



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

File

Office of the Secretary

July 10, 1996

Susan M. Miller, Vice President  
and General Counsel  
Alliance for Telecommunications  
Industry Solutions  
1200 G Street, N.W., Suite 500  
Washington, D.C. 20005

RE: Dell Computer Corporation  
Docket No. C-3658

Dear Ms. Miller:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement with Dell Computer Corporation. Your comment was placed on the public record pursuant to Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, and was given careful consideration by the Commission.

In your comment you agreed that Commission action is appropriate in cases where intentional non-disclosure of patents results in a firm's obtaining market power. However, you also expressed the view that a negligent failure to disclose one's patent rights should not be of antitrust concern.

The order should not be read as creating a general rule that inadvertence in the standard-setting process provides a basis for Commission action. Commission enforcement actions such as the Dell case are brought on a case by case basis and are dependent on the specific facts of each case. For example, you noted that ATIS is ANSI-accredited and that ATIS uses and endorses ANSI procedures. ATIS does not mandate early disclosure of patents; instead, ATIS seeks to rely on marketplace incentives for early disclosure. In these respects, ANSI procedures differ from those of the association involved in Dell. In Dell, the association's intention was to create a non-proprietary standard, and voting companies were required to certify whether they had any potentially conflicting intellectual property interests. The expectations of participants in the two standard-setting processes differ, and the affirmative representation of Dell therefore had different ramifications.

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You also suggested that Section IV of the order should prohibit intentional non-disclosure of patent rights, whether or not in response to a written request from a standard-setting organization. You also believe that Dell should not be held in violation of the order if Dell intentionally fails to search for a patent in response to a written request from a standard-setting association.

In the context of the facts of this case, and after reviewing the comments filed regarding the proposed consent agreement, the Commission has determined that the public interest would best be served by issuing the consent order as signed. Thank you again for your comment.

For your information, a copy of the Commission statement that accompanied issuance of the complaint and final order is enclosed, together with a copy of the dissenting statement of Commissioner Azcuenaga.

By direction of the Commission, Commissioner Azcuenaga dissenting.



Donald S. Clark  
Secretary

Enclosures