

To:

European Commission  
DG Competition  
B-1049 Brussels Belgium

## Free Software is competitive - flaws of argumentation by the Fairsearch initiative

The KDE community is deeply concerned by the wrong notion contained in the recent [complaint by the Fairsearch initiative claiming](#) that "distribution of Android at below-cost" could constitute anti-competitive behaviour or predatory pricing. Free Software platforms like KDE or Android are open to all actors without discrimination and at extremely low barriers of entry. The fact that Free Software solutions offer attractive alternatives to proprietary closed-source offerings makes it more competitive, not less.

KDE is one of the largest volunteer-driven Free Software<sup>1</sup> communities. The KDE community builds a free platform to create user experiences for desktop, mobile and other devices, and invites individuals and companies to extend and build upon this platform. Our community is a world-wide collaboration of companies and individuals that together create programs in an openly governed development process. Millions of users benefit from the programs that are distributed under a Free Software licence that guarantees the "[Four Freedoms](#)". This licence means that our users and contributors together create a common good that others can redistribute or build upon.

The KDE Community calls on the European Commission to very carefully analyze the Fairsearch complaint for attempts to reduce the strong competition of Free Software platforms like KDE or Android to proprietary non-free offerings. We encourage the European Commission to understand that Free Software truly fosters innovation and increases competition, and to protect the liberty of our contributors and those of other communities to collaboratively create and distribute Free Software as a common good.

**The "Four Freedoms" force actors to compete within markets, not for control over markets**

Free Software provides a level playing field for all competitors. By minimizing barriers of entry and eliminating discrimination of access to formats, standards and technologies, Free Software platforms

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<sup>1</sup> Often referred to as "open source". "Free Software" is the original and more accurate name which reflects all the aspects of the same phenomenon.

create comparable starting positions for all actors, leaving them with options to convince customers about (with) the functionality of their products and the quality of their services. Lock-in and artificial market segregation through discriminative licensing or essential technologies are systematically reduced. In fact, the most popular Free Software licence, the GPL, clearly forbids any kind of discrimination of use.

Consumers benefit from this openness by having choice between multiple interoperable products and by lower prices through increased competition. This is because Free Software implies open standards accessible to any party willing to implement them. The Free Software nature of the platforms fosters the proliferation of technical understanding and skills, improving the chances for the development of a more diverse, less concentrated technology business ecosystem. These concrete opportunities for economic development specifically in the European Union are endangered if Free Software platforms are penalized because of misunderstood complaints of predatory pricing.

The claim of anti-competitiveness of Free Software platforms is untenable. Even in the extraordinary situation where only one entity contributes to development, the licences under which the products are distributed explicitly rule out almost all typical forms of anti-competitive behaviour like exclusive dealing (for example through selective partnership licensing programs), any kind of fixed or barrier pricing or territorial divisions often employed by proprietary vendors. While trademarks can be used to limit platform fragmentation, they will not leverage control over competing products based on the Free Software platform itself. For example, Kindle Fire and Facebook Phone are products build upon the Android Open Source Project platform without any further restrictions.

Because the open, competitive nature of Free Software platform fosters confidence in users and vendors that the risk of undue lock-in is minimal, an obvious trend towards de facto standardization on open platforms is observable in many technological fields including the mobile space. Since actors are usually not inclined to voluntarily return to the strong lock-in of proprietary platforms, vendors of proprietary platforms have shown a tendency towards hampering the emergence of Free Software platforms by spreading fear, uncertainty and doubt. Volunteer-driven Free Software communities rely on regulators to identify these attempts and to provide protection of open innovation against the vested interest of strong proprietary players.

## Conclusion - Free Software platforms are competitive by nature

The KDE Community is asking the European Commission to protect the liberty to develop and distribute platforms under accepted Free Software licences providing the Four Freedoms to all potential users and to derivative works, and to recognize the overwhelming benefit to the public provided by open and collaborative innovation processes. We have shown that the elements of Free Software licences largely eliminate the possibility of anti-competitive behaviour, especially by forbidding discrimination between users of the product. The predatory pricing claims against Free Software platforms in the recent Fairsearch complaint are wrong in substance and hurtful to collaborative development and open innovation.

Sincerely,

Mirko Boehm  
KDE Community