PRESS RELEASE: Public procurement of ICT products in Europe still afflicted by references to brand names

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For the sixth consecutive year, OpenForum Europe examined the EU Member States' practice of referring to specific trademarks when procuring for ICT products. In our latest report released in July 2014, we found that 22% of all tender notices issued contained an explicit reference to specific brands – an increase of 5% since our previous report published in October 2013. This figure indicates a trend of continued discrimination.

EU procurement laws (Directives 2004/18/EC and 2014/24/EU) try to ensure that public procurement at both national and EU level gives equal treatment to potential bidders and doesn't discriminate in favour of one or another supplier. Naming trademarks in tenders is viewed as discriminatory, and is usually against existing EU procurement laws, except under specific and exceptional circumstances. By specifying one preferred supplier, public bodies are inadvertently helping dominant firms maintain their stranglehold on markets to the detriment of smaller competitors. In addition, the lack of competition often leads to greater expenses, resulting in a waste of EU's taxpayers money.

The OFE Monitoring Report examined all tender notices published on the TED database for IT products issued by public authorities in EU countries issued between October and December 2013 – more than 800 in total. Out of those, 18% either directly asked for the provision of specific products, or gave them a strong preference – a concerning figure. Some countries, such as Spain and Germany, are doing much worse in this regard than others.

“Europe has thousands of small IT firms that in many instances are simply excluded from competing in the public procurement process by restrictions such as the naming of trademarks in calls for tender,” said Graham Taylor, chief executive officer of OFE. “Whenever possible, technical specifications should be worded in terms of functional requirements and reference open standards, so as to ensure technological neutrality and fair competition”, he added.

In light of its findings OFE urges EU lawmakers to address such discriminatory practices, ensuring full respect of the EU Public Procurement Directives, and through a better application of the “Guide for the procurement of standards-based ICT – Elements of good practice”, published within the framework of the Commission's Action 23 of Digital Agenda.

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