

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al.

Plaintiffs,

v.

FIRST DATA CORPORATION,

and

CONCORD EFS, INC.,

Defendants.

CASE NUMBER: 1:03CV02169 (RMC)

**MOTION OF THE UNITED STATES FOR PERMISSION TO
FILE COMPETITIVELY SENSITIVE INFORMATION UNDER SEAL**

Plaintiff, the United States of America, moves the Court for entry of an order permitting plaintiff to file under seal competitively sensitive information submitted in the Memorandum in Support of Plaintiff United States' Motion for a Scheduling and Case Management Order, filed with the Court today. 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 and Local Rule 5.1(j) of the United States District Court for the District of Columbia. In support of this motion, plaintiff states as follows:

1. The United States of America, the states of Connecticut, Louisiana, Massachusetts, New York, Ohio and Texas, and the District of Columbia filed a Verified Complaint in this matter on October 23, 2003.
2. Today, the United States filed a Motion for entry of a scheduling and case management order and a memorandum in support of that motion with supporting materials

attached.

3. The Memorandum in Support of Plaintiff United States' Motion for a Scheduling and Case Management Order and supporting attachments contain, or make references to, business plans and other competitively sensitive information produced by defendants to the Antitrust Division of the United States Department of Justice during its investigation of Concord EFS, Inc. ("Concord") proposed acquisition by First Data Corp. ("First Data"). This information was provided to the Department in confidence and has been protected from public disclosure during the Department's investigation. *See, e.g.*, 15 U.S.C. § 18a(h); 28 C.F.R. §16.7.

4. Public disclosure of the confidential information contained in the United States' memorandum and supporting attachments might place the companies that provided the information at a competitive disadvantage with respect to their competitors, who would gain access to sensitive business plans and product development and marketing information. Pursuant to Fed. R. Civ. P. 26(c)(7), the Court may enter an order to restrict the disclosure of such sensitive business information. "It is clear that a court may issue a protective order restricting disclosure of discovery materials to protect a party from being put at a competitive disadvantage." *Zenith Radio Corp. v. Matsushita Elec. Indus. Corp.*, 529 F. Supp. 866, 890 (E.D. Pa. 1981); *Tavoulareas v. Washington Post Co.*, 93 F.R.D. 24, 29 (D.D.C. 1981) (imposing a protective order on documents submitted to protect third-party from likely competitive harm should they be released).

5. Nevertheless, plaintiff recognizes the public's legitimate interest in having access to court filings. Plaintiff will therefore file redacted versions of the Memorandum in Support of

Plaintiff United States' Motion for a Scheduling and Case Management Order as soon as is practicable.

6. The United States has raised the subject of this motion with counsel for defendants, who have no objection to it.

7. A proposed order granting this Motion is attached.

Respectfully submitted,

_____/s/_____
Craig W. Conrath
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Dated: October 27, 2003