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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ORACLE CORPORATION,

Defendant.

CASE NO. C 04-0807 VRW

Filed June 15, 2004

Hearing Date: TBA

**PLAINTIFFS' RESPONSE TO
BLOOMBERG NEWS ET AL.'S
MOTION TO UNSEAL EXHIBITS
SUBMITTED AT TRIAL**

The Associated Press, Bloomberg News, the Contra Costa Times, the Los Angeles Times, and the San Francisco Chronicle (collectively "Newspapers") move to unseal the Special Master's report and the redacted and sealed exhibits thus far moved into evidence.¹ Plaintiffs agree that the Special Master's five-page Second Report and Recommendation filed on June 1, 2004 [Docket #237] should be unsealed because it does not contain confidential information. However, Plaintiffs believe that, with respect to the Newspapers' motion to entirely unseal previously submitted documents, non-parties have demonstrated sufficiently compelling reasons to seal certain information from the public record. Contrary to the Newspapers' allegations, the

¹Although not specifically stated, Plaintiffs assume the Newspapers refer to the Special Master's Second Report and Recommendation because the initial Report filed on June 1, 2004 is public. See Docket #208.

1 Court, the Special Master, and the non-parties have complied with procedural requirements
2 established by applicable Supreme Court and Ninth Circuit caselaw, and with Local Rule 79-5.
3 The Court's actions and admonitions make clear that the Court strictly construes the relevant
4 caselaw and applies a great weight to the public's side of the scale when balancing it against the
5 legitimate interests of non-parties to avoid harm from public disclosure of selected sensitive
6 business information. There is no reason to believe that the Court has not, and will not, give that
7 public interest adequate weight in the balance.

8 Plaintiffs rely on our prior filings in this action regarding the confidentiality of third-party
9 sensitive business information. *See* Pls.' Resp. to Third Party Req. for Additional Protection
10 filed on 3/18/04 [Docket #79]; Pls.' Resp. to Third Parties' Mot. Supplementing Existing
11 Protective Order filed on 5/19/04 [Docket #180].

12 Plaintiffs wish to stress the public policy interests implicated by disclosing third-party
13 materials submitted to federal and state antitrust enforcement bodies. As the substantial number
14 of customer witnesses and other non-parties in this matter demonstrates, Plaintiffs heavily rely on
15 customers and other non-parties for critical information. For the federal and state antitrust
16 agencies to effectively investigate mergers under their respective statutes, third parties must have
17 confidence that their most sensitive business information will receive appropriate protection from
18 harmful disclosure in any subsequent litigation.

19 In addition to these significant public interests, third parties that have produced
20 information to the United States or Plaintiff States in the course of their investigations have
21 significant business interests in avoiding harmful disclosure of their sensitive business
22 information to a competitor or supplier. Without adequate protections, affected parties would be
23 unwilling to participate in antitrust investigations. Third parties in this action have largely
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1 complied with Civil Investigative Demands issued by the United States and with Plaintiffs'
2 discovery requests. They should not be subjected to possible harm for having done so. As the
3 court noted in *United States v. Dentsply International, Inc.*:

4 While some nonparties may rejoice in the Justice Department's antitrust
5 investigation, others doubtless consider the risk inherent in sharing extremely
6 sensitive information too high a price to pay for curing the alleged unlawful
7 anticompetitive activity. These nonparties have produced or will produce
8 information because they are law-abiding entities with severely limited options.
9 Their information will be shared not because they are a litigant seeking redress or an
10 accused wrongdoer defending a lawsuit, but because they have valuable information
which may or may not shed light on whether [the defendant] has engaged in
proscribed anticompetitive activity.

11 *United States v. Dentsply Int'l, Inc.*, 187 F.R.D. 152, 160 (D. Del. 1999) (granting non-party's
12 motion for protective order).

13 As such, the Newspapers' motion should be denied to the extent that it seeks to disclose
14 information that, if disseminated, would seriously harm or prejudice non-parties, thereby
15 threatening to impede the United States and the Plaintiff States' ability to enforce the antitrust
16 laws.

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18 Dated: June 15, 2004

Respectfully submitted,

19
20 /s/

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