

Neelie Kroes
Commissioner for Competition
European Commission
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October 19, 2009

Dear Commissioner Kroes,

Oracle should not be permitted to acquire its competitor, MySQL

Introduction

We are writing to express our opposition to the proposed acquisition of MySQL as part of the larger merger between Sun Microsystems and Oracle Corporation.

Richard Stallman¹ is a software developer and software freedom activist and is the main author of the GNU General Public License, the most widely used free software license. Stallman launched the Free Software Movement in 1983 and led the development of the GNU operating system (normally used together with the kernel Linux).

Knowledge Ecology International (KEI)² is a non-profit public interest organization, supporting work carried out earlier by the Consumer Project on Technology (CPTech), an organization that has in the past participated in a number of merger reviews, including those involving legal publishing, retail distribution, and media concentration and telecommunications regulation. KEI uses MySQL to power several different web page platforms, including those run by Free/Libre/ and Open Source (FLOSS) content management systems such as Joomla, Drupal and Wordpress.

The Open Rights Group (ORG)³, a non-profit company founded in 2005 by 1,000 digital activists, is the UK's leading voice defending freedom of expression, privacy, innovation, consumer rights and creativity on the net.

The European Commission should block Oracle's acquisition of MySQL as part of its acquisition of Sun Microsystems.

Oracle seeks to acquire MySQL to prevent further erosion of its share of the market for database software licenses and services, and to protect the high prices now charged for its proprietary database software licenses and services.

If Oracle is allowed to acquire MySQL, it will predictably limit the development of the functionality and performance of the MySQL software platform, leading to profound harm to those who use MySQL software to power applications.

Oracle is the leading seller of proprietary database software designed for very large enterprises. In this

1 http://en.wikipedia.org/wiki/Richard_Stallman

2 <http://www.keionline.org>

3 <http://www.openrightsgroup.org/>

market space, Oracle has market dominance, and charges very high prices and earns hefty profits. In other segments of the market, Oracle has faced more competition from other competitors for database software, including proprietary products such as Microsoft SQL Server, Sybase and IBM's DB2, but also from FLOSS platforms, including in particular MySQL.

MySQL is made available to the public in two parallel ways. Most users obtain it as free/libre software under the GNU General Public License (GPL) version 2; the code is released in this way gratis. MySQL is also available under a different, proprietary license for a fee.

This approach was able to provide (1) an attractive platform for developers looking to use FLOSS, and secured MySQL enormous mind share, particularly in supporting content rich web pages and other Internet applications, and (2) the ability for paying clientèle to combine and distribute MySQL in customizations that they do not want to make available to the public as free/libre software under the GPL. With excellent management and considerable trust within the user community, MySQL became the gold standard for web based FLOSS database applications.

MySQL is the "M" in LAMP, an acronym coined in April 1998, for an open source web server software bundle comprised of the GNU/Linux operating system, the Apache HTTP server software, the database program MySQL, and PHP, a web scripting language. Collectively these applications are used to build millions of general purpose web applications, including many of the most important web based applications on the Internet. According to Sun, there are more than 65,000 downloads of the MySQL software per day.

Over time, MySQL developed greater functionality, dependability and improved in performance, and became a very important element of the database market – much greater than can be measured by market share analysis based on revenues.

MySQL is also creating substantial competitive pressure on prices for proprietary databases, leading to moderation or lowering of licensing fees from Oracle and Microsoft, as well as defection of many enterprise database services to a MySQL platform. If one considers proprietary software a good thing, this reduction in their prices is an instance of the economic benefit that we seek from competition. Many of the larger users that form the backbone of Oracle's cash flow have or are expected to evaluate the benefits of migrating database services to a MySQL platform. While Oracle's database is the dominant player today for the "old" database market, MySQL is the dominant player for the "new," emerging database markets, and is seen by Oracle as the most important competitor for the future.

Oracle made an earlier effort to buy MySQL in 2006, but the management rejected Oracle's offer, in part because Oracle would not disclose its plan for MySQL, and some members of the MySQL management team were concerned that Oracle was only acquiring MySQL to curb its advances in the marketplace.

MySQL was acquired by Sun in February 2008, in a transaction welcomed by many users because of Sun's good reputation among advocates of FLOSS software, and a belief that Sun would position MySQL as a strong competitor. Under Sun, there was considerable staff turnover, but the core software product continued to expand and improve.

Defenders of the Oracle acquisition of its competitor naively say Oracle cannot harm MySQL, because a free version of the software is available to anyone under GNU GPL version 2.0, and if Oracle is not a good host for the GPL version of the code, future development will be taken up by other businesses and individual programmers, who could freely and easily "fork" the GPL'd code into a new platform. This defense fails for the reasons that follow.

MySQL uses the parallel licensing approach to generate revenue to continue the FLOSS development of the software. If Oracle acquired MySQL, it would then be the only entity able to release the code other than under the GPL. Oracle would not be obligated to diligently sell or reasonably price the MySQL commercial licenses. More importantly, Oracle is under no obligation to use the revenues from these licenses to advance MySQL. In making decisions in these matters, Oracle is facing an obvious conflict of interest – the continued development of a powerful, feature rich free alternative to its core product.

As only the original rights holder can sell commercial licenses, no new forked version of the code will have the ability to practice the parallel licensing approach, and will not easily generate the resources to support continued development of the MySQL platform.

The acquisition of MySQL by Oracle will be a major setback to the development of a FLOSS database platform, potentially alienating and dispersing MySQL's core community of developers. It could take several years before another database platform could rival the progress and opportunities now available to MySQL, because it will take time before any of them attract and cultivate a large enough team of developers and achieve a similar customer base.

Yet another way in which Oracle will have the ability to determine the forking of MySQL relates to the evolution of the GNU GPL license. GPL version 2.0 (GPLv2) and GPL version 3.0 (GPLv3) are different licenses and each requires that any modified program carry the same license as the original. There are fundamental and unavoidable legal obstacles to combining code from programs licensed under the different GPL versions. Today MySQL is only available to the public under GPLv2.

Many other FLOSS software projects are expected to move to GPLv3, often automatically due to the common use of the "any later version" clause. Because the current MySQL license lacks that clause, it will remain GPLv2 only and it will not be possible to combine its code with the code of many GPLv3-covered projects in the future. Given that forking of the MySQL code base will be particularly dependent on FLOSS community contributions - more so than on in-company development - the lack of a more flexible license for MySQL will present considerable barriers to a new forked development path for MySQL.

We note that Oracle has been conspicuously silent about its plans for MySQL since the announcement of the Sun acquisition, until very recently. Oracle CEO Larry Ellison, in the first public statement on the subject, insisted that Oracle will not spin-off MySQL after the merger and also made the outlandish claim that Oracle's product was not in competition with MySQL. While some merger defenders have suggested that the MySQL acquisition will bolster Oracle's position with respect to competition from Microsoft's SQL Server, it is naturally more likely that Oracle will prioritize protecting its core product, the Oracle proprietary database, from further erosion of market share and the shrinking of licensing fees, and this will most efficiently be accomplished by curbing the growth and improvement of the free version of MySQL.

We recognize the support Sun provides to increase competition in numerous markets through its support of FLOSS and open standards. We also recognize that Oracle's acquisition of Sun may be essential for Sun's survival. However, Oracle should not be allowed to harm consumer interests in the database market by weakening the competition provided by MySQL. For the reasons elucidated above, we ask that you block Oracle's acquisition of MySQL.

Sincerely,

James Love and Malini Aisola, Knowledge Ecology International (KEI)

Richard Stallman

Jim Killock, Open Rights Group (ORG)

cc: Philip Lowe, Director General Competition, European Commission, DG Competition