

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of  
MSC.SOFTWARE CORPORATION,  
a corporation.  
\_\_\_\_\_

)  
) PUBLIC RECORD VERSION  
)  
) Docket No. 9299  
)  
)

TO: The Honorable D. Michael Chappell  
Administrative Law Judge

**COMPLAINT COUNSEL'S REQUEST FOR LEAVE TO FILE AND  
SUPPLEMENTAL MEMORANDUM IN OPPOSITION  
TO RESPONDENT'S MOTION TO COMPEL**

Complaint Counsel hereby request leave to file this Supplemental Memorandum in opposition to "Respondent MSC.Software Corporation's Motion to Compel Complaint Counsel to Respond to Written Discovery" dated January 25, 2002 (hereafter Respondent's "Motion to Compel"). Complaint Counsel have filed a Memorandum In Opposition To Respondent's Motion To Compel (hereafter "Opposing Memorandum") dated February 4, 2002.

As discussed in the Opposing Memorandum, Complaint Counsel have provided to the Respondent extensive discovery concerning the allegations of the Complaint and the underlying evidentiary basis for the Complaint's allegations. See Opposing Memorandum at 2-3, 5-9. Those discovery responses have been more than sufficient to satisfy Complaint Counsel's disclosure obligations under the rules and the Scheduling Order in this case, and to enable Respondent to conduct discovery, work with experts and prepare its defense.

- The purpose of this Supplemental Memorandum is to inform your Honor that since filing their Opposing Memorandum, Complaint Counsel have provided further information concerning the allegations of the complaint and the underlying evidentiary basis, in the form of the expert

**PUBLIC RECORD VERSION**

report of Complaint Counsel's testifying economic expert, John C. Hülke, Ph.D., which has been provided to Respondent pursuant to the Scheduling Order in this case. A copy of the expert report is attached as Exhibit A to this Supplemental Memorandum.

The expert report discusses the analytic and evidentiary basis for the expert's conclusions, at this stage of the discovery process, concerning the allegations in the complaint. (Ex. A at 1-8). Among other matters, the expert report addresses the issue of market definition (Ex. A at 8-40) and concludes that the acquisitions have resulted in a market that is now effectively a monopoly with only one major supplier (Ex. A at 40-41). The report concludes that the possibility of new entry is unlikely to constrain the anticompetitive effects of the acquisitions. (Ex. A at 41-48). It concludes that the combination of MSC with the acquired firms is likely to substantially lessen competition, and that some anticompetitive effects - in the form of higher prices, reduced consumer choice and reduced or slower product innovation - have already occurred. (Ex. A at 48-57). It concludes that merger-specific efficiencies resulting from the acquisitions have not been large, and have not resulted in lower prices for consumers. (Ex. A at 57- 58). It concludes that an antitrust remedy is warranted to restore competition eliminated by the acquisitions, and discusses various economic considerations pertinent to such a remedy. (Ex. A at 58-60).

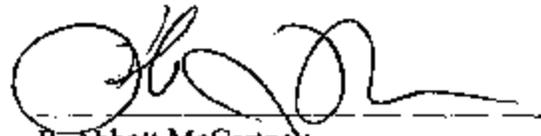
By providing Respondent with the expert report, Complaint Counsel have further supplemented the already extensive discovery that they have provided to the Respondent concerning the allegations of the Complaint and the underlying evidentiary basis for those allegations. Contrary to the arguments put forth by Respondent in support of its Motion to Compel, there is no legitimate need for any further response to the contention interrogatories

propounded by the Respondent.

For the reasons set forth above and in the Opposing Memorandum previously filed,  
Respondent's Motion to Compel should be denied.

February 8, 2002

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "P. Abbott McCartney", written over a horizontal line.

P. Abbott McCartney

Peggy D. Bayer

Kent E. Cox

Karen A. Mills

Patrick J. Roach

Counsel Supporting the Complaint  
Bureau of Competition

Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496

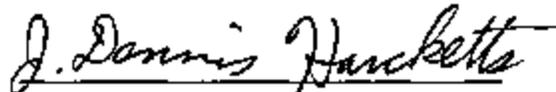
**CERTIFICATE OF SERVICE**

This is to certify that on February 8, 2002, I caused a copy of Complaint Counsel's Request for Leave to File and Supplemental Memorandum in Opposition to Respondent's Motion to Compel (Public Record Version) to be served by hand upon the following persons:

The Honorable D. Michael Chappell  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Fax (202) 879-5200

Counsel for MSC Software Corporation



J. Dennis Hacketts  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2783  
Facsimile (202) 326-3496

**EXHIBIT A**

**EXPERT REPORT OF JOHN C. HILKE, Ph.D., ECONOMIST**

**[Restricted Confidential, Attorney Eyes Only]**