

July 31, 1997

Mr. Donald S. Clark
Office of the Secretary
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Comment on Issues Relating to Joint Venture Project

Dear Mr. Clark:

I would like to take this opportunity to make a few comments in response to the FTC's Federal Register notice in connection with its Joint Venture Project.

ANSI administers and coordinates the voluntary consensus standardization system in the United States with the cooperation of federal, state and local governments. ANSI does not write standards; it serves as a catalyst for standards development by its diverse membership.¹ ANSI also is the United States representative to the two major, non-treaty international standards organizations: The International Organization for Standardization (ISO) and, through the United States National Committee, the International Electrotechnical Commission (IEC). Among other things, ANSI accredits standards developers and approves consensus standards as American National Standards if they meet certain criteria.

The voluntary consensus standards development process does involve the collaboration of competing companies and organizations. These competitors work together to set standards for products, services and processes in almost every industry sector including telecommunications, safety, information technology, petroleum, banking, healthcare and household appliances. The ANSI Procedures for the Development and Coordination of American National Standards provide two mechanisms for preventing abuses of the standards development process that may result in an unfair competitive advantage or a possible violation of the antitrust laws. As described below, ANSI accredited standards developers rely on procedural safeguards to (a) protect against unfair manipulations of the standards development process and (b) permit the use of patented technology in standards without conferring an unfair market advantage on the patent holder.

A. Due Process Safeguards

ANSI-accredited standards developers follow procedural requirements that are based on consensus and due process principles.² ANSI determines whether standards submitted to it by an accredited standards developer meet the necessary criteria to be approved as American National Standards. ANSI's approval of these standards is intended to verify that the principles of openness and due process have been followed and that a consensus of all interested parties has

been reached. In addition, ANSI considers any evidence that a proposed American National Standard is contrary to the public interest, contains unfair provisions or is unsuitable for national use.

ANSI recognizes that due process is not a defense to an antitrust claim. The benefit to relying on a standards development process that is based on due process principles is that any attempt to abuse the process for an improper purpose becomes very visible. As a result, it is difficult for any such conduct to go undetected and uncorrected.

B. ANSI's Patent Policy

This policy (which is very similar to the ISO's and IEC's patent policy relating to their international standards) provides that a standard may include patented technology if there are technical reasons to justify that approach. Any identified patent holder, however, must provide to ANSI a statement that the patent holder either will (a) make its technology available to those desiring to implement the standard without compensation to the patent holder or (b) license its technology under reasonable and non-discriminatory terms and conditions.

The purpose of this policy is to balance the rights of patent holders to exploit their government-granted monopoly with the rights of users of the standard. In other words, while the patent holder may enjoy the market power it receives from its patented technology, the patent holder should not be able to obtain any unfair market power as a result of the incorporation of that technology into a consensus standard.

ANSI appreciates having this opportunity to provide comments on the issues raised in the FTC's Federal Register Notice. If you have any questions please do not hesitate to contact me.

Sincerely,

Amy A. Marasco
Vice President and General Counsel

Footnotes:

1 The Institute is a unique partnership of approximately 1,300 companies, 250 professional, technical, trade, labor, academic and consumer organizations and some 40 government agencies. These members of the ANSI federation actually develop standards or otherwise participate in their development, contributing their time and expertise in order to make the system work.

2 Several of the requirements were instituted in response to certain Supreme Court decisions such as *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 108 S. Ct. 1931 (1988) and *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982).