ESF10-18

Mr. Karel De Gucht
Member of the European Commission
Commissioner for Trade
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 12 July 2010

RE: European Services Industry Priorities on EU-Singapore FTA

Dear Commissioner,

I am writing to give you the European Services Forum's views on the proposed EU Free Trade Agreement (FTA) with Singapore.

The negotiations that started between the EU and the ASEAN were suspended in 2008, one year after their launch. The European Services Forum (ESF) agrees with the decision to modify the EU negotiating strategy with the ASEAN region from a region-to-region to a bilateral approach. ESF members have enormous difficulties in penetrating the services markets of many ASEAN countries, most of which are emerging economies of potential interest to our member-companies. However, experience of regional trade negotiations with unwilling partners to engage at regional level has obvious limitations. ESF therefore welcomes the EU decision to launch separate trade negotiations with Singapore. We would like to congratulate you on your personal commitment to advance the negotiations with Singapore as well as for securing a commitment from Vietnam to launch negotiations later this year. We hope that other countries will follow suit, like Malaysia - which is putting into place a New Economic Policy with reforms of the services sector -, and Thailand.

The European Services Forum is strongly in favour of concluding a free trade agreement with Singapore, which can serve as an ambitious benchmark for future agreements in the region.

Singapore is essentially a services economy, with 74% GDP coming from the services sector. Singapore is the EU's 7th services trading partner with more than €18 billion in services trade with EU27 in 2007, well above Brazil, India, or even Australia or Korea. The EU had a net services trade surplus of € 4.2 Billon with Singapore in 2007. Singapore is also the main destination of EU FDI in South East Asia with more than €10 Billion in 2006 (Rank 6 worldwide), well beyond China, Hong Kong or Japan, with a very large majority of investments going into the services sectors. Singapore is a small city state with a population of only 4,6 million. But it has a high income per capita ($ 50 000+), and the figures clearly show that Singapore is a major trading partner for the EU which deserves full attention of the EU negotiators. Furthermore, the EU is Singapore's largest trading partner and Singapore represents almost half of all ASEAN Foreign Direct Investment.

The Singapore market is relatively open, but much remains to be bound under an international treaty to ensure further market access and national treatment to our companies and the legal security for their investments. More importantly, before the US-Singapore FTA came into force (January

2004), EU business in Singapore had very few discriminatory issues. Since then, however, Singapore has concluded 15 FTA's, with preferential treatments for companies from the signatories, but on the other hand with increased difficulties for the others, including EU companies. All European business representatives also have regional functions and Singapore must therefore be seen in the context of ASEAN, the largest integrated trading block in terms of population. Businesses choose Singapore as a hub to spread out operations in other countries in the region. Concluding an FTA with Singapore should therefore be in the priorities of the European Union.

As a starting point, ESF takes for granted that respective best GATS offers, including oral commitments made at the WTO Signalling Conference on Services on 26 July 2008 in Geneva, form the basis of the services and investment negotiations in this FTA. Furthermore, it is fully acknowledged that Singapore has already signed and is implementing trade agreements with significantly advanced commitments on services and investments with major EU competitors like Australia, New Zealand and the United States. The EU negotiators should therefore to do their utmost to secure from their Singaporean counterparts similar commitments to those obtained in the above mentioned agreements, so that existing discrimination between European businesses and those from other partners in the Singaporean markets are eliminated.

ESF also calls for the use of the negative list approach in the services negotiations with Singapore to avoid future classification problems as business and trade evolve. Singapore is a developed services economy that has experience of this approach. We therefore urge the EU to go along with that way of scheduling, which offers greater visibility and intelligibility to operators in the market. The opening up of access to Singapore public procurements at all levels, in all public entities, for European companies in relevant services sectors is also an ESF priority.

Among the more services related priorities, the European services industry calls for the removal of all equity caps that may remain in Singapore; the removal of all nationality or residency requirements for members of executive boards of branches, subsidiaries and joint-ventures; the negotiation of Mutual Recognition Agreements of diplomas and qualifications in professional services, starting with architectural services, aiming at legally binding instruments.

The attached document goes into the details of the priorities of the various services sectors, sector by sector. ESF Members might contact you and your services directly for further sector specific details.

We shall be grateful to the Commission for taking the European service industry's priorities into consideration during the current trade negotiations with Singapore, and remain at your disposal for any further information you and your services would find useful.

Yours sincerely,

Christoffer Taxell
ESF Chairman

Cc: Mr. David O'Sullivan – Director General, DG Trade, European Commission
Mr. Rupert Schlegelmilch – Head of Unit, DGA1.C.3 – Trade Relations with South Asia, Korea and ASEAN - DG Trade, European Commission

Brussels, June 2010

European Services Industries Priorities for the EU-Singapore Free Trade Agreement

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Executive summary

ESF priorities can be summarized as follow:

1. Negotiations on services and investment using a negative list approach;
2. Removal of all equity caps in Singapore;
3. Removal of all nationality or residency requirement for members of executive boards of branches, subsidiaries and joint-ventures;
4. Negotiations of Mutual Recognition Agreements of diplomas and qualifications in professional services, starting with architectural services, aiming at legally binding instruments;
5. Negotiations of significant market access to Singaporean public procurements at all levels.

Introductory remarks on SINGAPORE:

Singapore is a liberal country with open access to most of the services market, especially compared with most of the other ASEAN and WTO members. European services companies from many services sectors are allowed to do business in Singapore in a friendly and secure environment. Singapore is one of the world's most prosperous countries in the South East Asia region and beyond, with strong international trading links (its port is the world's busiest in terms of tonnage handled) and with per capita GDP equal to that of the leading nations of Western Europe. A highly developed and successful free market economy, Singapore enjoys a remarkably open and corruption-free environment, stable prices.

Singapore is essentially a services economy, with 74% GDP coming from the services sector. Singapore is the EU 7th trading partner in international trade in services with more than €18 billion with EU27 in 2007, well above Brazil, India, or even Australia or Korea. The EU has a net surplus of €4.2 billon with Singapore in 2007. Singapore is also the main destination of EU FDI in South East Asia with more than €10 Billions in 2006 (Rank 6 worldwide), well beyond China, Hong Kong or Japan, with a very large majority of those investments going into the services sectors. Even if it is true that Singapore is a small city state with a population of only 4,6 millions, but with a high income per capita ($ +50 000), the above mentioned figures clearly show that Singapore is a major trading partner for the EU and cannot be ignored. The EU is Singapore's largest trading partner and Singapore represents almost half of all ASEAN Foreign Direct Investment.

Singapore made a quality Schedule of Commitments in Services at the end of the Uruguay Round negotiations in 1994. In 1997, Singapore made a good set of commitments in the telecommunications negotiations and signed the Reference Paper on Basic Telecommunications. The Commitments in Financial Services in December 1997 are considered a good start, although much remains to be bound.

I. HORIZONTAL ISSUES

1) Starting level of the services negotiations

ESF takes for granted that respective best GATS offers, including oral commitments at the WTO Signalling Conference on Services on 26 July 2008 in Geneva, form the basis of the services and investment FTA negotiations with Singapore.

Furthermore, ESF encourages EU negotiators to do their utmost in getting from their Singapore counterparts similar commitments than committed by Singapore with the United States, with Australia and with New Zealand, so that existing discrimination between European companies and companies from these countries on the Singaporean markets are eliminated.

2) Services Commitments with a negative list approach

As for the negotiations of the comprehensive economic trade agreement with Canada (CETA), ESF strongly encourages the negotiators to use the negative list approach. In FTA negotiations engaging two developed and advanced services economies, the use of a negative list should become the EU standard. As you know, this way of negotiating obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity, since it is much easier for companies to assess whether their sector is covered or not and what the limitations are.

3) Movement of natural persons (mode 4)

Singapore generally welcomes foreign talents and the process to obtain work permits and visa is usually quite swift. The negotiations with Singapore should ensure that this easy access to EU companies' personnel into Singapore is bound, since as said earlier, the City-State is often used by our companies as a hub basis to provide services in the ASEAN region. Further negotiations with other ASEAN countries should also take this into consideration.

4) Foreign direct investment regimes

ESF members call for the removal of all remaining equity caps that prevent EU businesses to fully control their investments and operations in Singapore. Similarly, ESF looks for the complete removal, if necessary on a progressive basis, of nationality or residency requirements that still exist in some sectors for the companies' directors or members of the board. In its GATS Revised offer, Singapore has maintained Horizontal Mode 3 National Treatment (NT) restrictions on citizenship, residency and employment passes for managers/directors of foreign firms. These requirements hamper investments or proper business management of EU operations in Singapore.

ESF strongly encourages the European Union, in the framework of the new competence granted by the Lisbon Treaty on foreign direct investment, to negotiate investment protection with Singapore. Singapore is already the biggest receiver of European outward FDI in South East Asia, and proper investment protection, including investment portfolio and investor-to-state mechanism, will further strengthen the Singapore attractiveness.

5) Better access to Public Procurement

ESF strongly supports better access to Singapore public procurements at all levels, in all public entities, for relevant services sectors (architects, engineers, construction services, transport services, waste management services, water distribution services, education services, IT and Computer restated services, financial services, etc.). This should not be too difficult to negotiate and would provide an important benchmark for any future FTAs with countries in the region.

6) Other Horizontal issues

The negotiations should also aim at removing or reducing the following barriers: and solve the following issues:

(a) Eliminate economic needs tests;
(b) Secure commitment to adopt disciplines that provide for regulatory and procedural transparency, including prior comment on draft legislation;
(c) Establishment of a fixed period (or specified fixed periods in different cases) within which applications by EU service providers for any form of business authorisation must be decided upon or deemed to be approved;
(d) Secure commitment to recognise EU standards, licences, professional qualifications (e.g. in insurance and accountancy) and the like, where this would facilitate trade in services between the EU and Singapore;

II. SERVICES SECTOR SPECIFIC ISSUES

1) Professional Services

a) Legal services[1]:

Singapore did not take any commitments on legal services during the Uruguay Round and did not table any offer so far in the GATS DDA negotiations, despite EC requests for at least the opening of consultation on public international law and the law of jurisdiction where the service supplier or its personnel are qualified lawyers. Given Singapore's reputation as an open economy, and its current practice, commitments should be taken in the FTA with the EU. All kind of commercial presences should be permitted and committed for European law firms (capital ownership of law firms, etc.). In particular as regards the quantitative restrictions on the availability of Qualifying Foreign Law Firm (QFLF), these licences should be removed for EU firms.

b) Accounting Services[1]:

Residency requirements to provide cross-border services for accountants remain. Commitments on Bookkeeping services - not included in Singapore's GATS offer – should be made. The 50% threshold on non-audit services sold to audit clients triggering a review should be removed, as well as the ownership restrictions that 2/3 of the owners of Singaporean audit firms should be qualified as Singaporean accountants.

c) Architectural Services:

Under current WTO commitments, only registered architects, ordinarily resident in Singapore may serve as director of an architectural firm. Singapore made no offer on this sector in the GATS negotiations.

d) Engineering services:

As in architectural services, residency requirements for registered engineers should be removed. In addition, Singapore is yet to commit to the entire CPC 8672.

2) Business Services

Singapore GATS Offer remains relatively disappointing. FTA negotiations should aim at opening and significantly binding further a large number of business services that are important component of modern economies.

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[1] *The ESF fully supports the detailed comments made by International Financial Services London in its note dated 19 February 2010.*

- Computer related services offer is very weak, covering only a limited group of sub-sectors (software development, systems integration services, data processing, and database services). Even worse, Singapore does not use CPC classification. CPC 842, 843 and 844 should be at least fully committed. We strongly invite Singapore in using CPC classification for that sector and commit it at two digit level.
- Singapore has made important new GATS offer in many of the "Other Business Services", including Market research and public opinion polling, management consulting, services to management consulting, building cleaning, photographic, packaging, convention, translation/interpretation and interior design services, as well as Technical testing and analysis services, placement and supply services of personnel, investigation and security services and maintenance and repair of equipment in the revised offer. This offer was very welcomed and should now be also committed in the FTA with the EU.
- Furthermore, Singapore should also take full commitments in advertising services.

3) <u>Postal & Courier Services (Outbound international Postal Services)</u>

Singapore has only an extremely limited commitment in courier services during the Uruguay Round and nothing new has been table in the GATS initial or revised offer. This is very disappointing and we hope that in the EU-Singapore FTA framework, Singapore will reply favourably to the EU Requests made in that sector in the framework of the WTO Plurilateral negotiations, and will match its commitments with the EU to the level of those taken with other trading partners and of its current practice.

4) <u>Telecommunications Services</u>

Despite the actual situation in Singapore, which allows for 100% foreign ownership, there is still a Mode 3 restriction on foreign ownership with a cap of 73.99% (49% direct investment and 24.99% indirect investment). We would urge that Singapore removes the ceilings on foreign equity participation (direct, indirect and by shareholder). We are also concerned about a provision, which to our understanding has not been removed yet by Singapore and which limits the amount of telecommunications licenses for reasons of "scarce resources, such as rights of way and availability of frequency spectrum."We would like to ask the Commission to seek for a clarification of the scope of this provision, so that it does not result in unreasonable and discriminatory restrictions.

5) <u>Distribution Services</u>

We were happy that Singapore finally decided to commit this important sector in its GATS Revised Offer, which was not part of its schedule of commitment at all and appeared as an anomaly. We welcome the fact that Commission agents' services (sub-sector A), wholesale trade services (B) (except for pharmaceutical and medical goods and related), and franchising services (D) have been fully committed in four modes. We regret however that Retailing services have not been committed at all. We urge EU negotiators to encourage Singapore to reconsider that position, as to match the current practice, taking into consideration that specific products can be explicitly excluded if necessary.

6) <u>Environmental Services</u>

ESF calls Singapore to consider full commitments in all sub sectors of environmental services, as defined in the European classification proposal in the framework of the GATS negotiations, reflecting a more up-to-date definition of those services. Commitments in that sector are particularly relevant in relation with possible negotiations with other ASEAN countries.

7) Financial Services[2]

ESF urges negotiators to establish parity among international players in the Singaporean financial services market, including with companies from the USA, Australia and New Zealand, which still benefit from some preferential access.

Foreign banks in Singapore are divided into three categories of banks: qualifying full banks (QFBs), wholesale banks, and offshore banks. Wholesale and offshore banks face restrictions on their activities in Singapore whereas domestic banks are allowed to undertake universal banking activities.

The following lists some (but not all) of the negotiation objectives (please refer to the more detailed sectoral briefings submitted directly for any indication of priority):

(a) Removal of all quantitative limits on the number of Qualifying Full Bank licenses issued to EU banks;
(b) Full national treatment of Wholly-Owned subsidiaries (WOSs) and branches of EU banks with no limitations on domestic market share or requirement to "one form of presence" (ie both branch and WOS permitted for same group);
(c) Removal of current limits on number of customer service locations, branches and ATMs, a cap not applicable to the local banks and American banks, which are not subject to such a cap as a result of the US – Singapore FTA. Current rules in Singapore also provide that qualifying full banks may only establish up to a total of 25 branches and offsite ATMs. In addition, foreign full banks require the approval of the Monetary Authority of Singapore (MAS) to increase the number of offices, which is not the case for local banks. Wholesale banks and offshore banks may only have one office in Singapore.
(d) Removal of current Monetary Authority of Singapore (MAS) rule that no foreign person acting alone or in concert may assume control of any Singapore incorporated bank or financial holding company;
(e) Abolition of Ministerial approval before an EU bank can acquire indirect control, shareholdings or voting control of or exceeding 5%, 12% and 20% in a Singapore incorporated bank or financial holding company;
(f) Permission for EU banks not incorporated in Singapore to establish or acquire effective control of a Singapore-registered finance company;
(g) Wholesale banks are not allowed to participate in Singapore dollar retail activities. Offshore banks may engage in similar transactions as full banks through their Asian Currency Unit (relating to foreign currency transactions), but are subject to restrictions in respect of Singapore dollar transactions. These restrictions should be removed.
(h) Removal of limits on ability of EU wholesale banks to accept Singapore dollar fixed deposits of less than $250,000, offer savings accounts, or operate interest-bearing Singapore dollar current accounts;
(i) Elimination of all restrictions on the ability of EU banks to have access to payment and clearing systems in Singapore and to official funding and refinancing facilities available in the normal course of business;
(j) As regards investment, securities and asset management services, Singapore should commit to remove restriction which inhibits EU firms from lending in Singapore dollars to non-resident financial institutions (as per MAS rule 757), as well as to remove requirement that EU financial services providers maintain all deposits in investment graded assets.
(k) Mutual funds have to be registered. Those that are domiciled abroad are "recognised" in Singapore, but if there are not "domiciled" (established) in Singapore they are not authorised

[2] *The ESF fully supports the detailed comments made by International Financial Services London on its note dated 19 February 2010, by the European Banking Federation and by other ESF members to the Commission in February 2010.*

by the authority to be sold to retail consumers, but only to financial institutions, which limits considerably the penetration of the market. This obstacle; which does not exist for instance on the Honk Kong financial market; should be removed.

(l) Creation of a commitment to permit cross-border provision of financial information and processing of data.

8) <u>Insurance</u> [2]

Market Access for European insurance companies is still limited by foreign equity cap of 49%. This should be removed. The existing restrictions for insurance intermediation services should also be removed.

In particular, the negotiations with Singapore should have the following objectives:

(a) Remove restrictions on writing cross-border Marine, Aviation and Transport (MAT) and non-MAT large commercial risk insurance for both insurers and insurance intermediaries and on the supply of related services by insurance auxiliaries; and remove the related requirements on EU brokers placing domestic risks with EU insurers outside Singapore to first obtain MAS approval;

(b) Secure expedited approval for new insurance products from EU providers (as secured for US providers in the US-Singapore FTA, which, it is understood, also removed the requirement for regulatory product approval in the case of insurance supplied by US providers to the Singaporean business community);

(c) Secure additional freedoms in relation to cross-border supply of reinsurance (as secured for US providers in the US-Singapore FTA). This should be based on supervisory recognition of the competent EU home country supervisor of an EU re-insurer;

(d) Remove any remaining restrictions on the freedom of EU service-suppliers to establish wholly owned subsidiaries (WOS) and branches, or to participate in joint-ventures;

(e) Where there is private sector participation in the Singaporean pension and social security system, secure freedom for EU providers to participate without discrimination as to market access or national treatment.

9) <u>Securities and Asset Management</u> [2]

EU negotiators should seek full Market Access and National Treatment commitments in Mode 1 (cross border services) so that suppliers and consumers of capital market-related services may transact business on a cross-border basis, free from quantitative restrictions, economic needs tests, or discrimination based on nationality. Subject to the Additional Commitments described in the next paragraph, such commitments would not prevent the trading partner from imposing authorization requirements[3] on cross-border suppliers consistent with those imposed on domestic suppliers.

Additional Commitments in Mode 1 should be sought, which would exempt EU suppliers in certain circumstances (particularly when dealing with sophisticated investors) from the authorization and commercial presence requirements. Singapore may continue to apply conduct of business rules and market conduct rules[4] to these suppliers. Such commitments would promote effective cross-border

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[3] *"Authorization requirements" refer to standards that a supplier must meet in order to be authorized or licensed to do business in a market, such as standards that address the supplier's knowledge, resources, skills, and risk management procedures.*

[4] *"Conduct of business rules" includes rules relating to disclosure of information (including risk warnings) to customers, disclosure of information about the supplier, execution of orders, and the protection of customer assets. "Market conduct rules" relate to fraud, insider dealing, and market manipulation.*

access to capital markets-related services. As briefly described below[5], many WTO Members currently exempt foreign suppliers providing services on a cross border basis from authorization requirements, taking into account one or more factors, including investor sophistication.

Full Market Access and National Treatment commitments from Singapore should also be obtained in mode 2 (consumers who travel abroad), thereby allowing their consumers to travel outside their territory to obtain capital markets-related services; as well as in mode 3 (commercial presence abroad) thus allowing EU based service suppliers to establish and operate enterprises in the trading partner's territory, free from quantitative restrictions, economic needs tests, restrictions on corporate form, limits on foreign ownership, and measures that discriminate based on nationality. Such commitments would not prevent a Member from imposing authorization requirements.

Furthermore, the EU negotiators should seek from Singapore commitments to ensure that all measures relating to financial services are adopted, maintained, and applied in a non-discriminatory, transparent, and efficient manner. In particular, European financial institutions seek commitments that would require the trading partner to: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations according to fair and transparent criteria.

10) <u>Transport Services</u>

- <u>Maritime Transport</u>: This sector should be committed in the FTA. Singapore is one of the biggest and busiest harbours in the world that is used as a platform to serve the whole South East Region. A strong commitment in that sector would strengthen that position. Singapore follows the model schedule introduced in the GATS negotiations. The GATS additional commitments involving port services should be transcribed in the FTA commitment, as should be the commitments under Mode 1-3 on International Towage and on Classification Societies. However, seriously missing are commitments on auxiliary services like freight forwarding, stowage and warehousing, container station and depot services, cargo handling, etc.; Singapore specifically reserves the right of MFN exemption on certain of these concessions made in bilateral agreements. EU negotiators must ensure parity with all players in this important sector.

- Other transports services: Given that Singapore Airport is also among the most important one in the region and used as a hub by many airlines, including for air cargo, we would also like to see commitments on Air transport and ground handling services. The same is valid for Road transport and Services auxiliary to all modes of transport from Singapore, as there is currently nothing scheduled in these sectors, and containers shipped by sea must transit by road to neighbouring countries

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[5] *As described in a February 2004 report of the International Organization of Securities Commissions (IOSCO) - Technical Committee of the International Organization of Securities Commissions, "Regulation of Remote Cross-Border Financial Intermediaries," February 2004, available at http://www.iosco.org/library/pubdocs/pdf/ IOSCOPD162.pdf - many Members already provide exemptions from authorization requirements under domestic law for cross-border suppliers, taking into account one or more of the following factors:*

- *whether the investor is sophisticated (as defined in local law), thereby recognizing that the securities laws need not protect sophisticated investors in certain circumstances or to the same extent as other investors;*
- *whether the foreign supplier is well regulated in its home jurisdiction (i.e., unilateral or mutual recognition of other regulators);*
- *whether the foreign supplier solicits customers, or actively markets its services, in the local jurisdiction; and*
- *whether the securities transaction is "intermediated by" (i.e., conducted through) a locally authorized supplier.*

LIST OF ESF MEMBERS SUPPORTING THE ABOVE POSITION

1. Architects' Council of Europe –ACE
2. British Telecom Plc
3. Bundesverband der Freien Berufe – BFB
4. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
5. BUSINESSEUROPE
6. BUSINESSEUROPE WTO Working Group
7. Comité Européen des Assurances - C.E.A.
8. Confédération Fiscale Européenne - CFE
9. Commerzbank AG
10. Deutsche Bank AG
11. Deutsche Telekom AG
12. DHL Worldwide Network SA
13. DI – Confederation of Danish Industries
14. EK - Confederation of Finnish Industries
15. Ernst & Young
16. EuroCommerce
17. European Association of Cooperative Banks – EACB
18. European Banking Federation – FBE
19. European Community Shipowners' Associations – ECSA
20. European Express Association – EEA
21. European Federation of Engineering and Consultancy Associations – EFCA
22. European International Contractors – EIC
23. European Public Telecom Network – ETNO
24. European Savings Banks Group – ESBG
25. European Satellite Operators Association - ESOA
26. Fédération des Experts Comptables Européens – FEE
27. Fédération de l'Industrie Européenne de la Construction – FIEC
28. Foreign Trade Association - FTA
29. France Telecom
30. Goldman Sachs International
31. IBM Europe, Middle East & Africa
32. Irish Business and Employers Confederation
33. KPMG
34. Law Society of England & Wales
35. Lloyd's of London
36. Mouvement des entreprises de France – MEDEF
37. Oracle Europe, Middle East & Africa
38. PostEurop
39. Siemens AG.
40. Standard Chartered Bank
41. Svenskt Näringsliv (Confederation of Swedish Enterprise)
42. Telefónica SA
43. Telenor Group
44. The CityUK
45. Thomson-Reuters
46. Trägerverein Zenit e.V
47. TUI A.G.
48. Veolia Environnement
49. Vodafone
50. Zurich Financial Services