



Department of Justice

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JUSTICE DEPARTMENT REQUIRES SIX HIGH TECH COMPANIES TO STOP ENTERING INTO ANTICOMPETITIVE EMPLOYEE SOLICITATION AGREEMENTS

Settlement Preserves Competition for High Tech Employees

WASHINGTON — The Department of Justice announced today that it has reached a settlement with six high technology companies—Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc. and Pixar—that prevents them from entering into no solicitation agreements for employees. The department said that the agreements eliminated a significant form of competition to attract highly skilled employees, and overall diminished competition to the detriment of affected employees who were likely deprived of competitively important information and access to better job opportunities.

The Department of Justice’s Antitrust Division filed a civil antitrust complaint today in U.S. District Court for the District of Columbia, along with a proposed settlement that, if approved by the court, would resolve the lawsuit.

According to the complaint, the six companies entered into agreements that restrained competition between them for highly skilled employees. The agreements between Apple and Google, Apple and Adobe, Apple and Pixar and Google and Intel prevented the companies from directly soliciting each other’s employees. An agreement between Google and Intuit prevented Google from directly soliciting Intuit employees.

“The agreements challenged here restrained competition for affected employees without any procompetitive justification and distorted the competitive process,” said Molly S. Boast, Deputy Assistant Attorney General in the Department of Justice’s Antitrust Division. “The proposed settlement resolves the department’s antitrust concerns with regard to these no solicitation agreements.”

In the high technology sector, there is a strong demand for employees with advanced or specialized skills, the department said. One of the principal means by which high tech companies recruit these types of employees is to solicit them directly from other companies in a process referred to as, “cold calling.” This form of competition, when unrestrained, results in better career opportunities, the department said.

According to the complaint, the companies engaged in a practice of agreeing not to cold call any employee at the other company. The complaint indicates that the agreements were formed and actively managed by senior executives of these companies.

The complaint alleges that the companies' actions reduced their ability to compete for high tech workers and interfered with the proper functioning of the price-setting mechanism that otherwise would have prevailed in competition for employees. None of the agreements was limited by geography, job function, product group or time period. Thus, they were broader than reasonably necessary for any collaboration between the companies, the department said.

The department said in its complaint:

- Beginning no later than 2006, Apple and Google executives agreed not to cold call each other's employees. Apple placed Google on its internal "Do Not Call List," which instructed employees not to directly solicit employees from the listed companies. Similarly, Google listed Apple among the companies that had special agreements with Google and were part of the "Do Not Cold Call" list;
- Beginning no later than May 2005, senior Apple and Adobe executives agreed not to cold call each other's employees. Apple placed Adobe on its internal "Do Not Call List" and similarly, Adobe included Apple in its internal list of "Companies that are off limits";
- Beginning no later than April 2007, Apple and Pixar executives agreed not to cold call each other's employees. Apple placed Pixar on its internal "Do Not Call List" and senior executives at Pixar instructed human resources personnel to adhere to the agreement and maintain a paper trail;
- Beginning no later than September 2007, Google and Intel executives agreed not to cold call each other's employees. In its hiring policies and protocol manual, Google listed Intel among the companies that have special agreements with Google and are part of the "Do Not Cold Call" list. Similarly, Intel instructed its human resources staff about the existence of the agreement; and
- In June 2007, Google and Intuit executives agreed that Google would not cold call any Intuit employee. In its hiring policies and protocol manual, Google also listed Intuit among the companies that have special agreements with Google and are part of the "Do Not Cold Call" list.

The proposed settlement, which if accepted by the court will be in effect for five years, prohibits the companies from engaging in anticompetitive no solicitation agreements. Although the complaint alleges only that the companies agreed to ban cold calling, the proposed settlement more broadly prohibits the companies from entering, maintaining or enforcing any agreement that in any way prevents any person from soliciting, cold calling, recruiting, or otherwise competing for employees. The companies will also implement compliance measures tailored to these practices.

Today's complaint arose out of a larger investigation by the Antitrust Division into employment practices by high tech firms. The division continues to investigate other similar no solicitation agreements.

Adobe Systems Inc. is a Delaware corporation with its principal place of business in San Jose, Calif., and 2009 revenues of nearly \$3 billion. Apple Inc. is a California corporation with its principal place of business in Cupertino, Calif., and 2009 revenues of more than \$42 billion. Google Inc. is a Delaware corporation with its principal place of business in Mountain View, Calif., and 2009 revenues of more than \$23 billion. Intel Inc. is a Delaware corporation with its principal place of business in Santa Clara, Calif., and 2009 revenues of more than \$35 billion. Intuit Inc. is a Delaware corporation with its principal place of business in Mountain View, Calif., and 2009 revenues more than \$3 billion. Pixar is a California corporation with its principal place of business in Emeryville, Calif.

The proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street N.W., Suite 7100, Washington D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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