

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,    | ) | <b>Hearing Date: January 9, 2009</b> |
| Defendant.                | ) |                                      |
|                           | ) |                                      |

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION TO SEAL EXHIBIT 8  
TO PLAINTIFF’S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, through its undersigned counsel, respectfully requests that this Court enter an order sealing an exhibit that Plaintiff submitted in support of its Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. The document at issue contains competitively sensitive information submitted to Plaintiff by Defendant Microsemi Corporation (“Microsemi”). This relief is sought on an interim basis, pending the entry by the Court of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On December 18, 2008, Plaintiff filed with the Court a Complaint alleging that Microsemi’s acquisition of Semicoa, Inc. (“Semicoa”) violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. On December 22, 2008, Plaintiff filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, a memorandum in support of that

motion, and supporting declarations, documents, and other materials.

2. Certain exhibits supporting Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction contained information supplied in confidence to the Department of Justice by the Defendant. In order to preserve this confidentiality, on December 22, 2008, Plaintiff filed a 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. Plaintiff now seeks to have Exhibit 8 to Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction also placed under seal.
3. Exhibit 8 consists of the schedules attached to the execution copy of the Asset Purchase Agreement between Microsemi and Semicoa, dated July 14, 2008. The schedules contain information regarding the assets and liabilities assumed by Microsemi as a result of its purchase of Semicoa.
4. Public disclosure of the confidential information contained in Exhibit 8 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 pricing and supply information contained therein.
5. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), sets out the legal standard that this Court must apply when determining whether it is appropriate to order the sealing of documents. It states that before entering an order to seal, 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.” *Id.*

4. The first *Ashcraft* consideration, *i.e.*, public notice of the motion to seal, is satisfied by docketing the motion “reasonably in advance of deciding the issue.” *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Plaintiff’s motion to seal has been noticed for hearing on January 9, 2009.
5. The second *Ashcraft* consideration is satisfied because there are no less drastic alternatives to sealing the aforementioned exhibit. Redacting information from the exhibit is not a viable option because the issue in this case is whether the Defendant’s acquisition of the assets of Semicoa resulted in harm to competition in specific product markets. While redacting competitively sensitive information from the exhibit at issue would protect the Defendant and potential acquirers of any divested assets from future competitive disadvantage, it would also deprive the Court of the pricing and supply information it needs to evaluate whether the acquisition resulted in competitive harm.
6. The third *Ashcraft* consideration - that the Court “provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives” - is satisfied by the findings of fact in the proposed Order accompanying this Motion.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an order sealing Exhibit 8 to Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, and that Exhibit 8 remain under seal until a protective order has been entered by the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
LOWELL STERN (VA Bar #33460)  
Counsel for the United States  
Trial Attorney  
Antitrust Division, Litigation II Section  
United States Department of Justice  
1401 H Street, N.W., Suite 3000  
Washington, D.C. 20530  
(202) 514-3676  
(202) 307-6283 (fax)  
Lowell.Stern@usdoj.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30th day of December, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Michael Antalics  
O'Melveny & Meyers LLP  
1625 Eye Street, N.W.  
Washington, DC 20006

Jeffrey William Kilduff  
O'Melveny & Myers LLP  
1625 Eye Street, N.W.  
Washington D.C. 20006

Kimberly Anne Newman  
Hunton & Williams  
1900 K Street, N.W.  
Washington, D.C. 20006

\_\_\_\_\_/s/\_\_\_\_\_  
LOWELL STERN (VA Bar #33460)  
Counsel for the United States  
Trial Attorney  
Antitrust Division, Litigation II Section  
United States Department of Justice  
1401 H Street, N.W., Suite 3000  
Washington, D.C. 20530  
(202) 514-3676  
(202) 307-6283 (fax)  
Lowell.Stern@usdoj.gov