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**Re: Alternative Dispute Resolution for Consumer Transactions  
in the Borderless Online Marketplace**

Dell Computer Corporation welcomes the opportunity to submit these comments in response to the Initial Notice Requesting Comments published in the Federal Register on February 9, 2000. Dell respectfully requests that a Dell representative be permitted to participate as a panelist in the public workshop that the Commission and the Department plan to have on this subject.

Dell is the world's leading direct computer systems company, based on revenues of \$25.3 billion for the past four quarters, and is a premier provider of products and services required for customers to build their Internet infrastructures. The company ranks No. 78 on the Fortune 500, No. 210 on the Fortune Global 500 and No. 3 on the Fortune "most admired" lists of companies.

Dell has worked very hard to establish a top-flight reputation for customer service. Dell strongly believes that the first step in consumer satisfaction is a well-developed customer response program -- Dell's own experience has been that the vast majority of customer complaints can be resolved quickly and easily without resort to third-party dispute resolution services.

For those consumer disputes that cannot be resolved internally, however, the development of online alternative dispute resolution systems ("ADR") should be facilitated and encouraged. ADR can help solve one of the difficult dilemmas confronting ecommerce -- how to find a convenient and cost-efficient "place" to resolve disputes in a borderless medium where merchants and consumers alike deal with parties who are in different parts of the world. Because the monetary values of these disputes

are often small, traditional court-based solutions, including small claims courts, are impractical. Online ADR can reduce the costs and increase the convenience of resolving merchant-consumer disputes. The resulting ability to effectively address complaints will contribute significantly to consumer confidence in online transactions. That, in turn, will further fuel the growth of ecommerce.

As the Department and the Commission are aware, in the offline world, ADR is now a well-established mechanism for resolving disputes outside the formal court system. ADR has achieved this status through the development of *private* decisionmaking services such as AAA and CPLR to which parties turn because of their reputations as offering impartial and professional service. Significantly, government regulation of these services has not been necessary.

Dell urges the Department and the Commission to encourage the development of private online ADR mechanisms but to forbear from regulating such systems. With the right incentives, private parties will be able to develop online ADR mechanisms that not only build on offline models but also take advantage of the interactivity and other characteristics unique to the online medium.

The key issue is how to encourage the development of such online ADR mechanisms. One approach would be for jurisdictions in the United States and abroad to permit merchants and consumers to agree to submit to mandatory and binding online arbitration of disputes arising in connection with consumer transactions. In such a regime, merchants would have strong incentives to use online ADR as an alternative to being subject to suit in jurisdictions throughout the world. At the same time, merchants would want to choose fair, expeditious, and cost-effective ADR providers in order to attract consumers. Given such demand, private firms offering innovative and competitive ADR undoubtedly would emerge.

Dell recognizes, however, that many jurisdictions may be unwilling to defer entirely to online ADR mechanisms, particularly while these mechanisms are only beginning to develop. Accordingly, Dell suggests that the U.S. government should permit (and advocate internationally) a more limited regime under which merchants and consumers may, under certain conditions, agree to mandatory, but *not* binding, ADR.

Under this approach, merchants and consumers could agree that, prior to proceeding in the court of any local jurisdiction, consumers would submit contractual disputes to an expeditious online ADR process. (This proposal is limited to contractual issues, and does not address claims based on fraud, deception, or advertising -- which should continue to be subject to the consumer's local jurisdiction.) The decision by the ADR provider would not be binding on the consumer -- following the decision, the consumer would be free to seek recourse in an appropriate court instead of adhering to the ADR decision. Thus, the mandatory ADR mechanism would, at most, delay the time in which consumers could go to court, but not prevent them from doing so. The tradeoff for this slight delay would be that the consumer often would be able to resolve the dispute more quickly and conveniently and at lesser cost than going to court. Moreover, under

this proposal, the consumer would be able to enforce any favorable decision in the ADR process in court against the merchant.

Dell further suggests that a clause providing for mandatory ADR should be deemed enforceable only if the ADR process has certain key characteristics:

- Independence/impartiality
  - decision-maker possesses the abilities, experience, and competence required to carry out his/her function;
  - decision-maker's compensation and job security are not dependent in any way on how the he/she rules and the decision-maker is not liable to be removed from this office or position without just cause.
  
- Transparency
  - participants are provided a description of the types of disputes which may be referred to the forum, as well as any restrictions on the geographical scope of the forum and/or monetary limitations on the scope of disputes it is permitted to hear;
  - participants have notice of the procedural rules for the forum and the possible costs of the procedure (including the rules regarding any award of costs);
  - participants have notice of the substantive rules to be applied by the forum;
  - participants have notice of the manner in which decisions are made by the forum;
  - participants have notice of the binding/precedential effect of any decision by the forum, together with the penalties for non-compliance with the forum's ruling;
  - written decisions are communicated to the parties concerned as soon as possible, stating the grounds on which they were made;
  - forum publishes an annual report setting out decisions made (enabling results to be assessed and the nature of disputes referred to the forum to be identified).
  
- Adversarial
  - procedure allows parties to present their arguments and facts to the forum and to hear the arguments and facts of the other party.
  
- Effectiveness
  - consumer is not obliged to hire a lawyer in order to use the process (but is not precluded from doing so);
  - procedure is only moderately costly;
  - decision is made promptly (perhaps within a specified time period);
  - forum is allowed to take into consideration factors that might assist in settlement.
  
- Affordable

- Mechanism should be affordable, and should not, for example, generally cost more than the amount in dispute.

Because the ADR decision would not be binding (and in order to encourage experimentation with different online ADR techniques), Dell suggests that other characteristics of the ADR process should be left open to variation. For example, ADR processes could be established to apply a specified set of rules based on a particular local law (but not constituting the entire body of that law). More generally, ADR providers could be permitted to limit the remedies to be provided as part of their process. In addition, the procedural rights provided to the parties – other than the basic due process characteristics listed above – should be permitted to vary. Finally, merchants should be able to choose different, competing suppliers of neutral decisionmaking services. This freedom will encourage competition and the development of alternative approaches to online ADR.

To be clear, Dell’s proposal is limited in scope in a number of different respects:

- The proposal does not “replace” local law with a narrow, limited set of rules. It merely allows the choice for a limited time of a particular source of law in a particular forum for the purpose of interpreting a contractual relationship between parties.
- This proposal does not purport to suggest any change with respect to any claim that could be characterized as involving fraud, crime, or deception. Indeed, this proposal will not affect in the least a local government’s ability to protect its citizens by bringing law enforcement actions.
- This proposal does not address advertising or other content-based regulations – it is aimed only at the terms of online transactions between merchants and consumers.

In closing, Dell believes it is critical that the U.S. government endorse and encourage the development of online ADR processes, at least as a supplement to traditional remedies. Although Dell recognizes that jurisdictions may not be willing to permit consumers to agree to use online ADR as a replacement for court actions, Dell urges the Department and the Commission to encourage consumers and merchants at least to agree to enforceable, mandatory ADR with the characteristics noted here. Such an approach will spur the growth of online ADR mechanisms and will provide part of the solution to the problem of providing fair, cost-effective, and expeditious resolution of disputes in the online borderless marketplace.

Respectfully submitted,

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