

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

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. 1:08 CV 1311
)	
v.)	
)	
MICROSEMI CORPORATION,)	
Defendant.)	
)	

ORDER

Before the Court are 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 and Plaintiff's Motion to Seal Exhibit 8 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 Microsemi Corporation's ("Microsemi") marketing strategy for the products at issue, as well as future production plans. Exhibit 2 is a document titled "Strategic Overview," which discusses Microsemi's competitive strategy and contains market analyses for the products at issue. Exhibit 4 is an e-mail containing Microsemi and Semicoa, Inc. ("Semicoa") shipment data for the products at issue. Exhibit 6 is a spreadsheet recording all of the Microsemi's sales information for the products at issue from the years 1997 to 2008. Exhibit 8 consists of the schedules attached to the execution copy of the Asset Purchase Agreement between Microsemi and Semicoa, which contain information regarding the assets and liabilities assumed by

Microsemi as a result of its purchase of Semicoa. 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 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 Microsemi, as well as any company that may acquire assets divested as a result of this action, at a disadvantage with respect to its existing and potential competitors, who would gain access to sensitive business plans and product development and marketing information.

Plaintiff and Defendant agree that the aforementioned exhibits should be filed under seal and remain under seal until a protective order has been issued by this Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. 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*. See *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (cited by *Ashcraft*, 218 F.3d at 302). Plaintiff’s motions were docketed on December 22, 2008, and December 31, 2008, respectively, and the 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 Microsemi’s acquisition of the assets of Semicoa has resulted in competitive harm.

For these reasons, and for good cause shown, 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 and Plaintiff’s Motion to Seal Exhibit 8 to Plaintiff’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction are GRANTED. It is ORDERED that Exhibits 1, 2, 4, 6, 8, 9, 12, 13, 14, and 15 shall be SEALED until further order of this Court.

SO ORDERED, this ____ day of _____, 2009.

UNITED STATES MAGISTRATE JUDGE