

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
MICROSEMI CORPORATION,)
Defendant.)

Civil Action No. 1:08 CV 1311
2008 DEC 22 P 5:04
U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

ORDER

Before the Court is the Plaintiff’s Motion to Seal Exhibits 1, 2, 4, 6, 9, 12, 13, 14, and 15 to Plaintiff’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. Exhibit 1 is a document titled “Operation Growth Strategy,” which discusses the Defendant’s marketing strategy for the products at issue, as well as future production plans. Exhibit 2 is a document titled “Strategic Overview,” which discusses the Defendant’s competitive strategy and contains market analyses for the products at issue. Exhibit 4 is an e-mail containing Microsemi and Semicoa shipment data for the products at issue. Exhibit 6 is a spreadsheet recording all of the Defendant’s sales information for the products at issue from the years 1997 to 2008. Exhibit 9 is a Semicoa document discussing the company’s readiness to produce the products at issue, including information about its manufacturing processes and capabilities. Exhibit 12 is a Microsemi e-mail that discusses pricing and delivery timing for the products at issue. Exhibit 13 is a Semicoa e-mail discussing the company’s readiness to produce one of the products at issue.

Exhibit 14 is a Semicoa document that includes test results for one of the products at issue.

Exhibit 15 is a Microsemi e-mail analyzing the backlog of Semicoa orders for the products at issue.

These exhibits were provided to the Department of Justice by Defendant Microsemi Corporation (“Microsemi”) in confidence and have been protected from public disclosure during the Department’s investigation. Public disclosure of the confidential information contained in the exhibits might place the Defendant, as well as any company that may acquire assets divested as a result of this action, at a disadvantage with respect to their existing and potential competitors, who would gain access to sensitive business plans and product development and marketing information. The Court therefore finds that it is appropriate to enter an order sealing the aforementioned exhibits.

The Court has come to this conclusion mindful of the factors set forth in *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), which mandates that before entering an order sealing documents, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.”

Docketing the motion to seal “reasonably in advance of deciding the issue” is sufficient to provide the public notice required by *Ashcraft*. *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984). The Plaintiff has properly noticed its motion for a hearing, and this Court’s docket has been made available to the public. In addition, the Court finds that there are no less drastic alternatives to sealing the aforementioned exhibits. Redacting the competitively sensitive

information from these exhibits is not an option. The Court must review the product, pricing, and strategic business information contained in the exhibits in order to determine whether the Defendant's acquisition of the assets of Semicoa, Inc. ("Semicoa") has resulted in competitive harm.

For these reasons, and for good cause shown, the Plaintiff's Motion to Seal Exhibits 1, 2, 4, 6, 9, 12, 13, 14, and 15 to Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction is GRANTED. It is ORDERED that Exhibits 1, 2, 4, 6, 9, 12, 13, 14 and 15 shall be SEALED until further order of this Court.

SO ORDERED, this ____ day of _____, 2008.

UNITED STATES DISTRICT JUDGE