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JUNIPER NETWORKS, INC.

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN JOSE DIVISION**

23 UNITED STATES OF AMERICA,

24 Plaintiff,

25 v.

26 HEWLETT PACKARD ENTERPRISE CO.
27 and JUNIPER NETWORKS, INC.,

28 Defendants.

CASE NO. 5:25-cv-00951-PCP

**DEFENDANTS' ADMINISTRATIVE
MOTION FOR AN EXPEDITED CASE
MANAGEMENT CONFERENCE**

Judge: P. Casey Pitts
Action Filed: January 30, 2025

1 Pursuant to Civil Local Rule 7-11, the Hewlett Packard Enterprises Company (“HPE”) and
2 Juniper Networks, Inc. (“Juniper”) (collectively, “Defendants”) respectfully request that the Court
3 convene a case management conference this week or at the Court’s earliest opportunity to address
4 the trial schedule. The Antitrust Division of the United States Department of Justice (“DOJ”) is
5 seeking to block HPE’s acquisition of Juniper, a deal that was signed in January 2024, and that
6 DOJ investigated for over 12 months before filing this lawsuit.

7 Litigations challenging mergers and acquisitions typically unfold on an expedited schedule
8 compared with other federal civil actions, *see, e.g.*, 15 U.S.C. § 25 (providing that in an injunctive
9 action under Section 7 of the Clayton Act, “the court shall proceed, as soon as may be, to the
10 hearing and determination of the case”), because the intervening time pending a court decision can
11 cause significant disruption and financial uncertainty for the merging companies. The Parties are
12 at impasse over the schedule in this case, which is driven by the proposed trial date. The clerk has
13 set an initial case management conference for May 1, 2025. (Dkt. 28.) Defendants, however, seek
14 a case management conference as soon as possible so that the Court may order a schedule
15 consistent with past merger litigation timelines. Defendants requested that DOJ join a motion for
16 an expedited case management conference, but DOJ did not join, describing it as “premature.”

17 The Parties have vastly different views regarding the time needed to prepare for trial in this
18 matter and the exigencies facing the companies resulting from continued delay of their merger.
19 Consistent with traditional expedited schedules followed in other merger challenges, Defendants
20 have proposed a June 16, 2025 trial date. DOJ, on the other hand, seeks to delay the trial and
21 initially proposed an October 27, 2025 trial date, three weeks *after* the companies’ January 2024
22 merger agreement is set to terminate. In other words, DOJ chose a start date knowing that the
23 merits of DOJ’s case could not be heard and this Court could not render a decision before the
24 merger agreement ends. After Defendants objected and reminded DOJ of the exigencies associated
25 with closing the transaction and the difficulties of re-negotiating a \$14 billion transaction, DOJ
26 proposed a trial date of September 8, 2025. Such a prolonged case schedule is unnecessary and is
27 out of the norm for merger litigations, and it would needlessly push the parties and the Court
28 against the termination date in the agreement. DOJ’s apparent strategy is to delay trial as long as

1 possible in the hopes that Defendants will abandon their deal. Accordingly, Defendants request
2 that the Court promptly set a case management conference to address the trial schedule.

3 BACKGROUND

4 HPE and Juniper announced their transaction on January 9, 2024. The companies began
5 engaging with DOJ that month, including an in-person presentation to DOJ staff. On March 1,
6 2024, the companies filed the required notification under the Hart-Scott Rodino Act (“HSR Act”).
7 On April 1, 2024, DOJ issued a Request for Additional Information, colloquially called a “Second
8 Request,” to both companies. The companies promptly complied with the Second Request by
9 August 1, 2024, collectively producing to DOJ over 1.7 million documents, in addition to large
10 quantities of data and written submissions. DOJ then took depositions of six executives.

11 The companies also accommodated multiple extensions to facilitate DOJ’s investigation.
12 After substantially complying with DOJ’s Second Request on August 1, 2024, the companies were
13 subject to a statutory waiting period under the HSR Act that would prohibit them from closing the
14 transaction for 30 days. The companies agreed to give DOJ 75 days for its investigation, pushing
15 the date by which DOJ would need to sue to block the transaction to October 15, 2024. At DOJ’s
16 request, the companies agreed to further extensions to October 31, November 12, November 21,
17 and finally, January 30, 2025, 151 days after the original deadline by which DOJ would have been
18 required to bring a lawsuit. On January 30, 2025, after waiting until after the new Administration’s
19 acting appointees were installed at the Antitrust Division, DOJ filed this action.

20 Defendants have pushed to accelerate the schedule since they were informed DOJ was
21 filing a complaint. On January 30, when DOJ informed counsel for the Defendants of the
22 imminent filing of a Complaint, counsel for Defendants emphasized the need to agree to an early
23 trial date and get the schedule adopted by the Court. Defendants promptly provided a draft
24 protective order and draft case management statement for DOJ’s consideration on January 31,
25 2025, the day after the filing of the Complaint. (Declaration of Julie Elmer in Support of
26 Defendants’ Administrative Motion for an Expedited Case Management Conference (“Elmer
27 Decl.”), Ex. A.) Defendants also requested that DOJ begin the process necessary for production of
28 its investigative file (*e.g.*, any document or data productions or depositions of third parties that

1 provided information during DOJ’s investigation). Merger litigations unfold asymmetrically: from
2 day one, DOJ possesses a massive “discovery” record generated during its investigation, while
3 defendants have only their own materials. Until Defendants receive DOJ’s investigation materials
4 received from third parties, Defendants are litigating at a significant disadvantage.

5 On February 3, 2025, DOJ sent its own draft protective order and case management
6 statement. (Elmer Decl., Ex. B.). While Defendants proposed that the case proceed to trial on June
7 16, 2025, DOJ proposed a trial date of October 27, 2025. (Elmer Decl., Exs. A, B and C.) As DOJ
8 was aware, pursuant to the Defendant’s merger agreement, the termination date—the date at which
9 point the merger agreement will terminate if regulatory approvals have not been secured—is
10 October 9, 2025. DOJ’s initial proposed trial date was nearly three weeks after that date.

11 DOJ and counsel for the Defendants have met and conferred three times about a proposed
12 trial date. Counsel for Defendants have made clear that their proposed trial start date was well-
13 thought-out, noting that the time for pre-trial activities was in line with prior merger litigation
14 schedules and that a June trial enabled sufficient time for the Court to make a decision and issue an
15 opinion before October 9. On February 7, Defendants informed DOJ that they were prepared to
16 seek an expedited case management conference on February 10, and asked DOJ to join a motion.
17 DOJ said that such motion was “premature.” Later that day, DOJ asked why the October 9 merger
18 agreement termination date is “immovable.” (Elmer Decl., Ex. D.) Defendants explained that, as
19 the DOJ is well aware, the termination date cannot be easily moved in a heavily negotiated and
20 long-delayed transaction of this magnitude. (Elmer Decl., Ex. E.) On February 10, Defendants
21 notified DOJ of their intention to move for an early case management conference and again asked
22 DOJ to join (Elmer Decl., Ex. F). On February 11, DOJ acknowledged the need for an early case
23 management conference but again said the motion was “premature.” (Elmer Decl., Ex. G).

24 ARGUMENT

25 It is well-established that merger challenges are tried on expedited litigation schedules. 15
26 U.S.C. § 25; *see also United States v. US Airways Grp.*, 979 F. Supp. 2d 33, 35 (D.D.C. 2013)
27 (“[B]ecause of the need for the prompt resolution of this matter, the Court has set an expedited
28 discovery and trial schedule.”). Defendants thus proposed a trial start date of June 16, 2025, 137

1 days following the Complaint, consistent with the time from complaint to trial of other recent DOJ
2 merger challenges. *See, e.g., United States v. AT&T, Inc.*, No. 17-cv-02511-RJL (D.D.C.) (122
3 days); *United States v. United States Sugar Corp.*, No. 21-cv-01644-MN (D. Del.) (146 days).
4 Indeed, Defendants' proposed schedule is *longer* than prior DOJ merger litigation schedules. *See,*
5 *e.g., United States v. Oracle Corp.*, No. 04-cv-00807 (N.D. Cal.) (102 days). Parties to merger
6 challenges undertake fact and expert discovery and provide pre-trial briefing in a period of months,
7 shortening the default federal rules intervals for various pre-trial activities and foregoing other
8 activities (e.g., motions practice). Countless companies have embraced these expedited schedules,
9 even though DOJ enjoys a significant litigation advantage due to its pre-complaint discovery.

10 DOJ's proposal ignored its own past schedules and disregarded the termination date under
11 the parties' merger agreement. But courts in this circuit have previously expedited case schedules
12 to accommodate termination dates "[b]ecause undue delay could force the parties to abandon the
13 proposed merger." *Fed. Trade Comm'n v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1165 (9th Cir.
14 1984); *see also Fed. Trade Comm'n v. Microsoft Corp.*, 681 F.Supp.3d 1069, 1083 (N.D. Cal.
15 2023) (noting "action proceeded on an expedited basis given the Agreement's impending
16 termination date."). DOJ's new offer of a September 8 trial date remains untenable because it
17 continues to unnecessarily run up against the termination date. It would also force the Court to
18 decide the fate of this \$14 billion merger in under three weeks, which is unnecessary when the
19 schedule can be expedited to provide the Court with sufficient time for its decision.

20 DOJ's delay is harming Defendants and the marketplace. The uncertainty that hangs over
21 transactions during a merger challenge threatens the loss of employees and customer contracts. It
22 also adds unnecessary costs, and the merger parties are unable to realize the synergies and
23 efficiencies that caused them to merge in the first place. Similarly, the marketplace is being
24 deprived of the procompetitive benefits of this merger: here, a stronger rival better positioned to
25 drive innovation and challenge Cisco's entrenched position and to compete globally with Huawei.

26 Accordingly, Defendants respectfully request that the Court convene a case management
27 conference at the earliest possible date to address the trial schedule.

28

1 DATED: February 11, 2025

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By: /s/ Jack P. DiCanio
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Julie S. Elmer, am the ECF user whose identification and password are being used to file Defendants' Administrative Motion for an Expedited Case Management Conference. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Julie S. Elmer