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

FILED

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

2008 DEC 22 P 5:00
CLERK, US DISTRICT COURT
ALEXANDRIA, VIRGINIA

PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The United States of America, pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, Section 4 of the Sherman Act, 15 U.S.C. § 4, and Rule 65 of the Federal Rules of Civil Procedure, moves the Court for entry of a Temporary Restraining Order and Preliminary Injunction enjoining defendant Microsemi Corporation ("Microsemi"), and all persons acting on its behalf, from destroying, disposing of, or ceasing operation of any asset defendant Microsemi acquired from Semicoa, Inc. ("Semicoa"), pending entry by the Court of a final judgment in this action.

This motion is based on the following grounds:

(1) On December 18, 2008, the United States filed a Verified Complaint ("complaint") alleging that Microsemi's acquisition of substantially all of the assets of 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.

(2) Unless enjoined by this Court, Defendant may destroy, dispose of, or cease operations of the assets of Semicoa before this Court can enter a final judgment.

The Defendant's Chief Executive Officer has stated publically that part of the Defendant's business strategy is to destroy the specialized manufacturing equipment it acquires from its competitors.

(3) Pursuant to Rule 65(a)(1) of the Federal Rules of Civil Procedure, undersigned counsel for the Plaintiff respectfully certifies to the Court that on December 18, 2008, Plaintiff filed a complaint in this matter. On Friday, December 19, 2008, Plaintiff's counsel and Defendant's counsel negotiated the terms of a draft Agreed Order To Preserve Assets, which incorporated Defendant's comments. Plaintiff's counsel sent the draft Agreed Order to Defendant's counsel on Friday afternoon. On Monday, December 22, 2008, Plaintiff's counsel and Defendant's counsel again discussed the terms of Agreed Order but failed to reach agreement. Defendant still has failed to sign the draft Agreed Order. Moreover, Defendant previously reneged on a promise to divest the Semicoa assets to resolve the Plaintiff's competitive concern about the acquisition. Plaintiff cannot accept the risk that the Defendant will renege on its unilateral representation to preserve the assets. Concurrently with filing, Plaintiff is providing defendant's counsel copies of this motion, the proposed TRO, with has the same terms as the draft Agreed Order To Preserve Assets, the memorandum in support of this motion, and declarations and exhibits in support thereof.

(4) There is a substantial likelihood that Plaintiff will establish at trial that the acquisition of Semicoa by Microsemi has violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2.

(5) A Temporary Restraining Order is necessary to preserve the status quo, to prevent the irreparable injury to the public that would result from the destruction, disposal, or cessation of operations of the Semicoa assets, and to allow the Court to render effective relief if the Plaintiff prevails at trial. Plaintiff would have no adequate remedy at law, and this Court's ability to fashion effective relief would be significantly impaired, if Microsemi proceeds to destroy, dispose of, or cease operation of Semicoa assets pursuant to an acquisition that is found, after trial, to be unlawful.

(6) Any harm to Defendant from enjoining the destruction, disposal of, or cessation of operations of the Semicoa assets would be outweighed by the actual and potential anticompetitive effects resulting from the already-consummated acquisition, including increased prices and lengthened delivery times for certain specialized transistors and diodes used in military applications critical to the national security of the United States.

(7) Granting the requested preliminary relief will serve the public interest.

(8) This Court has authority under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to issue the requested preliminary relief.

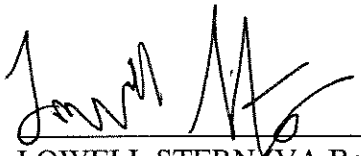
(9) Pursuant to Federal Rule of Civil Procedure 65(c), neither the United States nor any officer or agency of the United States is required to post a bond as a prerequisite to the issuance of an injunction.

This Emergency Motion is supported by a concurrently filed Memorandum of United

States in Support of Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, the United States' proposed Temporary Restraining Order, and supporting declarations.

WHEREFORE, the United States prays that the Defendant and all persons acting on its behalf be enjoined from destroying, disposing of, or ceasing operation of the assets of Semicoa, pending entry by the Court of a final judgment in this action.

Respectfully submitted,

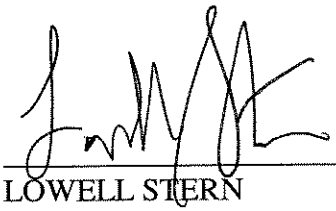


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of December, 2008, I will hand deliver the foregoing document to the following :

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