



Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036-6797
+1 212 698 3500 Main
+1 212 698 3599 Fax
www.dechert.com

MARK CHEFFO



August 6, 2024

VIA FEDEX & EMAIL

David Boies
Boies Schiller Flexner LLP
55 Hudson Yards
New York, NY 10001
dboies@bsfllp.com

RE: Response to Letter Regarding CrowdStrike Outage

Dear Mr. Boies:

I have received your letter to Microsoft dated July 29, 2024. Microsoft has asked me to respond on its behalf.

Let me say first that Microsoft empathizes with Delta and its customers regarding the impact of the CrowdStrike incident. But your letter and Delta's public comments are incomplete, false, misleading, and damaging to Microsoft and its reputation.

The truth is very different from the false picture you and Delta have sought to paint:

- (a) Even though Microsoft's software had not caused the CrowdStrike incident, Microsoft immediately jumped in and offered to assist Delta at no charge following the July 19 outage;
- (b) Each day that followed from July 19 through July 23, Microsoft employees repeated their offers to help Delta. Each time, Delta turned down Microsoft's offers to help, even though Microsoft would not have charged Delta for this assistance.
- (c) On the morning of July 22, a Microsoft employee, aware that Delta was having more difficulty recovering than any other airline, messaged a Delta employee to say, "just checking in and no pressure to reply, but if you can think of anything your Microsoft team can be helping with today, just say the word." The Delta employee replied, saying "all good. Cool will let you know and thank you." Despite this assessment that things were "all good," public reports indicate that Delta canceled more than 1,100 flights on July 22 and more than 500 flights on July 23.

(d) More senior Microsoft executives also repeatedly reached out to help their counterparts at Delta, again with similar results. Among others, on Wednesday, July 24, Microsoft CEO Satya Nadella emailed Delta CEO Ed Bastian, who has never replied.

(e) In fact, it is rapidly becoming apparent that Delta likely refused Microsoft's help because the IT system it was most having trouble restoring—its crew-tracking and scheduling system—was being serviced by other technology providers, such as IBM, because it runs on those providers' systems, and not Microsoft Windows or Azure.

Microsoft continues to investigate the circumstances surrounding the CrowdStrike incident to understand why other airlines were able to fully restore business operations so much faster than Delta, including American Airlines and United Airlines. Our preliminary review suggests that Delta, unlike its competitors, apparently has not modernized its IT infrastructure, either for the benefit of its customers or for its pilots and flight attendants.

Given all this, my client was surprised to see your letter. This is particularly so given that CrowdStrike has acknowledged responsibility for the content update that caused the July 19 incident.

As you know, Windows is an open platform that supports a vibrant ecosystem of programs, including built-in and first-party solutions and additional options by third-party developers, such as CrowdStrike. To ensure that Microsoft's customers have options for the best possible protection from malicious attacks, Windows enables trusted third-party developers to develop kernel drivers, in addition to user mode drivers. Security programs are able to use kernel mode drivers to protect the Windows system in the startup process. Third-party programs that utilize kernel drivers must balance security against resilience, and Microsoft provides feedback and best practices to third-party security program developers through Microsoft's Virus Initiative.

Given Delta's false and damaging public statements, Microsoft will vigorously defend itself in any litigation if Delta chooses to pursue that path. Further, Microsoft demands that Delta preserve (a) the documents CrowdStrike demanded that you preserve; as well as (b) documents discussing or referring to (i) the CrowdStrike incident and Delta's outage, including Delta's efforts and experience in returning to working order its systems, including its crew-tracking and scheduling system and systems that use other third-party technology providers; (ii) the extent to which non-Microsoft systems or software, including systems provided and/or designed by IBM, Oracle, Amazon Web Services, Kyndryl or others, and systems using other operating systems, such as Linux, contributed to the interruption of Delta's business operations between July 19 and July 24; (iii) the decision to deploy CrowdStrike across the various different systems comprising Delta's computer infrastructure; and (iv) Delta's communications with third-party media and/or public affairs consultants concerning the CrowdStrike incident and Delta's outage, and concerning Delta's

communications strategy and/or public response. Such documents include both communications internally and externally, with third parties.

Please let me know if you would like to schedule a time to talk.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Cheffo". The signature is written in a cursive, flowing style.

Mark Cheffo