**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON, JOHNNA FOX, BENJAMIN BORROWMAN, ANN LAMBERT, ROBERT ANDERSON, and CHAD HOHENBERY on behalf of themselves and all others similarly situated,

*Plaintiffs*,

v.

DEUTSCHE TELEKOM AG et al.,

*Defendants*.

Case No. 1:22-cv-03189

Hon. Thomas M. Durkin

Hon. Jeffrey Cole

**DEFENDANTS T-MOBILE US, INC. AND SOFTBANK GROUP CORP.'S**
**RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants T-Mobile US, Inc. and SoftBank Group Corp. submit this response to Plaintiffs' "Notice of Supplemental Authority" (Dkt. 103).

Defendants agree that this case is pertinent supplemental authority on a crucial issue in the case, but it is of no assistance to Plaintiffs. To the contrary, the D.C. Circuit's decision in *New York v. Meta Platforms, Inc.*, 2023 WL 3102921 (D.C. Cir. Apr. 27, 2023), actually supports *Defendants'* arguments that both prongs of the laches defense—undue delay and prejudice—are met here. *Meta* thus confirms that laches bars Plaintiffs' claim for injunctive relief.

As to undue delay, the D.C. Circuit did not view the antitrust statute of limitations as "presumptive" or controlling, as Plaintiffs claim. Notice at 1. Instead, the court emphasized that the statute of limitations that applies to antitrust damages claims is useful "*solely* for the light [it] may shed" on the "decisive" question, which is always "whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair." 2023 WL 3102921, at *8

(emphasis added; quotation marks omitted). Thus, as the (now affirmed) district court pointed out, "courts frequently find a divestiture remedy clearly unfair and unwarranted after delays in filing much shorter than four years—sometimes only months or even days after the merger's announcement." *New York v. Facebook, Inc.*, 549 F. Supp. 3d 6, 35 (D.D.C. 2021); *see* MTD at 36–37 (explaining why Plaintiffs' unexplained delay was undue).

As to prejudice, the D.C. Circuit likewise agreed with Defendants that the "severe consequences" attending divestiture after a completed merger result in prejudice to the defendant—and that this is an appropriate Rule 12 determination. 2023 WL 31029291, at *8; MTD at 37–38. The court pointed specifically to the harm arising from "breaking up" a merged entity after the "progressive integration of the assets and operations of the merged firms" made them "costly and difficult to separate." *Id.* (quotation marks omitted). Plaintiffs' contention that Defendants would not be similarly harmed here, Notice at 2 n.1, is belied by their own allegations that Sprint's operations have been integrated with T-Mobile's since day one, Compl. ¶¶ 1, 5; *see also* MTD at 37–38 (explaining how Defendants would be prejudiced).

Dated: May 16, 2023

Respectfully submitted,

/s/ *Josh Krevitt*

Clifford C. Histed
ARDC No. 6226815
Michael E. Martinez
ARDC No. 6275452
K&L GATES LLP
70 West Madison Street, Suite 3300
Chicago, IL 60602-4207
Phone: 312-807-4448
clifford.histed@klgates.com
michael.martinez@klgates.com

Josh Krevitt (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue

New York, NY 10166-0193 USA
Phone: 212-351-4000
JKrevitt@gibsondunn.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
Daniel G. Swanson (*pro hac vice*)
Rodney J. Stone (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Phone: 213-229-7000
TBoutrous@gibsondunn.com
DSwanson@gibsondunn.com
RStone@gibsondunn.com

Rachel S. Brass (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street
San Francisco, CA 94105-0921
Phone: 415-393-8200
RBrass@gibsondunn.com

*Counsel for T-Mobile US, Inc.*

/s/ *Henry B. Liu*

Rachel S. Morse
MASSEY & GAIL LLP
50 East Washington Street, Suite 400
Chicago, IL 60602
Tel: 312-283-1590
rmorse@masseygail.com

Robert D. Wick
Henry B. Liu (*pro hac vice*)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001-4956
Tel: 202-662-6000
rwick@cov.com
hliu@cov.com

Michael B. Miller (*pro hac vice*)
MORRISON & FOERSTER LLP
250 West 55th Street

New York, NY 10119
Tel: 212-468-8000
MBMiller@mofo.com

*Counsel for Defendant SoftBank Group Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2023, I electronically filed a copy of the foregoing through the Court's CM/ECF system, which will send notifications of the filing to all counsel of record.

*/s/ Josh Krevitt*
Josh Krevitt