



Microsoft Corporation's Comments on Proposed Information Collection

PAE Reports: Paperwork Comment; Project No. P131203

June 18, 2014

Microsoft Corporation ("Microsoft") submits the following comments in response to the second Federal Register Notice issued by the Federal Trade Commission ("FTC") on May 19, 2014, regarding proposed information requests for a potential Section 6(b) study to analyze the competitive effects of patent assertion entities ("PAEs") in the wireless communications sector.¹ As stated in Microsoft's comments to the initial notice issued by the FTC last fall,² Microsoft supports the FTC's efforts to gather information to help better understand PAEs and the costs and benefits of their behavior.³ Microsoft also supports the OMB's approval, pursuant to the Paperwork Reduction Act ("PRA"), of the proposed 6(b) study in its now revised form.⁴

In its initial notice regarding the proposed study, the FTC invited comments on (1) the necessity of the information requested; (2) the accuracy of the FTC's estimate of the burden imposed by the information requests; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden of collecting information in accordance with the PRA.⁵ Microsoft submitted comments to the initial notice on December 16, 2013.⁶ Those comments were directed towards (1) ensuring that the FTC's requests were narrowly tailored to obtain relevant and useful information about harmful PAE practices, and (2) providing the FTC with a practical understanding of the burden the proposed requests would impose upon non-PAE entities (*i.e.*, Manufacturing Firms).⁷ In short, Microsoft encouraged the FTC to reconsider the substantial burden imposed on Manufacturing Firms by narrowing the initially proposed requests in a way that would provide useful baseline comparison information.⁸

¹ Fed. Trade Comm'n, Agency Information Collection Activities; Submission for OMB Review; Comment Request, 78 Fed. Reg. 28715 (May 19, 2014), *available at* https://ftcpublishcommentworks.com/FTC/InitiativeDocFiles/580/FTC_FRDOC_PAESTudyPRA2.pdf [*hereinafter* FTC Second Notice].

² Fed. Trade Comm'n, Agency Information Collection Activities; Submission for OMB Review; Comment Request, 78 Fed. Reg. 61352 (Oct. 3, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/federal_register_notices/2013/10/131003paereportsfrn.pdf [*hereinafter* FTC Initial Notice]. The FTC's initial notice received 70 comments from various wireless industry participants, varying from major operating companies, to well-known PAEs, to various wireless chipset manufacturers.

³ Greg Sivinski, Microsoft Corporation's Comments on Proposed Information Collection (Dec. 16, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/public_comments/2013/12/00067-87876.pdf.

⁴ 44 U.S.C. §§ 3501-3521.

⁵ FTC Initial Notice, 78 Fed. Reg. at 61357; *see* 44 U.S.C. §§ 3501-3521.

⁶ Sivinski, *supra* note 3.

⁷ *See generally id.*

⁸ *Id.* at 16.



The FTC has extensively revised the proposed 6(b) study in response to the feedback received in response to the initial notice. Microsoft appreciates the FTC's efforts to lessen the burden on Manufacturing Firms, such as eliminating requests seeking general patent portfolio information and information concerning patents that have not been asserted, reducing the relevant time period, and providing clearer definitions regarding the information to be collected. Microsoft also welcomes the FTC's narrowing of document requests, and believes that the revised requests will allow the FTC to gather more targeted, useful information.⁹ Finally, Microsoft finds the revised structure of the study to be significantly easier to follow. In particular, it is now much clearer that the study is divided into two separate case studies, with the second part being a "narrowly focused comparative case study of PAE activity in the wireless communications sector."¹⁰

Microsoft believes that the revised study more appropriately balances the burdens imposed on Manufacturing Firms. The revised study's focus on comparing assertion activity in the "wireless communications sector," and wireless chipsets in particular, will gather responses in a well-defined market and allow the FTC to review and issue a report in a relatively short time period, thereby maximizing the utility of the study.¹¹ This should better achieve the PRA's "practical utility" goal of "the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion."¹² Therefore, Microsoft encourages the OMB to approve the FTC's proposed 6(b) study in its revised form.

⁹ For example, the revised requests now seek final agreements and reports, rather than "all documents."

¹⁰ FTC Second Notice, 78 Fed. Reg. at 28716.

¹¹ FTC Second Notice, 78 Fed. Reg. at 28717.

¹² 44 U.S.C. § 3502(11).