is often the incubator for cutting-edge research and, subsequently, wealth-creating innovations.

1 Open source software is software that is distributed under an open source license. An open source license gives anyone who is interested the right to access the program's source code and to copy, modify, and redistribute the program on a royalty free basis. There are many different open source licenses, but these characteristics are common amongst all of them. The most popular open source software programs also use an open source development methodology, which provides any interested programmer with access into the program development process, and a democratic, open means for development and enhancement of the program. Software can be open source even if the developers do not adopt an open source development methodology.

Open source software is also an excellent approach for driving emerging standards and, in many cases; an open source software project can become the common implementation of a standard that is used by a large number of IT vendors and customers. The Apache Web Server is a good example of this.

Governments around the world have a unique opportunity to harness the open source movement for the benefit of their citizens and public institutions.

Open source software is complementary to, and is often included in, commercial software. For that reasons, DIGITALEUROPE disagrees with the notion that there is a "battle" between open source and commercial software- both have a place in the contemporary IT ecosystem and should be adopted on their merits. Most commercial software vendors today include some open source code in their commercial products. And, the open source Linux interoperates with commercial software.

Open source software should not be confused with low priced or no price commercial software. The mere fact that a software program is available for free on the Internet does not mean that it is open source. Nor does it mean that it is based on open standards.

⇨ Policy Recommendations

The Indian OSS policy is an extremely important step. However, in its current language, the OSS policy gives a perceived impression about mandatory preference to OSS. Policy debates that create a false conflict between open source and commercial software have tended to obscure the fundamental fact that in today's IT environment both co-exist and complement each other.

Accordingly, DIGITALEUROPE believes that open source software should be leveraged as a part of a national IT architecture but open standards are the true facilitators of a smarter, more agile and transparent government.

Open standards enable the seamless connection of internal and external entities using different technologies. They allow quick adjustment to changing government needs and processes, and the rapid building of new solutions that involve multiple hardware and software platforms. These best-of-bred solutions will, in many cases, include open source software, but they will just as often include open standards-based, commercial software.

Software procurement policy should focus on open standards (not open source) to allow the broadest choice possible from a level playing field. These policies will ensure greater competition and choice within government procurements. As DEITY seeks to finalise the draft Open Source Software, we encourage governments to consider the following policy actions:

- Create **government IT architecture and smarter government infrastructure** that ensures software interoperability based on open standards. And, require open standards based interoperability for any government investment in software infrastructure. Open standards go far beyond software: products are built to publicly available technical specifications which permit everything from nuts and bolts to electric plugs to software to freely interoperate. One well-known example is the World Wide Web, whose open specifications allow anyone to write software for it. The World Wide Web is open source and has open standards, but some open source software lacks open standards and will not readily interoperate. The same is true of proprietary software – some is built to open standards, some

not. Lack of open standards can be a costly liability. Open standards provide savings by guaranteeing that data and software will inter-operate and can be ported from one hardware or software platform to another, so users never become locked in to one proprietary standard. Open standards will help ensure savings and provide an advantage to purchasers, while open source software must be carefully weighed against other solutions to determine if it is the right choice.

- **Evaluate open source and software as part of national information technology, research and development and economic development strategies** and understand how it can increase reliability and security, improve service to citizens, and create economic opportunities.

- **Ensure that software procurement rules demand "openness**" and enable a level playing field among commercial competitors as well as open source communities. DEITY should avoid technology mandates or preferences that discriminate against either commercial or open source solutions in public sector procurements.

- Base **software procurement decisions on objective and measurable criteria**, such as cost effectiveness, functionality, interoperability, security and flexibility, performance, support for open standards, the effect on local economies, the adoption of open file formats, and the adaptability to future technologies. We recommend equitable treatment to OSS and proprietary software based on the project requirements and objectives. In some instances open source software will win, and in others proprietary software will, but ultimately the procurement decision needs to rest on which option is best suited for meeting the needs of public administrations and citizens. Software procurement managers need to be careful in evaluating the comparable costs. The use of open source software is not free in a Government or business setting, even if it costs nothing initially. Management and administration costs, annual support subscriptions and insurance policies for indemnity protection are only some of the costs associated with open source software. In some cases the total cost of ownership over a period of three to five years may be more for open source software than for proprietary software.

- **Develop a software assessment framework for Government projects and industry involvement** at the project conceptualisation stage to ensure identification of OSS usage in Government.

- **Support research and development programs** that employ the open source model, just as programs that employ other models are supported. Ensure that research and development terms, including license terms, promote commercialisation.

10.2. Machine-to-Machine (M2M), Cloud, Internet of Things (IOT):

DIGITALEUROPE recommends that the Government of India adopts a flexible, light touch regulatory environment for IOT, M2M, and the cloud. These are evolving technologies. Almost all of the players in this ecosystem (service providers, engineers, vendors, regulators, etc.) are still working out the applicable technological, regulatory, legal, and policy frameworks. As such, DIGITALEUROPE recommends that the Government avoids technology mandates or requirements.

Similarly, we urge the Governement to resist the desire to enact policies that would impose a fragmented, India-only framework. To do so would lead to limited growth, investment, and innovation in these industries.

- Machine-to-Machine (M2M) Roadmap:

We are delighted to learn that India has launched the impressive national telecom M2M Roadmap. M2M communications and IOT offer tremendous potential for reshaping business and Government service delivery.

We observe the focus on including the services such as sensors and microchips in India's preferential market access policy. This may potentially limit access to highest quality products and cross border innovation.

Also the roadmap proposes that all M2M gateways and application servers which are serving customers in India, needs to be located in India only. This provision would be counterproductive to innovation through cross border data flows. The Indian IT act already provides for laws related to privacy and security of data. It is important that such data localisation requirements are relaxed to promote the growth of Indian IT Industry.

- Strategy for cloud uptake by Government:

The application of IT in Indian Government and business world is undergoing a radical shift. There is a growing realisation to reap the benefits of potential of cloud computing to transform the way IT is used and managed for improved cost efficiencies, accelerated innovation, and the ability to scale applications on demand.

The Government of India has released a document on GI cloud – which is a strategic roadmap for introduction of cloud in Indian Government. We are pleased to note that Government of India has come out with the policy on reengineering existing applications on cloud using an e-Gov App store.

Cloud technology can dramatically lower cost, improve replicability and significantly speed up the digital India Mission. While Government has recognised the potential of cloud technology and has initiated some welcome steps in that direction, there is a need to significantly speed up the laying down of an enabling policy framework, which will make it easier for Government entities to adopt Cloud technologies. Government should issue guidelines enabling Government entities to leverage the benefits of public cloud, accelerate the creation of a standardised accreditation process which makes the procurement of cloud services by Government agencies fast. We also recommend that the Government should create the proposed Cloud Management office at an early date.

While the larger policy on enabling cloud environment in India is evolving, DIGITALEUROPE and its representative companies will be happy to share the best practices and experience around the following:

- Location of servers and the resultant opportunity for cross border innovation;
- Data privacy;
- Taxation of cloud services;
- Service level agreements for cloud services;
- Standards for cloud products and services;

- Conduct guidelines for cloud service providers;
- Security and certification of cloud services.

We sincerely believe that effective guidelines on policy issues highlighted above will accelerate the efforts towards larger ICT adoption in India.

- M2M & Internet of Things (IoT) policy:

In addition to the M2M roadmap mentioned above, a draft Internet of Things policy has also been released by the Indian Government. DIGITALEUROPE is extremely pleased to note the focus on IoT as a part of Digital India and the setting up of IoT Center of Excellence by the Indian Government. While the IoT policy is still a draft policy, we wish to highlight one important aspect of IoT standards. We suggest that India should collaborate and coordinate with the global community on IoT standards, which are evolving round the globe and decide on the standards relevant for India. India can engage proactively with standard developing organisations to drive India specific requirements. This may prove to be more productive in the longer run as compared to "defining" the IoT standards as envisaged in India's draft IoT policy. The proactive steps taken by DOT and DeitY to bring out a policy document on IoT (M2M) are laudable.

However DOTs policy paper appears insular and looking only at India as a consumer of IoT and not looking at making India a global hub of IoT services. Considering the number of cloud data center, the number of entrepreneurial ventures in IoT and the strength of India's software development, India is well poised to become a global hub of IoT services provided the right policy framework is in place. Mandatory data localisation, prohibition of use of foreign SIMs, linking local manufacturing to security, registration of service providers, mandatory certification etc. impede rather than encourage the IoT ecosystem. Cloud services are an important part of the IoT ecosystem and need to be an integral part of the IoT roadmap.

10.3. Offset Policy

The existence of an offset policy in India assists greatly in encouraging offshore companies to identify local, indigenous partners with whom to work. Increasingly around the world it is clear that countries no longer want to continue to be seen as being potential markets for offshore suppliers, but instead are seeking to want to be perceived as being potential partners and the existence of offset policies is one manifestation of this. An Offset policy would assist greatly in achieving the long-sought aspiration of giving the country greater self-reliance.
The Government of India may consider in reforming the offset policy so as to incentivise greater technology transfer, more effective and expedient offset work share (including sourcing and manufacturing), and a reduced cost environment including ease of doing business.

Also, many European and other Multinational companies (MNC) deliver and export a significant volume and value of services through its Global Services Centres based out of India, thus generating foreign exchange for the country. The government is requested to view this positive contribution in totality – foreign exchange via

Services, equipment export along with employment generation and increasing demand for skilled jobs coupled with minimal imports of equipment. And accordingly there is a need to consider for a "Net Off".

Also, these MNCs who have demonstrated long term commitment to the country should be facilitated with support for ease of doing business, address the tax structure challenges such as DDT, fast track clearances with a Mega Policy, besides allowing them to participate in all Government procurements without PMA hurdles.

10.4. Special Economic Zones (SEZ)

SEZs[2] can act as catalyst to industrial growth provided they are implemented effectively. DIGITALEUROPE appreciates the present government's industrial policy which emphasises deregulation of Indian industry and to allow the industries to flexibly respond to the market forces. SEZs create employment, quality goods and services and India will be able to bag a good position in the international economic scenario.

Therefore SEZ policy is a welfare policy and all shackles to be removed from its way of calculated success. With taxes being levied, the savings for companies on account of tax concessions was reduced, impacting interest in SEZs. SEZs lost sheen after imposing MAT (Minimum Alternate Tax) and dividend distribution tax (DDT) from 2011-12 on the book profits of these units. There is a further increase in dividend distribution tax (DDT) over 20% in 2014 budget that made these SEZ enclaves unattractive. Only 192 of the 388 notified SEZs are operational as we understand as of June 2015.

Further, the practice of assessing custom duty on goods manufactured in SEZs based on their full value upon entry into domestic (DTA) commerce is discouraging for investors, in this global recession scenario. In successful countries, such as China, Malaysia, Korea and Taiwan, customs duty on DTA sales is assessed only on the imported materials used in the production of SEZ exports. China also permits duty-free domestic sales if the SEZ product is based on new and sophisticated technology. This has not only been a major incentive for investors to invest in SEZs but has also proved to be a key motivation for SEZ investors to forge linkage with the domestic economy.

The policy reversals and imposition of MAT, DDT sent negative signals around the world regarding the government's sincerity towards its SEZ policy, discouraging in particular foreign direct investors.

In India, at the aggregate level, SEZs have made a significant contribution to investment and exports. Experience of successful countries indicates that a strategic SEZ policy requires a clear vision, strong commitment, concerted efforts, continuity in efforts, and a pragmatic approach.

Restoring fiscal incentives for SEZs could go a long way in this direction. Indeed, the vision of SEZs is to ensure investors a business-friendly environment.

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2 Special economic zone or SEZ refers to a totally commercial area specially established for the promotion foreign trade. A SEZ is a geographical region that has economic laws more liberal than a country's typical economic laws. Usually the goal is flourishment in foreign investment. In other words SEZs are specifically delineated enclaves treated as foreign territory for the purpose of industrial, service and trade operations, with relaxation in customs duties and a more liberal regime in respect of other levies, foreign investments and other transactions.

10.5. The Companies (Accounts) Rules 2014 – Books of Accounts servers physically located in India

The Rules notified by the Ministry of Corporate Affairs (MCA) under the Companies Act 2013, Rule 3 (5) of "The Rules" provides that the back-up of the Books of Account and other books and papers of the company be maintained in electronic mode. The Rule further states that in case the Books of Accounts are maintained on servers located at a place outside India, a back- up on periodic basis, needs to be kept in "servers physically located in India".

As many global conglomerates operate over 180 countries, they are severely impacted with this regulation considering also that they have to maintain their books of accounts electronically in their Headquarter or any other location, and use the same in a shared IT infrastructure model. They will not be able to segregate the data for the purpose of back-up.

If Multinational companies required maintaining the books of accounts in a separate instance segregated from our other group companies' data, it would involve substantial capital cost of IT, cost of Licenses, maintenance cost, which is quite high, and thus may negate benefits derived initially by centralising IT processing.

Further MNCs face an immediate challenge if they are required to keep a back-up of the books of account in servers physically located in India as the data protection or privacy laws in Europe impose many restrictions on cross border sharing, storing and revealing of data.

In view of above, request that due consideration be given to this issue. The Rules should be considered to be amended and words "servers physically located in India on a periodic basis" should be removed from compliances.

10.6. Net Neutrality

There is an intense debate going on in India on Net Neutrality, which is very welcome. The Telecom Regulatory Authority of India and the Department of Telecommunications have come out with their own papers in this regard. These papers however show a proclivity of governing the 21st century app world with the paradigms of the 20th century network world.

The rules which govern telecommunications cannot be applied on app services provided over the internet.

In this connection, we also observe that India is the only country in the world which has regulations preventing VOIP to domestic PSTN calls.

This is an artificial barrier created which leads to huge technical and regulatory overheads. Indian regulations should be modified considering the realities of the Internet economy and Internet technologies. Unfettered VOIP services will bring down the cost of communication for the common citizen, increase collaboration, improve innovation and help digital India to achieve its objectives in the field of e-Health, e-Education, e-Governance etc.

11. "Make in India" and Trade Disconnect

The "Make in India" campaign launched personally by Prime Minister Modi is designed to attract manufacturing to India and better integrate the country into global supply chains to boost exports. However trade-related policy decisions over the past year have raised some concerns among the Industry, notably decisions which:

- Expressed strong opposition to the Information Technology Agreement expansion negotiations and stated that joining ITA was a mistake for India.
- Delayed and almost derailed the WTO Trade Facilitation Agreement.
- Raised tariffs on a range of telecommunications products, many of which are captured under the ITA.
- Pursued India-unique standards for the ICT sector, creating significant operational challenges for U.S. companies and disrupting wider ICT hardware imports.

DIGITALEUROPE understands the legitimate concerns of the government regarding the growing deficit in electronic goods and efforts to increase domestic manufacturing under the "Made in India" initiative. However, we ask the Indian Government not to adopt government's policies related to forced localisation as a means of driving manufacturing. Instead, the government should continue to put in place competitive, market-based incentives to attract the type of high-end manufacturing envisaged by the "Digital India" initiative.

Conclusion

The European ICT Industry in Europe has high hopes in the new Modi Government – business and investor-friendly. We ask the Indian Government to resist and prevent new protectionist and discriminatory measures – such as forced manufacturing. India and the European Union, in coordination with other major regions and countries should continue to cooperate together and encourage partnerships on e-skills, trainings, digital society and digital transformation.

We encourage India to follow the example of other third countries and to recognise internationally accepted safety and certification norms and protocols.

Furthermore, we hope that India will join in the upcoming months the expansion of the Information and Technology Agreement, and the negotiations on the Trade in Services Agreement. We believe a successful outcome could happen for the ongoing multilateral and plurilateral negotiations and could be beneficial and balanced for all WTO countries.

Finally, we ask the European Commission and the Indian Government to "bring back to life" the EU-India Free Trade Agreement. The European industry is in strong need for such an agreement that could settle many questions – notably on regulatory coherence, common standards, cooperation on innovation and on mode 4 (circulation of workers). We would be happy to contribute to the discussions and to provide information for an ICT annex.

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 59 corporate members and 35 national trade associations from across Europe. Our website provides further information on our recent news and activities: http://www.digitaleurope.org

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