

Commission has broadened this category to include entities that have been subject to actions for the same or similar conduct by other federal agencies or state or local agencies. The law violations prosecuted by the Commission are frequently very similar to violations prosecuted by other federal, state, and local law enforcement agencies.¹⁵ It is therefore appropriate, in considering whether to exclude entities from lenient treatment, to consider whether similar conduct has been subject to enforcement efforts by such agencies.

Second, SBREFA also suggests excluding violations that pose serious health, safety, or environmental threats. The Commission will, in addition to such risks, also consider serious economic injury, as that form of injury is the type most often encountered in Commission cases, and in many instances may cause as much serious injury as that arising from health, safety, or environmental threats.

Part C—Request for Comments

Members of the public are invited to comment on any issues or concerns that they believe are relevant or appropriate to the policies described above. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies specific issues on which it solicits public comments. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Should the Commission revise in any way the policies that it has adopted to assist small businesses and other small entities? If so, please provide specific suggestions.

(2) How would the revisions affect the benefits provided by the current policies?

(3) Are any of the criteria or means of guidance that the Commission has used in establishing small business compliance assistance and civil penalty leniency policies for small businesses and other small entities inappropriate? If so, please explain.

(4) Are there any other criteria or economical means of guidance that the

Commission should use? If so, please elaborate.

Authority: Secs. 213 and 223, Pub. L. 104-121, 110 Stat. 847.

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 971-0049]

Autodesk, Inc.; Softdesk, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Autodesk—a San Rafael, California-based developer and marketer of computer-aided design (CAD) software which intends to acquire Softdesk, Inc.—from reacquiring the “IntelliCADD” CAD engine that Softdesk recently sold to Boomerang Technology, Inc. The complaint accompanying the consent agreement alleged that Autodesk’s \$90 million acquisition of Softdesk, as originally proposed, would have substantially lessened competition in the development and sale of CAD software engines.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Howard Morse, Federal Trade Commission, S-3627, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-2949.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission’s rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent

agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for March 31, 1997), on the World Wide Web, at “http://www.ftc.gov/os/actions/htm.” A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission’s rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (“the Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Agreement”) from Autodesk, Inc. (“Autodesk”) and Softdesk, Inc. (“Softdesk”).

The proposed Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement’s proposed Order.

The Commission’s investigation of this matter concerns a proposed acquisition by Autodesk of Softdesk. In December 1996, Autodesk and Softdesk entered into an Agreement and Plan of Reorganization whereby Autodesk will acquire 100% of the voting securities of Softdesk in exchange for share of Autodesk common stock with a value of \$90 million (the “Acquisition”).

The Agreement Containing Consent Order would, if finally accepted by the Commission, settle charges that the Autodesk acquisition of Softdesk as originally proposed may have substantially lessened competition in the development and sale of computer aided design (“CAD”) engines for Windows-based personal computers in the United States or in North America. The Commission has reason to believe that Autodesk’s original proposal to acquire Softdesk violates Section 5 of the Federal Trade Commission Act and that the acquisition, if consummated, would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an

¹⁵ In addition, the Commission often works with the State Attorneys General and other federal agencies, such as the United States Post Office, to investigate conduct that may violate laws enforced by the Commission. In cases where we work with certain agencies, the Commission must often enter conduct Orders to ensure that the violative behavior is prohibited nationwide.

effective remedy eliminates likely anticompetitive effects.

The Proposed Complaint

According to the Commission's proposed complaint, Autodesk is a public company that develops and markets computer-aided design ("CAD") software for use in the architecture, engineering and construction (the "AEC") industry. Autodesk offers a portfolio of software products including a CAD engine marketed and sold under the name "AutoCAD," for use on Windows-based personal computers. Autodesk has had annual sales in excess of \$530 million. Softdesk has had annual sales in excess of \$40 million. Softdesk offers a portfolio of applications software that is used in conjunction with and to supplement CAD engines, primarily AutoCAD. Softdesk also was developing and had tested a CAD engine, referred to as "IntelliCADD," for use on personal computers that would be used as a substitute and replacement of AutoCAD.

According to the Commission's proposed complaint, a relevant line of commerce within which to analyze the effects of Autodesk's acquisition of Softdesk is the market for CAD engines for Windows-based personal computers. CAD engines are critical to architects and engineers to plan and design everything from manufactured products, to buildings, to utilities, and water treatment plants. The complaint alleges that there are no economic substitutes for CAD engines for Windows-based personal computers. CAD engines for Unix-based computers, the only theoretical alternative, are inadequate substitutes because of the higher costs to acquire the hardware and software and higher costs to maintain and service.

The Commission's proposed complaint further alleges that Autodesk is the dominant provider of Windows-based CAD engines, accounting for nearly 70% of the installed base, and alleges that the relevant U.S. or world market for Windows-based CAD engines is highly concentrated.

The complaint further alleges that de novo entry or fringe expansion into the relevant market sufficient to deter or defeat reductions in competition resulting from Autodesk's acquisition of Softdesk and the IntelliCADD technology would not be timely or likely. According to the proposed complaint, developing a CAD engine would require an expenditure of

substantial sunk costs and would be time-consuming. The large installed base of AutoCAD users necessitates that any new CAD engine developed and offered in the market offer file compatibility and transferability to AutoCAD in order to gain sales. Users of AutoCAD have a large number of drawings in the AutoCAD format. Moreover, many users must share files they create with others who must be able to read and edit those files using their CAD software. Since most engineers use AutoCAD, any alternative CAD engine must have the capability to read and be compatible with AutoCAD files without losing substantial amounts of data or information.

According to the complaint, Softdesk's IntelliCADD product was being developed to compete directly with and to replace AutoCAD as a pc-based CAD engine. IntelliCADD was in the final stages of testing and was within months of introduction to the market when the current proposal by Autodesk to acquire Softdesk was announced. The IntelliCADD product, if brought to market, would have provided direct and significant competition to Autodesk in that it offered file compatibility and file transferability with AutoCAD, a feature that other pc-based CAD engines currently in the market do not offer. Furthermore, the Commission's complaint also alleges that some customers have already altered their buying decisions in anticipation of the introduction of IntelliCADD by delaying or postponing purchasing AutoCAD.

After being advised by Commission staff of these competitive concerns, Softdesk sold and transferred all of its rights and title to the IntelliCADD product to Boomerang Technology, Inc. ("Boomerang") on February 21, 1997. Boomerang is a company created and owned by the developer of the IntelliCADD product, a former Softdesk employee. Boomerang now has full rights and title to the IntelliCADD product and has assigned its rights to Visio Corporation ("Visio"). As a result, the IntelliCADD product is now under the control of an entity independent of Autodesk and Softdesk, which is free to fully develop and market the IntelliCADD product.

The proposed complaint alleges that the acquisition by Autodesk of the IntelliCADD product would have substantially lessened competition by, among other things, eliminating actual

and potential competition to Autodesk's AutoCAD product, likely resulting in continued high prices for CAD engines.

The Proposed Consent Agreement

The proposed Order accepted for public comment contains provisions that would prohibit either Autodesk or Softdesk from re-acquiring the IntelliCADD product, or any entity that owns or controls the IntelliCADD technology, without prior notice to the Commission for a period of ten (10) years. The purpose of this prohibition is to ensure the continued development and sale of the IntelliCADD product to compete with the merged Autodesk/Softdesk, to ensure that the IntelliCADD product remains in the hands of an independent competitor in the development and sale of CAD engines for Windows-based personal computers, and to remedy the lessening of competition as alleged in the Commission's complaint.

The proposed order would also prohibit Autodesk or Softdesk from enforcing any non-compete or confidentiality agreements against any former employees of Softdesk whose primary responsibility was the development of the IntelliCADD product that may now or in the future be an employee of Boomerang or its assigns. The purpose of these provisions is to ensure that Boomerang or its assigns remain a viable competitor to Autodesk and Softdesk in the development and sale of the IntelliCADD product, thereby fostering a competitive environment for the sale of CAD engines for Windows-based personal computers.

Pending final issuance of this proposed order, Autodesk and Softdesk have also entered into an Interim Agreement whereby they have agreed to be bound to the provisions and terms of the proposed Order pending and until final issuance by the Commission.

The purpose of this analysis is to facilitate public comment on all aspects of the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

Donald S. Clark,

Secretary.

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