

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

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

AGREEMENT CONTAINING CONSENT ORDER

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 referred to as the "proposed Respondents," are willing to enter into an agreement containing an order to cease and desist from making certain acquisitions and providing for other relief:

IT IS HEREBY AGREED by and between the proposed Respondents, by their duly authorized officers, and counsel for the Commission, that:

1. Proposed 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. Proposed 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. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.
4. Proposed Respondents waive:
 - a. any further procedural steps;

- b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. all rights to seek judicial review or otherwise to challenge or contest the

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 ten (10) years from the date this Order becomes final.

SIGNED this day of _____, 1997.

AUTODESK, INC.

BUREAU OF COMPETITION

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

Joseph G. Krauss
Counsel for the Federal
Trade Commission

**WILSON, SONSINI, GOODRICH &
ROSATI, P.C.**

APPROVED:

By: _____
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650 Page Mill Road
Palo Alto, California 94304
Counsel for Autodesk, Inc.

M. Howard Morse
Assistant Director
Bureau of Competition

SOFTDESK, INC.

George S. Cary
Senior Deputy Director
Bureau of Competition

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

William J. Baer
Director
Federal Trade Commission

HALE & DORR, LLP

By: _____
John C. Christie, Jr.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20005
Counsel for Softdesk, Inc.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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AUTODESK, INC.,)
 a corporation) File No. 971-0049
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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

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a corporation)	
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Autodesk, Inc. (“Autodesk”) entered into an Agreement and Plan of Merger with Softdesk, Inc. (“Softdesk”), whereby Autodesk agreed to acquire all of the outstanding shares of Softdesk, in violation of Section 5 of the Federal Trade Commission Act, as

B. THE PROPOSED ACQUISITION

4. In December 1996, Autodesk and Softdesk entered into an Agreement and Plan of Reorganization whereby Autodesk would acquire 100% of the voting securities of Softdesk in exchange for shares of Autodesk common stock with a value of \$90 million (the "Acquisition").

5. Autodesk is a public company that develops and markets computer-aided design ("CAD") software for the architecture, engineering and construction (the "AEC") industries. Autodesk offers a portfolio of software products including a CAD engine marketed and sold under the name "AutoCAD," for use with Windows operating systems on personal computers. Autodesk has had annual sales in excess of \$530 million.

6. Softdesk is a public company that also develops and markets CAD software for the AEC market. Softdesk has had annual sales in excess of \$40 million. Softdesk offers a portfolio of applications software that are used in conjunction with and to supplement CAD engines,

11. The relevant market for Windows-based CAD engines is highly concentrated. Autodesk commands a dominant market share of the Windows-based CAD engines in North America, controlling nearly 70% of the installed base with approximately 1.4 million seats.

12. Among CAD engines in the marketplace for use on Windows-based personal computers, Autodesk's AutoCAD product is viewed by many in the industry as the de facto standard for Windows-based CAD systems. There are other CAD engines available in the market for use on personal computers, with varying degrees of file compatibility and transferability with AutoCAD, which is necessary to be an effective competitor in this market.

E. CONDITIONS OF ENTRY

13. De novo entry or fringe expansion into the relevant market would require an expenditure of substantial sunk costs and would be time-consuming and, therefore, such entry is not likely.

14.

17. After being advised by Commission staff that Autodesk's acquisition of Softdesk raised competitive concerns in the market for personal computer-based CAD engines, Softdesk resumed negotiations with Boomerang and divested and sold all of its rights in the IntelliCADD product to Boomerang pursuant to a Technology Transfer Agreement dated February 21, 1997. On that same date, Boomerang assigned and sold all of its rights to the IntelliCADD product to Visio Corporation.

18. Softdesk's development of the IntelliCADD product provided the market with a potential CAD engine that offered file compatibility and transferability with AutoCAD, thus providing direct head-to-head competition to AutoCAD.

19. Customers who had tested the IntelliCADD product reacted favorably to it. Some customers delayed or postponed the purchase of AutoCAD in anticipation of IntelliCADD being made available in the market. By the time Autodesk agreed to acquire Softdesk, the IntelliCADD product was within months of being introduced in the market.

G. EFFECTS OF THE PROPOSED ACQUISITION

20. The acquisition by Autodesk of Softdesk's IntelliCADD product would have substantially lessened competition in the market for Windows-based CAD engines by, among other things:

- a. eliminating substantial, direct head-to-head competition between Autodesk and Softdesk;
- b.

Donald S. Clark
Secretary

SEAL:

ANALYSIS TO AID PUBLIC COMMENT ON THE PROVISIONALLY ACCEPTED CONSENT ORDER

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Autodesk, Inc. ("Autodesk") and Softdesk, Inc. ("Softdesk").

The proposed Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission's investigation of this matter concerns a proposed acquisition by Autodesk of Softdesk. In December 1996, Autodesk and Softdesk entered into an Agreement and Plan of Reorganization whereby Autodesk will acquire 100% of the voting securities of Softdesk in exchange for share of Autodesk common stock with a value of \$90 million (the "Acquisition").

The Agreement Containing Consent Order would, if finally accepted by the Commission, settle charges that the Autodesk acquisition of Softdesk as originally proposed may have substantially lessened competition in the development and sale of computer aided design ("CAD") engines for Windows-based personal computers in the United States or in North America. The Commission has reason to believe that Autodesk's original proposal to acquire Softdesk violates Section 5 of the Federal Trade Commission Act and that the acquisition, if consummated, would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates likely anticompetitive effects.

The Proposed Complaint

According to the Commission's proposed complaint, Autodesk is a public company that develops and markets computer-aided design ("CAD") software for use in the architecture, engineering and construction (the "AEC") industry. Autodesk offers a portfolio of software products including a CAD engine marketed and sold under the name "AutoCAD," for use on Windows-based personal computers. Autodesk has had annual sales in excess of \$530 million. Softdesk is also a public company that develops and markets CAD software for the AEC market. Softdesk has had annual sales in excess of \$40 million. Softdesk offers a portfolio of applications software that is used in conjunction with and to supplement CAD engines, primarily AutoCAD. Softdesk also was developing and had tested a CAD engine, referred to as "IntelliCADD," for use on personal computers that would be used as a substitute and replacement of AutoCAD.

According to the Commission's proposed complaint, a relevant line of commerce within which to analyze the effects of Autodesk's acquisition of Softdesk is the market for CAD engines for Windows-based personal computers. CAD engines are critical to architects and engineers to plan and design everything from manufactured products, to buildings, to utilities, and water treatment plants. The complaint alleges that there are no economic substitutes for CAD engines for Windows-based personal computers. CAD engines for Unix-based computers, the only theoretical alternative, are inadequate substitutes because of the higher costs to acquire the hardware and software and higher costs to maintain and service.

The Commission's proposed complaint further alleges that Autodesk is the dominant provider of Windows-based CAD engines, accounting for nearly 70% of the installed base, and alleges that the relevant U.S. or world market for Windows-based CAD engines is highly concentrated.

The complaint further alleges that de novo entry or fringe expansion into the relevant market sufficient to deter or defeat reductions in competition resulting from Autodesk's acquisition of Softdesk and the IntelliCADD technology would not be timely or likely. According

to the proposed complaint, developing a CAD engine would require an expenditure of substantial sunk costs and would be time-consuming. The large installed base of AutoCAD users necessitates that any new CAD engine developed and offered in the market offer file compatibility and transferability to AutoCAD in order to gain sales. Users of AutoCAD have a large number of drawings in the AutoCAD format. Moreover, many users must share files they create with others who must be able to read and edit those files using their CAD software. Since most engineers use AutoCAD, any alternative CAD engine must have the capability to read and be compatible with AutoCAD files without losing substantial amounts of data or information.

According to the complaint, Softdesk's IntelliCADD product was being developed to compete directly with and to replace AutoCAD as a pc-based CAD engine. IntelliCADD was in the final stages of testing and was within months of introduction to the market when the current proposal by Autodesk to acquire Softdesk was announced. The IntelliCADD product, if brought to market, would have provided direct and significant competition to Autodesk in that it offered file compatibility and file transferability with AutoCAD, a feature that other pc-based CAD engines currently in the market do not offer. Furthermore, the Commission's complaint also

The proposed complaint alleges that the acquisition by Autodesk of the IntelliCADD product would have substantially lessened competition by, among other things, eliminating actual

The purpose of this analysis is to facilitate public comment on all aspects of the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.