

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

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In the Matter of)	
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AUTODESK, INC.,)	
a corporation)	Docket No. C-3756
and)	
)	DECISION AND ORDER
SOFTDESK, INC.,)	
a corporation.)	
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The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Autodesk, Inc. ("Autodesk"), and Softdesk, Inc. ("Softdesk"), and it now appearing that Autodesk and Softdesk, hereinafter sometimes referred to as the "Respondents," are willing to enter into an agreement containing an order to refrain from certain acts and providing for other relief, and Respondents having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of the Clayton Act and Federal Trade Commission Act; and

The Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, makes the following jurisdictional findings and enters the following order:

1. Respondent Autodesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 111 McInnis Parkway, San Rafael, California, 94903.

2. Respondent Softdesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Liberty Hill Road, Henniker, New Hampshire, 03242.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

Order

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent Autodesk" or "Autodesk" means Autodesk, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries (including, after the Acquisition, Softdesk, Inc.), divisions, groups and affiliates controlled by Autodesk, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "Respondent Softdesk" or "Softdesk" means Softdesk, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Softdesk, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

C. "Boomerang" means Boomerang Technology, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 241 Kalbaugh Street, Ramona, California, 92065.

D. The "Acquisition" means the purchase of Softdesk by Autodesk pursuant to the Agreement and Plan of Reorganization by and among Autodesk, Inc., Autodesk Acquisition Corporation and Softdesk, Inc., dated December 10, 1996.

E. "Respondents" means Autodesk and Softdesk.

F. "Commission" means the Federal Trade Commission.

G. "IntelliCADD Products" means the IntelliCADD software product and all technical system Documentation and user Documentation relating thereto identified as the "Acquired Assets" in the Technology Transfer Agreement entered into between Softdesk and Boomerang dated February 21, 1997.

H. "Documentation" means all supporting documentation associated with the IntelliCADD Products provided by Softdesk identified in the Technology Transfer Agreement entered into between Softdesk and Boomerang dated February 21, 1997.

II.

IT IS FURTHER ORDERED that Respondents shall take no action to interfere with the ability of Boomerang to recruit or employ Respondents' employees whose primary responsibility at Respondents was the development and/or programming of the IntelliCADD Products.

III.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire the IntelliCADD Products;

B. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in the IntelliCADD Products.

IV.

IT IS FURTHER ORDERED that the prior notification required by Paragraph III of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early

termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by Paragraph III of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II and III of this Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and reasonable notice, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to the Respondents, and without restraint or interference, to interview officers, directors, or employees of the Respondents, who may have counsel present.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on June 18, 2007.

By the Commission.

SEAL

Donald S. Clark
Secretary

ISSUED: June 18, 1997

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
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AUTODESK, INC.,)
 a corporation) File No. 971-0049
 and)
)
SOFTDESK, INC.,)
 a corporation.)
)
)

INTERIM AGREEMENT

This Interim Agreement is by and between Autodesk, Inc., a corporation organized and existing under the laws of the State of Delaware (“Autodesk”), Softdesk, Inc., a corporation organized and existing under the laws of the State of Delaware (“Softdesk”), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (the “Commission”).

PREMISES

WHEREAS, Autodesk has proposed to acquire all of the voting securities of Softdesk pursuant to the Agreement and Plan of Reorganization by and among Autodesk, Inc., Autodesk Acquisition Corporation and Softdesk, Inc., dated December 10, 1996 (“the proposed Acquisition”);

WHEREAS, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

WHEREAS, if the Commission accepts the Agreement Containing Consent Order (“Consent Agreement”), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm; and

WHEREAS, the entering into this Interim Agreement by Autodesk and Softdesk shall in no way be construed as an admission by Autodesk and Softdesk that the proposed Acquisition constitutes a violation of any statute; and

WHEREAS, Autodesk and Softdesk understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

NOW, THEREFORE, Autodesk and Softdesk agree, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission’s agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Autodesk and Softdesk agree to execute the Consent Agreement and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Autodesk and Softdesk sign the Consent Agreement.

2. Autodesk and Softdesk agree that, from the date Autodesk and Softdesk sign the Consent Agreement until the first of the dates listed in subparagraphs 2.a. and 2.b., they will comply with the provisions of this Interim Agreement:

a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date the Order is final.

3. Autodesk and Softdesk waive all rights to contest the validity of this Interim Agreement.

4. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, Autodesk and Softdesk shall permit any duly authorized representative or representatives of the Commission:

a. access, during the office hours of Autodesk and Softdesk and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Autodesk and Softdesk relating to compliance with this Interim Agreement; and

b. upon five (5) days' notice to Autodesk and Softdesk and without restraint or interference from them, to interview officers, directors, or employees of Autodesk and Softdesk who may have counsel present, regarding any such matters.

5. This Interim Agreement shall not be binding until accepted by the Commission.

Dated:

FEDERAL TRADE COMMISSION

AUTODESK, INC.

By: _____
Stephen Calkins
General Counsel

By: _____
Marcia K. Sterling
Vice President of Business Development and
General Counsel

SOFTDESK, INC.

By: _____
R. Drew Ogden
Vice President of Legal and Business
Development