UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Aerotec International, Inc., **Plaintiff,** **vs.** **Honeywell International, Inc.,** **Defendant.**	**2:10-cv-00433 JWS** **ORDER AND OPINION** **[Re: Motion at Docket 153]**

I. MOTION PRESENTED

At docket 153, Plaintiff Aerotec International, Inc. ("Aerotec") asks the court to modify the protective order at docket 16 and unseal the materials relating to the summary judgment proceedings in this case. Defendant Honeywell International, Inc. ("Honeywell") responds at docket 155. Aerotec replies at docket 156. Oral argument is not requested and would not assist the court.

II. BACKGROUND

This in anti-trust case brought by Aerotec against Honeywell. It concerns competition in the repair market for auxiliary power units ("APUs"). APUs are small engines for commercial aircraft which provide power for auxiliary functions such as on-board electrical equipment and cabin air conditioning. APUs need routine maintenance, repair, and overhaul ("MRO") services. When an airline does not perform

its own MRO services, it solicits bids from MRO service providers such as Aerotec and Honeywell.

Aerotec's complaint against Honeywell alleged that Honeywell used its position as the predominant APU manufacturer and component parts supplier in an anticompetitive manner in the MRO service market, thereby violating antitrust laws and price discrimination laws. Aerotec's first claim alleged that Honeywell engaged in illegal tying in violation of section 1 of the Sherman Act by using its power in the market for Honeywell APU component parts to tie sales of parts to the sale of Honeywell's MRO services. Aerotec's second claim alleged that Honeywell engaged in exclusive dealing and bundled pricing in violation of section 1 of the Sherman Act by using "exclusive dealing agreements with APU repair customers to foreclose a substantial portion of the APU repair market from rival repair providers" and imposing "a severe pricing penalty if customers do not commit to using Honeywell repair services." Aerotec's third claim and forth claims for relief alleged that Honeywell engaged in monopolization and attempted monopolization in violation of section 2 of the Sherman Act by effectively refusing to deal with Aerotec, failing to provide Aerotec reasonable access to facilities that are essential for it to compete in the repair market, using bundled pricing, and requiring exclusive dealing arrangements with repair customers. The fifth claim for relief alleged that Honeywell engaged in price discrimination in violation of the Robinson-Patman Act. Aerotec's sixth claim alleged Honeywell violated Arizona's antitrust laws, and its seventh through tenth claims alleged that Honeywell committed various torts under Arizona law.

The parties' cross motions for summary judgment supported by voluminous statements of fact were filed under seal pursuant to the protective order they had jointly proposed to the court,[1] and which the court had approved.[2] The court granted

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[1]Stipulation at doc. 14.

[2]Doc. 16.

Honeywell's motion for summary judgment and denied Aerotec's motion. Aerotec appealed. In its motion at docket 153, Aerotec asks the court to unseal all the documents relating to the summary judgment proceedings.

III. DISCUSSION

Honeywell does not oppose unsealing most of the sealed materials used in the summary judgment proceedings:

> Honeywell agrees that this Court may unseal the vast majority of these materials, including the transcript of the hearing, the entirety of all the legal memoranda, all but two paragraphs of each Statement of Facts, and all but 18 of the approximately 280 exhibits submitted by the parties.[3]

The materials which Honeywell contends should remain sealed include exhibit 31 to Aerotec's statement of facts and exhibits 17, 21, 34, 35, and 46 to Honeywell's statement of facts which contain information about the pricing and terms of still outstanding agreements and proposals between Honeywell and some of its airline customers ("Contract/Proposal Exhibits"). Honeywell also argues that certain internal Honeywell documents should remain sealed–specifically exhibits 34, 114, 125, 127, 128, 129, and 131 to Aerotec's statement of facts and exhibits 26, 38, 39, 41, and 45 to Honeywell's statement of facts ("Internal Document Exhibits"). Finally, Honeywell asserts that paragraphs 42 and 43 of Honeywell's statement of facts ("Paragraphs 42 and 43") should remain under seal.

Of course, federal courts are courts of public record. The Ninth Circuit has said that there is a strong presumption favoring public access to court records.[4] However, the presumption is not absolute. It may be overcome by compelling reasons favoring non-disclosure.[5] The Ninth Circuit has long instructed trial courts confronting the need to determine whether there are such compelling reasons to consider all relevant factors

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[3]Doc. 155 at p. 1.

[4]*Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

[5]*Id.*

including, "the public interest in understanding the judicial process, and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets."[6] Moreover, the mere fact that the materials at issue have been subject to a protective order is of no significance after they have been used to support dispositive motions. At that point they become more than the mere results of discovery so that their continued non-disclosure depends not on the "good cause" required for the initial protective order, but on the establishment of compelling reasons for non-disclosure.[7] Here, as the proponent of non-disclosure, Honeywell bears the burden of establishing the compelling reasons.[8] If Honeywell does not demonstrate compelling reasons, then the default setting–that is allowing public access to the materials–applies.[9]

A. Contract/Proposal Exhibits

Honeywell contends that the Contract/Proposal Exhibits contain "detailed, non-public pricing information," which if publicly disclosed could be used for improper purposes because it could be used by Honeywell's competitors seeking to "negotiate similar agreements."[10] Honeywell also equates the pricing information with a "trade secret." To support its position, Honeywell relies on the affidavit of an employee, Robert Buddecke.[11] Aerotec argues that there are problems with Honeywell's reliance on Buddecke's affidavit. To begin with Aerotec argues that it is doubtful that he has sufficient personal knowledge to support his assertions with respect to the

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[6] *Id.* (quoting *Hagestad v. Tragesser*, 49 F. 3d 1430, 1434 (9th Cir. 1995) in turn quoting *EEOC v. Erection Co., Inc.*, 900 F.2d 168, 170 (9th Cir. 1990)).

[7] *Id.*, 331 F.3d at 1135-36.

[8] *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1181-82 (9th Cir. 2006).

[9] *Id.*, 447 F.3d at 1182.

[10] Doc. 155 at pp. 3-4.

[11] Doc. 155-1.

Contract/Proposal Exhibits, because his deposition testimony shows that he has had little to do with Honeywell's APU business since some time in 2010.[12] However, an examination of the Contract/Proposal Exhibits shows they were all executed before Buddeke transitioned away from the APU area. Exhibit 31 to Aerotec's statement of facts was signed on October 20, 2006, and Exhibits 34, 35, and 46 to Honeywell's statement of facts are all documents from 2009.

Aerotec also argues that Buddecke's affidavit is too conclusory to satisfy Honeywell's obligation to provide compelling reasons for non-disclosure of the Contract/Proposal Exhibits. This argument has merit. Buddeke asserts that disclosure of the pricing and related financial information in the Contract/Proposal Exhibits "would be extremely valuable" to Honeywell's competitors. Each of the subject documents is lengthy and complicated. Yet, the affidavit does not identify the particular provisions whose disclosure would harm Honeywell's competitive position, nor does it explain how that harm would arise. It is not for the court to comb through the documents and then advance its own conjecture as to which provisions would be valuable to Honeywell's competitors and further conjecture as to how their disclosure would be harmful to Honeywell. Finally, Honeywell makes no attempt to quantify the harm so that the court could weigh the harm to Honeywell against the public's right to see materials which relate to the disposition of this anti-trust case. Honeywell has the burden to show compelling reasons why the documents should remain shrouded in secrecy. It has not carried that burden.

B. Internal Document Exhibits

As with the Contract/Proposal Exhibits, Honeywell relies on Buddecke's declaration to establish the compelling reasons required to keep the Internal Document Exhibits from public view. The testimony in the declaration indicates that disclosure of the Internal Document Exhibits could put Honeywell at a competitive disadvantage. The

[12]Doc. 156 at pp. 3-4 quoting from Buddecke's deposition.

declaration does not identify which of the numerous documents' disclosure actually would result in significant harm to Honeywell. Buddecke treats this large array of documents as fungible. Moreover, he does not point to any particular provision in any of the documents which would be a source of harm to Honeywell, much less offer an explanation of how Honeywell would be disadvantaged. Given the nature of some of the material in the Internal Document Exhibits, the court could speculate that disclosure would aid Honeywell's competitors, but the court's conjecture is only that, conjecture. The business in which Aerotec and Honeywell compete is a complex one. The court cannot independently evaluate the significance of the Internal Document Exhibits in that context. It is Honeywell's burden to show compelling reasons for not disclosing the Internal Document Exhibits. It has not done so.

C. Paragraphs 42 and 43

Buddecke's declaration asserts generally that disclosure of Paragraphs 42 and 43 could be used by Honeywell's competitors to put Honeywell at a competitive disadvantage. Paragraph 42 refers to the fact that Honeywell establishes standardized regional pricing. Use of that pricing allows its employees to bid on contracts promptly. Paragraph 42 states that the standardized prices are substantially above cost. It also gives as an example the profits and returns on a contract made in 2009. Buddecke does not explain how disclosure of this information would put Honeywell at a competitive disadvantage in 2014. Even if the court could speculate that some harm to Honeywell would flow from disclosing paragraph 42, it is for Honeywell to provide the court with something concrete, not speculative. The strong presumption favoring disclosure has not been rebutted. Paragraph 42 will be unsealed.

Paragraph 43 explains that a contract which does not use the standardized pre-approved prices must receive further approval within Honeywell. It explains generally how Honeywell goes about giving further approval via a process that takes into account various measures of profit and rates of return. It then gives as an example information concerning how the process applied in negotiating with Avianca in 2008 and early 2009.

Buddecke does not articulate how disclosure of the information in paragraph 43 would specifically harm Honeywell. The contract data disclosed in the paragraph relates to a time period five years before the present. Without more from Honeywell, the court cannot conclude that disclosure of paragraph 43 would impair Honeywell's ability to compete. As with the other matters Honeywell wants to shield from public view, Honeywell has not carried its burden to show the compelling reasons required for continued secrecy. Paragraph 43 will be unsealed.

IV. CONCLUSION

For the reasons set out above, the Protective Order at docket 16 is **MODIFIED** such that Aerotec's motion to unseal at docket 153 is **GRANTED** as follows: (1) The Clerk of Court will please unseal the materials filed at dockets 103, 104, 107, 108, 112, 113, 115, 116, 119, 120, 122, 123, 127, 128, 130, 131, 132, 134, 135, 137, 138, 140, 142, and 144.

DATED this 12th day of May 2014.

/S/
JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE