

INTELLECTUAL PROPERTY COMMITTEE

April 10, 2008

Federal Trade Commission  
Office of the Secretary  
Room 134-H (Annex D)  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: In the Matter of Negotiated Data Solutions LLC (FTC File No. 051 0094) –  
Comment on Proposed Consent Order

Dear Commissioners:

The Association of Corporate Counsel (“ACC”) is the world’s largest bar association exclusively serving in-house counsel. ACC is the voice of the in-house bar, serving members through networking, knowledge sharing, continuing legal education, and advocacy on behalf of in-house practice. Established in 1982, ACC now has more than 23,000 members in 75 countries employed by more than 10,000 companies. ACC’s members represent all of the Fortune 100 companies, and internationally, its members represent 74 of the Global 100 companies. Unlike other associations, ACC’s membership is made up entirely of in-house counsel. Therefore, it consists entirely of not only intellectual property owners but also members of the FTC’s regulated community.

ACC has 16 Committees serving its membership’s substantive and executive practice concerns. ACC’s Intellectual Property (“IP”) Committee is one of ACC’s largest, most active and highly subscribed Committees worldwide. ACC’s IP Committee’s large and broad membership represents the entire spectrum of intellectual property owners and companies subject to regulation by the FTC. Therefore, it is uniquely qualified to represent accurately and objectively the concerns and positions of industry and consumers relative to issues arising from the interplay of intellectual property and antitrust laws.

Accordingly, ACC’s IP Committee is respectfully submitting these comments in support of the majority decision in *In the Matter of Negotiated Data Solutions LLC* (FTC File No. 051 0094). ACC’s members have experienced first-hand the damaging effects of patent hold-ups in the standard setting context. Such conduct undermines competition, and discourages pro-competitive and beneficial standards setting activities and participation in such activities by well-intentioned companies. In addition, it raises prices to consumers, reduces choices and stymies innovation. More particularly, ACC’s IP Committee further concurs with the majority’s observations that

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“The impact of [N-Data’s] alleged actions, if not stopped, could be enormously harmful to standard-setting. Standard-setting organization participants have long worried about the impact of firms failing to disclose their intellectual property until after industry lock-in. Many standard-setting organizations have begun to develop policies to deal with that problem. But if N-Data’s conduct became the accepted way of doing business, even the most diligent standard-setting organizations would not be able to rely on the good faith assurances of respected companies. The possibility exists that those companies would exit the business, and that their patent portfolios would make their way to others who are less interested in honoring commitments than in exploiting industry lock-in. . . The process of establishing a standard displaces competition; therefore, bad faith or deceptive behavior that undermines the process may also undermine competition in an entire industry, raise prices to consumers, and reduce choices.”

ACC’s IP Committee supports the principles of transparency, fair dealing and the honoring of licensing commitments to companies that participate in the standards setting process and/or implement technologies adopted as an industry standard. These principles promote competition and benefit consumers and industry.

Accordingly, ACC’s IP Committee supports the issuance of the Complaint against the Respondent in this matter and acceptance by the FTC of the proposed Consent Agreement settling it.

Thank you for allowing ACC’s IP Committee the opportunity to submit these comments.

Sincerely,

Taraneh Maghamé  
Chairperson  
ACC Intellectual Property Committee

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