



Office of the Secretary

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

September 22, 2008

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Donald Deutsch
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Lin Lee
Vice President
Global Communities
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Re: *In the Matter of Negotiated Data Solutions LLC*
File No. 051-0094

Dear Ms. Yen, Mr. Lafontaine, Mr. Deutsch and Ms. Lee:

Thank you for your comments on behalf of Cisco Systems, Inc., International Business Machines Corporation, Oracle Corporation, and Sun Microsystems, Inc., regarding the proposed consent order accepted for public comment in the above-captioned matter. These companies are active participants in standards development processes at many standards development organizations. The Commission has reviewed your comments and has placed them on the public record of the proceeding.

Your letter expresses support for the Commission's action, and notes that the companies share the Commission's expressed concern that the conduct described in the Complaint can undermine the success of standard setting efforts and harm competition and the consuming public. In particular, your letter notes that standards development organization (SDO) policies that seek *ex ante* license assurances would not provide adequate protection if, after the industry is locked into a standard, a subsequent patent owner is free to repudiate a prior owner's assurance. Your letter suggests that "[w]hile SDOs should be encouraged to employ their own measures against such conduct, many SDOs are not well-positioned to monitor and police these situations in a manner sufficient to obviate any FTC oversight role." You argue that if the behavior challenged in the N-Data complaint became commonplace, standard setting participants would

Cisco Systems, Inc.
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Oracle Corporation
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lose confidence in *ex ante* licensing assurances. The resulting uncertainty is highly problematic from the standpoint of firms like yours “that need to make major investment decisions in the immediate wake of the voting to adopt a new industry standard.” To mitigate this uncertainty problem, your letter welcomes the Commission’s use of its authority under Section 5 of the FTC Act against the conduct described in the N-Data complaint.

Thank you for your interest in this matter. After considering all comments, including your comments, the Commission has determined that the public interest would be served best by issuing the Decision and Order in final form without modification.

By direction of the Commission, Chairman Kovacic dissenting.

Donald S. Clark
Secretary