

United States Federal Trade Commission

For Your Information: June 17, 1996

FTC FINDS DELL CORPORATION RESTRICTED COMPETITION BY FAILING TO DISCLOSE PATENT RIGHTS IN STANDARD-SETTING PROCESS (In Re: Dell Corporation, Docket No. C-3658, File No. 931 0097)

The Federal Trade Commission has given final approval to a consent agreement with Dell Computer Corporation settling charges that it restricted competition in the personal computer industry and undermined the standard-setting process by threatening to exercise undisclosed patent rights against computer companies adopting the VL-bus standard. The Commission's action makes the consent order provisions binding.

Dell, a leading U.S. manufacturer of personal computers, is based in Austin, Texas.

Under the final order, Dell cannot enforce its patent rights against computer manufacturers using the VL-bus, a mechanism to transfer instructions between the computer's central processing unit and its peripherals, such as a hard disk drive or video display hardware. VL-bus is the technology of choice in computers that use "486" chips.

In announcing its approval of the slightly modified agreement, the Commission said in a statement, "This case involved the standard for VL-bus...During the standard-setting process, VESA [Video Electronics Standard Association] asked its members to certify whether they had any patents, trademarks, or copyrights that conflicted with the proposed VL-bus standard; Dell certified that it had no such intellectual property rights. After VESA adopted the standard -- based, in part, on Dell's certification -- Dell sought to enforce its patent against firms planning to follow the standard.

"We believe that in the limited circumstances presented by this case, enforcement action is appropriate. In this case -- where there is evidence that the association would have implemented a different non-proprietary design had it been informed of the patent conflict during the certification process, and where Dell failed to act in good faith to identify and disclose patent conflicts -- enforcement action is appropriate to prevent harm to competition and consumers."

The proposed consent agreement with Dell was announced for a public comment period in November, 1995. The Commission noted that the proposed order generated

considerable public comment and that it was issuing a statement “to improve understanding of this enforcement action.”

“The remedy in this case is carefully circumscribed,” the Commission statement says. “Moreover, the remedy in this case is consistent with those cases, decided under the concept of equitable estoppel, in which courts precluded patent-holders from enforcing patents when they failed properly to disclose the existence of those patents. In this case, Dell is precluded from enforcing the patent only against those implementing the relevant standard.”

The FTC statement noted that some of those who commented on the original proposed agreement suggested a FTC endorsement of a certain form of standard-setting process. “On the contrary,” the statement says, “the Commission’s enforcement action does not address, and is not intended to address, any of these broader issues.”

“Other commenters asked whether the Commission intended to signal that there is a general duty to search for patents when a firm engages in a standard-setting process. The relief in this matter is carefully limited to the facts of the case,” the statement says. “[T]he relief in this case should not be read to impose a general duty to search.”

The Commission noted that other commenters suggested that the theory supporting this law enforcement action “could impose liability for an unknowing (or ?inadvertent’) failure to disclose patent rights. Again, the Commission’s enforcement action is limited to the facts of this case, in which there is reason to believe that Dell’s failure to disclose the patent was not inadvertent. The order should not be read to create a general rule that inadvertence in the standard-setting process provides a basis for enforcement action. Nor does this enforcement action contain a general suggestion that standard-setting bodies should impose a duty to disclose,” the statement says.

“Finally, some commenters suggested that private litigation is sufficient to address this type of controversy,” the statement says. “In fact, the judicious use of Section 5 [of the FTC Act] -- culminating in carefully tailored relief -- is particularly appropriate in this type of case, in which the legal and economic theories are somewhat novel.”

The commission statement concluded by noting the important, procompetitive role of standard-setting organizations. “Nevertheless, a standard-setting organization may provide a vehicle for a firm to undermine the standard-setting process in a way that harms competition and consumers. We believe that the Commission’s enforcement action in Dell strikes the right balance between these important objectives,” the statement says.

The commission vote to issue the consent in final form was 4-1, with Commissioner Mary L. Azcuenaga dissenting. In her dissenting statement Commissioner Azcuenaga said, "The public comments, the majority and I all agree that [the FTC Act] prohibits knowing deception of standards makers to acquire market power..." She observed that the novelty of the case, "the reason it has been characterized as precedent-setting," is that the complaint contains no "allegation that Dell intentionally and knowingly misled VESA," and no allegation that Dell acquired market power. Azcuenaga said, "I do not favor a departure from the usual requirement that intent must be shown to establish liability," and that the majority "fails to articulate its standard in any comprehensible way, much less to explain why it is appropriate in the name of competition to upset a standards-setting process that seems to be well established and working well."

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$10,000.

Copies of the complaint, the consent agreement, the Commission's statement and Commissioner Azcuenaga's dissenting statement are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 1-866-653-4261. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710. FTC news releases and other materials also are available on the Internet at the FTC's World Wide Web site at: <http://www.ftc.gov>

Media Contact:

Claudia Bourne Farrell,
Office of Public Affairs,
202-326-2181

Staff Contact:

William J. Baer,
Bureau of Competition,
202-326-2932