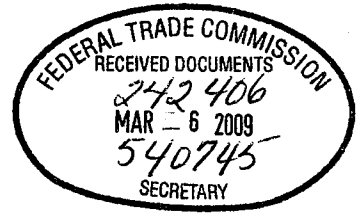


ORIGINAL



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	PUBLIC VERSION
CCC HOLDINGS INC.,)	
)	
and)	Docket No. 9334
)	
AURORA EQUITY PARTNERS III L.P.,)	
Respondents.)	
_____)	

COMPLAINT COUNSEL’S RESPONSE TO RESPONDENTS’ AND DR. CHRISTOPHER VELLTURO’S MOTION TO QUASH SUBPOENA AD TESTIFICANDUM AND SUBPOENA DUCES TECUM ISSUED TO DR. CHRISTOPHER VELLTURO

I. INTRODUCTION

On February 23, 2009, Respondents and Dr. Christopher Vellturo filed two separate motions to quash the subpoena *ad testificandum* and subpoena *duces tecum* issued by the Secretary of the Commission on January 29, 2009 and served on Dr. Vellturo on February 6, 2009. As discussed more fully below, Respondents and Dr. Vellturo have failed to carry their substantial burden on these motions, and thus, the motions should be denied.¹

This case is about a merger between two competitors, CCC Information Services (“CCC”) and Aurora Equity Partners III L.P., the parent of Mitchell International (“Mitchell”). The proposed merger between the parents of CCC and Mitchell would leave only two providers of U.S. partial loss estimation systems (“estimatics”) and U.S. total loss valuation systems (“TLV systems”). There is only one other significant competitor – Audatex – in these two

¹ Dr. Vellturo’s Report is attached as Annex A.

markets, thus creating a duopoly in each market, leading to coordinated interaction among the remaining competitors. Moreover, the \$1.4 billion transaction would create a company with huge market shares, reflective of monopoly or near-monopoly market power. The Commission issued an administrative complaint challenging this merger on November 25, 2008, and a hearing on the merits before this Court is scheduled to begin on March 31, 2009. Part and parcel to the case before this Court is the head-to-head competition between CCC and Mitchell that will be lost if the transaction is consummated.

REDACTED

Respondents, in their motion, made three separate arguments. First, Respondents argued that Dr. Velturo's expert report is irrelevant.

REDACTED

These facts are admissions in this case that can be verified by Dr. Velturo, who was a witness to these statements.

REDACTED

² Velturo Report, PX0837-003.

REDACTED

Second, Respondents argued that the discovery sought from Dr. Vellturo is irrelevant. In its subpoena *duces tecum*, Complaint Counsel asks for “a copy of all documents and/or data cited in Dr. Christopher Vellturo’s Expert Report . . . or otherwise relied on by Dr. Vellturo in the preparation and drafting of the aforementioned report.”

REDACTED

These types of documents are exactly the types of documents that are used to investigate, prosecute, and defend an antitrust case, especially one in which the parties referenced in the documents are merging. Third, Respondents argued that complying with the subpoenas would cause an undue hardship to Dr. Vellturo. Respondents fail to meet their burden with respect to that issue as well. In Exhibit 2 to his report, Dr. Vellturo identifies documents and information that he relied upon in preparation of the report. Thus, Respondents already have a list of the documents sought by the subpoena *duces tecum*. In addition, Complaint Counsel is requesting to depose Dr. Vellturo, which is hardly unduly burdensome, especially for an expert who represented that he had testified over 25 times from 2002 to 2006 on his curriculum vita submitted as Exhibit 1 to the expert report at issue.⁴

Dr. Vellturo also filed a motion to quash, and made two separate, but related arguments. First, Dr. Vellturo argued that the subpoenas impose a burden and expense that far outweigh any

³ Vellturo Report, PX0837-003.

⁴ Vellturo Report, PX 0837-053.

likely benefit.

REDACTED

Those documents and information may reveal information that is highly relevant to Complaint Counsel's case. In addition, Dr. Velturo would have difficulty arguing an undue burden, as a seasoned and very experienced testifying expert that has been through the litigation process time and again. Moreover, we would agree to take no more than four hours of his time. Second, Dr. Velturo argued in his motion to quash that the subpoenas infringe on his proprietary interests. That is incorrect.

REDACTED

That is what this case is about, and Dr. Velturo is a witness to the competition that would be lost as a result of this merger. Just because he was a witness for money, does not immunize him from being a witness in this case.

II. ARGUMENTS AND AUTHORITIES

REDACTED

They further argue that responding to the subpoenas issued by Complaint Counsel would be burdensome and would infringe on Dr. Velturo's proprietary interests. None of these arguments withstands scrutiny.

A. Respondents And Dr. Velturo Have Failed To Carry Their Burden.

As the subpoenaed party, Dr. Velturo and Respondent bear the "burden of showing that

the request[s] [are] unreasonable.” In re Rambus, Inc., No 9302, 2002 FTC LEXIS 90, at *9 (Nov. 18, 2002) (denying motions to quash a subpoena in an FTC adjudicative proceeding). Moreover, that burden is “heavy.” In re Flowers Industries, Inc., No. 9148, 1982 FTC LEXIS 96, at *15 (March 19, 1982) (denying motions to quash third-party subpoenas in FTC anti-merger action.). For the reasons discussed below, neither Dr. Velturo nor Respondents have satisfied this heavy burden.

B. Dr. Velturo’s Expert Report And The Information He Relied Upon To Prepare It Are Relevant To The Antitrust Case Before This Court.

Respondents and Dr. Velturo argue in their motions that Dr. Velturo’s expert report, and the documents and information he relied upon in its preparation, are irrelevant. Commission Rule of Practice § 3.31(c)(1) states that, “Parties may obtain discovery to the extent that it may be *reasonably expected* to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” Moreover, “[t]he practice of the Commission has been to uphold subpoenas duces tecum upon a showing . . . that the requested information is generally relevant to the issues raised by the pleadings.” In re Kaiser Alum. & Chem. Corp., No. 9080, 1976 FTC LEXIS 68, at *4 (Nov. 12, 1976).

Dr. Velturo was retained by CCC in connection with a 2006 patent dispute between CCC and Mitchell. At issue in the case was a feature that allowed a user of the estimatics software to automatically calculate and compare the costs of repairing a vehicle with parts from different sources, such as recycled parts, aftermarket parts, or Original Equipment Manufacturer (“OEM”) parts. CCC was the first to introduce this feature to the market, through its Pathways product. The dispute was over Mitchell’s subsequent introduction and sale of UltraMate, which CCC claimed violated one of its patents covering the Pathways product.

REDACTED

⁵ Velturo Report, PX0837-019.

⁶ Velturo Report, PX0837-003.

⁷ Velturo Report, PX0837-015.

⁸ Velturo Report, PX0837-016.

REDACTED

These issues go to the very heart of Complaint Counsel's case. As noted above, this case is about a merger between CCC and Mitchell. There is only one other significant competitor – Audatex – in the estimatics and TLV markets. This 3-to-2 merger would create a duopoly, leading to coordination, as well as a company with huge market shares, reflective of monopoly or near-monopoly market power.

REDACTED

⁹ Vellturo Report, PX0837-017.

¹⁰ Vellturo Report, PX0837-014.

Thus, it would be a “reasonable” expectation that the documents and information sought by Complaint Counsel’s subpoena’s would “yield information relevant to the allegations of the complaint.”

REDACTED

C. Respondents And Dr. Velturo Have Failed To Support Their Claim Of Undue Burden.

Respondents and Dr. Velturo argue in their motions that Complaint Counsel’s subpoena would cause an undue hardship to Dr. Velturo and would impose a burden that would far outweigh any likely benefit. In re General Motors Corp., No 9077, 1977 FTC LEXIS 18, at *1 (Nov. 25, 1977), states that, “seeking relevant data will not be quashed on the grounds that the burden is imposed on a third party, especially where the party initiating the subpoena has expressed a willingness to mitigate whatever burden may exist by negotiation and compromise.” In addition, In re Kaiser Alum. & Chem. Corp., No 9080, 1976 FTC LEXIS 68, at *18, states that “a general, unsupported claim [of burden] is not persuasive.”

Complaint Counsel’s subpoena *duces tecum* issued to Dr. Velturo contains one, single request. That request is for a copy of all documents and data cited by Dr. Velturo, and all documents and data relied upon by Dr. Velturo, in his expert report.

REDACTED

Respondent does not submit any detailed evidence on the cost and burden of searching for those documents listed in Exhibit 2, but rather, makes a

“general, unsupported claim [of burden].” Kaiser Alum., 1976 FTC LEXIS, 68, at *18.

Complaint Counsel is merely seeking to obtain a copy of those documents listed in Exhibit 2, which were used by Dr. Velturo in December 2006, only 26 months ago. In addition, Respondents argue that the benefit and usefulness of those documents are “too slight to justify the burden and expense” on Dr. Velturo, and that any evidence he could provide “would have nothing to do with the facts and issues in this antitrust case.”

REDACTED

This case is about the loss of competition that would result from a 3-to-2 merger between CCC and Mitchell.

REDACTED

These issues, and thus, the documents and data Complaint Counsel seeks, are not only relevant, but rather, go to the heart of Complaint Counsel’s antitrust case. Based on the foregoing, Respondents and Dr. Velturo’s claims of undue burden should be rejected.

D. Respondents Fail To Meet Their Burden In Establishing That The Subpoena's Infringe On Dr. Vellturo's Proprietary Interests.

In Dr. Vellturo's motion, counsel argues that the subpoenas infringe on Dr. Vellturo's proprietary interests, and argue that he is an unretained expert whose "opinion and information do not in any way describe the specific occurrences in dispute and who was not retained by any party for purposes of this case."

REDACTED

Second, Complaint Counsel accepts that Dr. Vellturo was not retained by any party for purposes of this case.

REDACTED

III. CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that Respondents' and Dr. Vellturo's Motion to Quash the Subpoena *Duces Tecum* and Supoena *Ad Testificandum* be denied.

ANNEX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CCC Information Services Inc.,

Plaintiff,

v.

Mitchell International, Inc.,

Defendants.

Case No. 03 C 2695

EXPERT REPORT OF DR. CHRISTOPHER A. VELLTURO

REDACTED ENTIRE REPORT

PX0837-001

Dated: March 6, 2009

Respectfully submitted,

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by JM

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Complaint Counsel

CERTIFICATE OF SERVICE

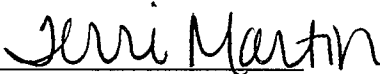
I hereby certify that on March 6, 2009, I served the foregoing via electronic mail on the following counsel:

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Dated: March 6, 2009