

**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

Magistrate Judge Jeffrey Cole

**DEFENDANT T-MOBILE'S
STATEMENT OF INTEREST
REGARDING PLAINTIFFS' MOTION
TO COMPEL AT&T MOBILITY LLC**

T-Mobile submits this Statement of Interest pursuant to the stipulated briefing schedule regarding Plaintiffs' Motion to Compel. *See* Notice Regarding Briefing Schedule, ECF No. 257-17 ("On or before March 28, 2025, T-Mobile may file a statement of interest."). Plaintiffs' Complaint seeks to recover from T-Mobile some undetermined portion of the amounts that they, and members of the putative class, allegedly paid to non-parties AT&T and Verizon for cellular service. Plaintiffs have now moved this Court for an order compelling AT&T to conduct unspecified custodial searches of the files of fifteen AT&T executives and directors hoping to find some evidence to support their claim that AT&T was able to "profitably maintain prices ... substantially above" competitive levels due to a merger between T-Mobile and Sprint in 2020, a merger that has already been "vetted and vetted and vetted again." *See* Compl. ¶¶129, ECF No. 1; Mem. Op. and Order at 6, ECF No. 206; *see generally* Pls.' Mot. to Compel AT&T, ECF No. 257.

Plaintiffs do not allege that the price increases that AT&T has issued since 2020 are caused by any direct relationship between AT&T and T-Mobile. Because Plaintiffs' claims hinge on the motive behind AT&T's independent price decisions, discovery from this non-party is critical to verifying Plaintiffs' case. As such, T-Mobile also seeks discovery from AT&T to defend itself from Plaintiffs' baseless claims. T-Mobile's subpoena contains many requests that are identical to Plaintiffs' requests and others that are substantially similar to requests made by Plaintiffs (collectively "Overlapping Requests"). T-Mobile agrees with Plaintiffs that AT&T should conduct reasonable searches and produce documents responsive to the Overlapping Requests; T-Mobile believes that AT&T has already agreed to do so, meaning that Plaintiffs' motion is premature.

According to AT&T, documents likely to illuminate the key issues in this case, including documents demonstrating AT&T's retail wireless mobile service plans, pricing, quality, costs, investments, competitive analyses, and competitive responses, and documents relevant to market definition, are likely to be contained in reports, presentations, and analyses prepared in the ordinary course of business. AT&T has agreed to conduct a reasonable search in good faith to locate and produce such documents, including by conducting custodial interviews and searching both custodial and noncustodial sources for responsive documents and data. Plaintiffs do not explain, much less show with evidence, that AT&T's proposed methodology is unreasonable or deficient.

T-Mobile reserves the right to seek the Court's assistance if AT&T fails to conduct adequate searches or to make reasonable productions. However, T-Mobile currently has no reason to believe that AT&T's productions *will* be deficient or that the broad search of emails and other custodial materials proposed by Plaintiffs is *more likely* to lead to the production of relevant information than the process that AT&T has already agreed to undertake.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiffs' theory is that the 2020 merger of T-Mobile and Sprint (the "Merger") "reduced competition," including by "reduc[ing] the incentive to compete" for AT&T and Verizon, and "affected prices and quality industry-wide." Compl. ¶¶1, 5, 8, 20. As relevant here, Plaintiffs specifically allege that AT&T "profitably" charged "inflated prices," slowed the introduction of new plans, and otherwise stopped vigorously competing for subscribers post-Merger. *See id.* ¶¶106-08, 129; *see also id.* ¶¶121-22. Plaintiffs' theory that the Merger harmed competition requires the Court to ignore the conclusion of every regulatory agency and court that scrutinized the Merger in advance and, based on that scrutiny, concluded that the Merger would "strengthen competition" and "benefit American consumers." Mem. Op. and Order at 10. But to prove the claims made in this case, Plaintiffs must not only show that the conclusions reached by regulators and courts were wrong, but also that the Merger directly caused AT&T to offer lower quality services and to overcharge for those services by some identifiable amount. While T-Mobile vigorously disputes Plaintiffs' claims, it agrees that AT&T, as the party that allegedly overcharged Plaintiffs and members of the putative class, has information squarely relevant to the claims and defenses in this case.

Plaintiffs served a subpoena on AT&T on October 19, 2022. On February 27, 2025, T-Mobile served AT&T with its own subpoena.¹ *See* Exhibit 1, Decl. of Jennifer Milici ("Ex. 1"). Of the 43 requests in T-Mobile's subpoena, 10 are identical to requests served by Plaintiffs and 11 are slightly modified versions of requests served by Plaintiffs—these 21 requests are the Overlapping Requests.² These Overlapping Requests include requests for documents regarding

¹ On March 4, 2025, T-Mobile served a corrected subpoena changing the entity named to "AT&T Mobility LLC", but that subpoena was otherwise identical to the subpoena originally served.

² The Overlapping Requests include Plaintiffs' Requests Nos. 1, 2, 4-16, 20, 22-24, 28 and T-Mobile's Request Nos. 1-6, 12-19, 21-23, 28, 29, 42.

AT&T's pricing and market analysis, AT&T's network, AT&T's investments, including in 5G, its prices and plans, costs of providing service, and the competitive significance of undeployed spectrum. T-Mobile's subpoena included its own, non-overlapping requests, which are not raised in Plaintiffs' motion and about which T-Mobile continues to negotiate with AT&T and reserves all rights.³

On March 21, 2025, AT&T served their responses and objections ("R&Os") to T-Mobile's subpoena. T-Mobile and AT&T have met and conferred with respect to T-Mobile's subpoena and AT&T's R&Os four times. T-Mobile understands that AT&T has agreed to conduct a robust "go get" search and to produce documents responsive to the Overlapping Requests, including regularly prepared and ad hoc reports, presentations and analyses about 5G, competitive market intelligence, spectrum acquisitions, costs of providing service, post-merger analysis of AT&T's sales, the process employed by AT&T in determining prices and the factors it considers, product bundling practices, and the plans AT&T has offered during an appropriate time period. AT&T has also provided samples of structured data to Plaintiffs and T-Mobile in response to their data requests. T-Mobile is evaluating the sufficiency of the structured data AT&T has agreed to provide.

ARGUMENT

As stated above, T-Mobile's subpoena includes Overlapping Requests to Plaintiffs' subpoena as well as T-Mobile's own non-overlapping requests. T-Mobile addresses each category of requests below in turn. At bottom, however, T-Mobile maintains that, based on AT&T's representations and commitments to date, Plaintiffs' motion to compel, particularly with respect to custodial searches, is premature.

³ Plaintiffs' subpoena included several requests that do not seek information relevant to the claims and defenses in this matter and so were not requested in T-Mobile's subpoena, including requests relating to communications between Verizon, Sprint, or T-Mobile or "between T-Mobile and Sprint" relating to a litany of topics, and all documents relating to "industry trade association meetings." Plaintiffs' Requests Nos. 17-19.

Overlapping Requests—Documents

Plaintiffs and T-Mobile seek documents relating to, for example, AT&T’s pricing, costs, market analysis, network, investments (including in 5G), and quality, and about the competitive significance of the Merger and undeployed spectrum and spectrum acquisitions.

Nowhere in its Motion to Compel do Plaintiffs identify any requests for which AT&T has *refused* to provide documents. To the contrary, T-Mobile understands from its negotiations with AT&T that AT&T intends to conduct a robust set of custodial interviews and to collect documents in a good faith effort to produce information responsive to the parties’ overlapping requests. At this juncture, before any documents have been produced, T-Mobile cannot evaluate whether AT&T has completed a reasonably diligent search, nor whether the information AT&T provides will prove sufficient—but likewise it cannot conclude that AT&T is somehow failing to fulfill its obligations in response to the Overlapping Requests, or is “cherry pick[ing]” self-serving documents. Pls.’ Mot. to Compel AT&T, ECF No. 257 at 8. As such, T-Mobile’s position is that Plaintiffs’ motion is premature, while T-Mobile reserves its rights to address the sufficiency of AT&T’s production once it is made.

Moreover, Plaintiffs’ request for custodial searches for the Overlapping Requests does not appear targeted to locate responsive information, and T-Mobile believes any resolution of a dispute about custodial searches should be deferred, at minimum, until informed targeted requests can be made. Plaintiffs ask this Court to order searches of the custodial files of 15 AT&T executives without demonstrating why those custodial searches are necessary given the targeted collections that AT&T is apparently prepared to undertake. For example, Plaintiffs’ Request No. 13, and T-Mobile’s Request No. 15, seek documents relating to “retail mobile wireless pricing, quality

adjusted pricing, market share, the effect of the transaction, innovations in plan introductions, discounting, sales, network coverage, network speed, network investment, or spectrum purchases, or competitive intelligence documents or SWOT analysis.” *See* Ex. 1 at 10. T-Mobile understands that AT&T is willing to conduct a robust “go get” search for documents responsive to this request. According to AT&T, the documents sought through this request, including competitive intelligence documents and SWOT analyses, are likely better located via a robust targeted collection process where knowledgeable individuals identify appropriate repositories or other means to collect a complete set of materials for the appropriate time-period. Provided that proves to be true, Plaintiffs’ sweeping request is unnecessary; if there are gaps in AT&T’s production, later targeted searches can be conducted to address those deficiencies.

Similarly, Plaintiffs’ Request No. 15 and T-Mobile’s Request No. 17 seek documents “concerning Your pricing of retail mobile wireless service.” *See* Ex. 1 at 11. T-Mobile understands that AT&T is willing to conduct a robust “go get” search for documents relating to its pricing decisions during an appropriate time period, including documents showing the factors that it considered in setting prices. At this point, it would be most efficient to have AT&T produce the documents it has located through its proposed targeted, robust process wherein knowledgeable individuals will identify the regularly prepared reports and analyses and any relevant ad hoc analyses. This would allow for the production of a complete set of relevant materials for the appropriate time period. To the extent AT&T’s search and production are not sufficient, T-Mobile and Plaintiffs can seek additional documents and data, including documents located through the use of search-term based searches if necessary.

With respect to the Overlapping Requests relating to documents produced in the Pre-Merger Investigation and Litigation (Plaintiffs’ Request Nos. 1, 2, 4 and T-Mobile’s Request Nos.

1-3), *see* Ex. 1 at 6-7. T-Mobile understands that AT&T has identified a set of documents from its prior pre-merger productions that it is willing to re-produce in this case. Without further detail, T-Mobile cannot assess whether AT&T's proffered production is sufficient, is the result of a reasonably diligent search, or covers a reasonable time period. T-Mobile believes the parties will be in a position to assess the sufficiency of any such production *after* it is made. As such, T-Mobile reserves its rights with respect to Request Nos. 1-3, and to pre-Merger documents generally, but believes motion practice regarding those requests is premature.

Overlapping Requests—Structured Data

T-Mobile believes that AT&T should produce structured data responsive to the Overlapping Requests to the extent that it exists, but T-Mobile is not at impasse with AT&T with respect to any structured data request. AT&T has provided a sample of structured data to Plaintiffs and T-Mobile. T-Mobile is considering the sufficiency of the sample data that AT&T has provided, and is continuing to negotiate with respect to the appropriate scope and time period for that data and for the data T-Mobile seeks in its non-overlapping requests. T-Mobile reserves all rights with respect to those requests.

T-Mobile's Non-Overlapping Requests

Plaintiffs' motion naturally does not implicate T-Mobile's non-overlapping requests. T-Mobile and AT&T are engaging productively regarding those requests, and while there are no disputes ripe for adjudication at this time, T-Mobile reserves all rights.

CONCLUSION

T-Mobile's position is that AT&T should produce the documents that it has agreed to produce as soon as the dispute about the Confidentiality Order is resolved. Once the parties have received AT&T's production, the parties, and the Court, will be in a better position to assess the

adequacy of that production and the proportionality of any further demands for production (through custodial searches or otherwise). Should AT&T fail to conduct adequate targeted searches for documents responsive to T-Mobile's overlapping requests, T-Mobile reserves all rights.

Dated: March 28, 2025

Respectfully Submitted,

/s/ Jennifer Milici
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CERTIFICATE OF SERVICE

I, Jennifer Milici, hereby certify that this STATEMENT OF INTEREST was electronically filed on March 28, 2025, and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Respectfully submitted,

/s/Jennifer Milici

Jennifer Milici
Counsel for T-Mobile US, Inc.