

# Free ICT Europe

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*Supporting the development of an open and sustainable secondary market in Europe for the service, maintenance and sales of Information Communication and Technology (ICT) Systems and Software.*

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Free ICT Europe (FIE) is a non-profit foundation actively promoting the ICT<sup>1</sup> Secondary Market within Europe. Our objective is to secure the right of ownership and the freedom for consumers and businesses alike to freely choose their sales, maintenance and repair providers.

We can achieve this by addressing the restrictive practices undertaken by Original Equipment Manufacturers (OEMs) and software publishers, ensuring serviceability is included as a key component of the Digital Agenda, promoting common standards for reuse and resale of equipment and software and achieving contract transparency to protect end users against unfair business practices.

FIE brings together organisations from the ICT secondary market under the banner of “Freedom to Support, Repair and Resell”. We represent the interests of all operators within this market including Third Party Maintainers, Out Of Warranty Repairers, ICT Refurbishers, ICT Brokers, Spare Parts Suppliers, Independent Integrators, Software Support Organisations, Used Software Resellers and Rental and Leasing Companies.

## Value of the ICT Secondary Market

The ICT Secondary Market is a critical source of value for European Small to Medium Enterprises (SMEs), Multinational Companies and Publicly owned entities. By ensuring access to locally sourced ICT services and products these organisations have been able to extend the life and improve the service to their ICT assets while realising better value. More than €10bn is saved each year by organisations operating in Europe thanks to the value and competition delivered by these local European companies.

Mainly composed of independent SMEs and representing over 50,000 European jobs in a market worth €30bn, the Secondary Market is characterized by a highly skilled European based workforce. With the emergence of a software Secondary Market, the potential growth of this market is expected to be worth €90bn and an additional 100,000 European jobs in the coming years.

Supporting this local element of the global knowledge economy would anchor business in Europe, support the creation of jobs, benefit the economy and increase European Competitiveness.

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<sup>1</sup> *Information and Communication Technology*

## Restrictive Practices

Today the realisation of that potential growth is threatened by the restrictive processes and policies applied by OEMs<sup>2</sup> and software publishers in order to lock in end users. As part of the ongoing debate between Intellectual Property Rights and Competition, OEMs and software publishers validate these restrictive practices behind the shield of Intellectual Property Rights, legitimizing them in the minds of their end users and preventing the growth of an effective, competitive, European Secondary Market.

These practices include:

- Penalties or fees applied for all Secondary Market products not sourced through OEM controlled channels
- Retrospective licensing of firmware<sup>3</sup> and imposition of new restrictions on use
- Restricted access to firmware and software fixes
- Abuse of transfer restriction rules;
- Limited spare parts accessibility and/or quality compatible spare parts access; and
- Retrospective changes to terms of use of Software

If these practices are left unchallenged, Europe will be characterised by an ICT environment devoid of innovation and effective competition that excludes local companies from providing local services. This will have broad and long term detrimental consequences for the European Union from an economic, social and environmental standpoint.

### Economic Consequences

**Lack of any meaningful competition:** the restrictive practices of OEMs and software publishers eliminate an End User's freedom to choose service and maintenance providers leading to a lack of any meaningful competition with independent providers, such a lack of competition opens the door for OEMs and software publishers to increase market prices.

**Devaluing assets:** Restrictions on transfer of licences, activation codes and software devalues an End User's assets overnight with the resultant value being near to zero, potentially wiping out millions from the balance sheets of many European Union companies.

**Closed Public Procurement:** Where only OEMs and software publishers and approved partners, offering OEM services, can be compliant with public tendering requirements it is impossible for independent operators, including local SMEs, to participate in public tendering.

**Higher costs for business:** Lack of access to Secondary Market equipment and software and the resultant higher cost will affect the ability of the European Union to compete as a location for hosting ICT services and delay investments in ICT improvements or replacements.

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<sup>2</sup> Original Equipment Manufacturer; legal entity that is the owner of the brand or trademark under which the equipment / product was placed on the market

<sup>3</sup> Firmware is also often known as Microcode, Machine Code, Microprogram, Driver, Microsoftware, Micro Instruction Set, Internal Software, Embedded Software/Code etc.

## Social Consequences

**Jobs lost:** Operators within the European Union Secondary Market deliver all of their services from a European based workforce, unlike OEMs and software publishers that 'off shore' as many of their services out of Europe as possible. The OEM instigated barriers will lead to losses in the existing workforce and fail to realise the potential job creation the Secondary Market can offer.

**Local businesses suffer:** Allowing the restrictive practices of the OEMs and software publishers to continue will prevent the growth of the Secondary Market in Europe, stifling opportunity for local businesses to participate in this lucrative industry. Such local businesses can provide highly skilled job opportunities and contribute taxes directly back to their member states unlike OEMs which may be based elsewhere.

**Stifling innovation:** There is no opportunity in a restricted market for innovative European companies to participate, bringing new services to the European market thus adding significant value to the European economy. Supporting European business and SMEs in the knowledge economy requires that we ensure the economy is open for them to participate in.

## Environmental Consequences

**Increased waste:** Lack of reuse and repair/refurbishing in the ICT sector shortens the product life-cycle, increases e-waste and frustrates the realisation of a circular economy.

**Forced obsolescence:** By restricting end user access to the Secondary Market, whether for repair or replacement, the OEM's can force product obsolescence rates up and increase the pace of their product lifecycles. This increases the amount of product materials in the environmental landscape.

**Sourcing Raw Materials:** New products result in a far higher consumption of resources. Meeting this demand requires mining raw materials, including certain metals which cannot be captured in recycling, leading to an increased environmental impact.

## Supporting an ICT Secondary Market for the European Union

For us to restore and ensure fair competition in the European Secondary ICT Market we must demand that:

- Abusive and non-proportionate vertical restraints set up by OEMs and software publishers are removed.
- Serviceability and resale are included as key features of the Digital Agenda.
- Common standards and legislation for re-use repair and resale of equipment and software, including license transfers, are developed to increase the re-use of ICT equipment, parts and software
- Contract transparency is provided for in legislation to protect end users against unfair business practices.