

Fair Treatment and Affirmative Actions Towards Free Software by the Public Administration

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Why Affirmative Actions Should NOT Occur

- Equality of arms
- **Competition** solely on tech merits, value for money
- Tech neutrality
- Preserving the market (companies)
- There is no such a thing as a free lunch (AKA “get the facts” AKA “it's the TCO, dummy”)

Procurement

- Procurement is based on games (as in the gaming theory)
- Decision now with limited or insufficient:
 - knowledge (current situation, **future**)
 - handles on the market
- Aims:
 - receive the **right** price
 - minimize risks
 - “social” spillovers

Affirmative Actions

- Policy decision
- Alter the established rules for one game, in order to balance the likelihood of success of a given solution over another
 - EG, favor those solutions where disadvantaged categories of workers are employed
- By:
 - **mandating** a solution and prohibiting others
 - establishing a **threshold** (admission **criteria**)
 - putting more **weight** on one solution over another

Why Affirmative Actions in Software Procurement?

- Is it necessary?
- Can rational decisions be implemented without policy decisions?
 - EG: consider “Exit Costs” in TCO?
 - EG fair treatment rules to ALL solutions?
- Currently, evident **inequality of arms** due to.
 - Inertia of the installed basis (pendulum is permanently askew)
 - Cultural Gap (also creates FUD)
 - Procurement models (no innovation in tenders)

EXIT THROUGH

THE GIFT SHOP

Exit Costs

- Entrance is cheap, exit is costly
- Lock-in, an analogy
- It's an infinite loop
 - I cannot afford switching the whole system
 - So I am locked in until I decide to invest enough
 - “I can quit smoking any time, I have done it hundreds of times”
- The game perpetuates the inefficient situation through a series of short terms decisions that are individually rational, but collectively are madness.

How Affirmative Can be Implemented

- Free, Open Source Software is not a technology, it's a set of rights
- Value independence, no lock-in
- Value spillovers (as a matter of policy)
- Value long term costs/advantage
- Need for a more solid procurement legal framework in countries like Italy
- Need clear policies acknowledging all of the above

A Recent Example

- Piedmont Law
 - Discussed it the last IFOSS Law R.
<http://www.ifosslr.org/ifosslr/article/view/38>
- Regional law binding as such only onto the Region and entities subject to its direct power
- Favors adoption of Free Software and Open Standards for the software procured by the Region
- Challenged on “conflict of powers” rules, i.e., involves competition rules, reserved to the Central State

Decision

- Stronger point of the Constitutional Court:
 - “Finally, it must be once more reminded that the concepts of free software and software with inspectable code are not notions concerning a given technology, brand or product, instead they express a legal characteristic. At the end of the day, what discriminates between free and proprietary software is the different legal arrangement of interest (licence) upon which the right of using the program is based; and the choice concerning the adoption of one or the other contractual regime belongs to the will of the user.
 - It follows that the damage to competition feared by the counsel of the State with regard to the law in question, is not envisaged.”
- Here, the conflict of powers does not occur

Why affirmative Actions Should NOT Occur: An Answer

- Equality of arms
- **Competition** solely on tech merits, value for money
- Tech neutrality
- Preserving the market (companies)
- There is no such a thing as a free Lunch (AKA “get the facts”)