MERGER ANTITRUST LAW

Unit 2: The DOJ/FTC Merger Review Process

Class 3

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Table of Contents

Premerger Notification

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Premerger Notification and the Merger Review Process

Under the Hart-Scott-Rodino (HSR) Act, parties to certain large mergers and acquisitions must file premerger notification and wait for government review. The parties may not close their deal until the waiting period outlined in the HSR Act has passed, or the government has granted early termination of the waiting period. The FTC administers the premerger notification program, and its staff members answer questions and maintain a website with helpful information about how and when to file. The FTC also provides daily updates of deals that receive early termination.

Steps in the Merger Review Process

Step One: Filing Notice of a Proposed Deal

Not all mergers or acquisitions require a premerger filing. Generally, the deal must first have a minimum value and the parties must be a minimum size. These filing thresholds are updated annually. In addition, some stock or asset purchases are exempt, as are purchases of some types of real property. For further help with filing requirements, see the FTC's Guides to the Premerger Notification Program. There is a filing fee for premerger filings.

For most transactions requiring a filing, both buyer and seller must file forms and provide data about the industry and their own businesses. Once the filing is complete, the parties must wait 30 days (15 days in the case of a cash tender offer or a bankruptcy) or until the agencies grant early termination of the waiting period before they can consummate the deal.

Step Two: Clearance to One Antitrust Agency

Parties proposing a deal file with both the FTC and DOJ, but only one antitrust agency will review the proposed merger. Staff from the FTC and DOJ consult and the matter is "cleared" to one agency or the other for review (this is known as the "clearance process"). Once clearance is granted, the

investigating agency can obtain non-public information from various sources, including the parties to the deal or other industry participants.

Step Three: Waiting Period Expires or Agency Issues Second Request

After a preliminary review of the premerger filing, the agency can:

1. terminate the waiting period prior to the end of the waiting period (grant Early Termination or "ET");
2. allow the initial waiting period to expire; or
3. issue a Request for Additional Information ("Second Request") to each party, asking for more information.

If the waiting period expires or is terminated, the parties are free to close their deal. If the agency has determined that it needs more information to assess the proposed deal, it sends both parties a Second Request. This extends the waiting period and prevents the companies from completing their deal until they have "substantially complied" with the Second Request and observed a second waiting period. A Second Request typically asks for business documents and data that will inform the agency about the company's products or services, market conditions where the company does business, and the likely competitive effects of the merger. The agency may conduct interviews (either informally or by sworn testimony) of company personnel or others with knowledge about the industry.

Step Four: Parties Substantially Comply with the Second Requests

Typically, once both companies have substantially complied with the Second Request, the agency has an additional 30 days to review the materials and take action, if necessary. (In the case of a cash tender offer or bankruptcy, the agency has 10 days to complete its review and the time begins to run as soon as the buyer has substantially complied.) The length of time for this phase of review may be extended by agreement between the parties and the government in an effort to resolve any remaining issues without litigation.

Step Five: The Waiting Period Expires or the Agency Challenges the Deal

The potential outcomes at this stage are:

1. close the investigation and let the deal go forward unchallenged;

2. enter into a negotiated consent agreement with the companies that includes provisions that will restore competition; or
3. seek to stop the entire transaction by filing for a preliminary injunction in federal court pending an administrative trial on the merits.

Unless the agency takes some action that results in a court order stopping the merger, the parties can close their deal at the end of the waiting period. Sometimes, the parties will abandon their plans once they learn that the agency is likely to challenge the proposed merger.

Previous: Mergers

Up

Hart-Scott-Rodino
Premerger Notification Program

INTRODUCTORY GUIDE I

WHAT IS THE PREMERGER NOTIFICATION PROGRAM?

AN OVERVIEW

Revised August 2024

FTC PREMERGER NOTIFICATION OFFICE

https://www.ftc.gov/enforcement/premerger-notification-program

HSRHelp@ftc.gov

AN OVERVIEW

Guide I is the first in a series of guides prepared by the Federal Trade Commission's Premerger Notification Office ("PNO"). It is intended to provide a general overview of the Premerger Notification Program (the "Program") and to help the reader in determining which types of business transactions are reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (§ 7A of the Clayton Act or "the Act"). *Guide I* describes the basic reportability requirements and how the program works. It also provides a list of alternative information sources to assist you in deciding whether or not you need to file. This Guide will introduce you to certain terminology and concepts regarding the Act and the Premerger Notification Rules (the "Rules"), 16 C.F.R. Parts 801, 802 and 803. Additional information can be obtained on the Federal Trade Commission's website at https://www.ftc.gov/enforcement/premerger-notification-program .

Guide II explains in greater detail certain terms used in the Act and the Rules, and shows how to determine if a transaction is reportable by analyzing a hypothetical transaction.

The Guides are not intended to address specific proposed transactions. If you are analyzing a transaction, we suggest that you consult the Act, the Rules, and the additional material referenced in Section XII of this Guide. If you have questions about the application of the Rules to a specific scenario, email the PNO at HSRHelp@ftc.gov.

I. INTRODUCTION

The Act requires that parties to certain mergers or acquisitions notify the Federal Trade Commission ("FTC" or the "Commission") and the Department of Justice ("DOJ") (together, the "enforcement agencies") and observe a waiting period before closing the proposed transaction. The waiting period is usually 30 days, except in the case of a cash tender offer or a section 363(b) bankruptcy sale, when the waiting period is only 15 days. During this time, the enforcement agencies conduct a preliminary antitrust review of the proposed transaction.

The Program, which was created to implement the Act and to establish a uniform notification process, became effective September 5, 1978, after final promulgation of the Rules.[1] The review of transactions under the Program enables the FTC and the DOJ to determine which acquisitions are likely to be anticompetitive and to challenge them prior to consummation, when remedial action is most effective.

Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Small acquisitions, acquisitions involving small parties, acquisitions involving passive investors, and other classes of acquisitions are excluded from the Act's coverage.

If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) of the Clayton Act to request additional information or documentary materials from the parties to a reported transaction (a "second request"). A second request extends the waiting period for a specified period, usually 30 days (ten days in the case of a cash tender offer or a section 363(b) bankruptcy sale)[2], after all parties have complied with the second request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the submitted information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.

The Rules, which govern compliance with the Program, are technical and complex. We have prepared Guide I to describe the structure of the Program and to introduce some of the Program's specially defined terms and concepts.

II. DETERMINING REPORTABILITY

The Act requires persons contemplating proposed business transactions that satisfy certain size criteria to report their intentions to the enforcement agencies before consummating the transaction. If the proposed transaction is reportable, then both the acquiring person and the person whose business or assets are being acquired must submit information about their businesses and about what is being acquired to the enforcement agencies, and then wait a specific period of time before consummating the proposed transaction. During the waiting period, the enforcement agencies review the antitrust implications of the proposed transaction. Whether a particular transaction is reportable is determined by application of the Act, the Rules, and formal

[1] The Premerger Notification Rules are found at 16 C.F.R. Parts 801, 802 and 803. The Rules also are identified by number, and each Rule beginning with Rule 801.1 corresponds directly with the section number in the C.F.R. (so that Rule 801.40 would be found in 16 C.F.R. § 801.40). In this Guide, the Rules are cited by Rule number.
[2] *See* 11 U.S.C. 363(b), 16 CFR 803.10(b).

interpretations, and is also informed by informal staff interpretations.

As a general matter, the Act and the Rules require both acquiring and acquired persons to file notifications under the Program if all of the following conditions are met:

1. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities, non-corporate interests ("NCI"), and/or assets of the acquired person valued in excess of $200 million (as adjusted)[3], regardless of the sales or assets of the acquiring and acquired persons[4]; or

2. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities, NCI and/or assets of the acquired person valued in excess of $50 million (as adjusted) but at $200 million (as adjusted) or less; and

3. One person has sales or assets of at least $100 million (as adjusted); and

4. The other person has sales or assets of at least $10 million (as adjusted).

A. Size of Transaction Test

The first step in analyzing reportability is to determine what voting securities, NCI, assets, or combination thereof are being transferred in the proposed transaction. Then you must determine the value of the voting securities, NCI, and/or assets as well as the percentage of voting securities and NCI that will be "held as a result of the acquisition." Calculating what will be held as a result of the acquisition (referred to as the "size of the transaction") requires the application of several rules, including Rules 801.10, 801.12, 801.13, 801.14 and 801.15. Generally, the securities and/or NCI held as a result of the transaction include those that will be acquired in the proposed transaction, as well as any voting securities and/or NCI of the acquired person, or entities within the acquired person, that the acquiring person already holds. Assets held as a result of the acquisition include those that will be acquired in the proposed transaction as well as certain assets of the acquired person that the acquiring person has purchased within the time limits outlined in Rule 801.13.[5]

If the value of the voting securities, NCI, assets or combination thereof exceeds $200 million (as adjusted) and no exemption applies, the parties must submit a premerger notification filing and observe the waiting period before closing the transaction.

If the value of the voting securities, NCI, assets or combination thereof exceeds $50 million (as adjusted) but is $200 million (as adjusted) or less, the parties must look to the size of person test.

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[3] The 2000 amendments to the Act require the Commission to revise certain thresholds annually based on the change in the level of gross national product. A parenthetical "(as adjusted)" has been added where necessary throughout the Rules (and in this guide) to indicate where such a change in statutory threshold value occurs. The term "as adjusted" is defined in subsection 801.1 (n) of the Rules and refers to a table of the adjusted values published in the Federal Register notice titled "Revised Jurisdictional Thresholds for Section 7A of the Clayton Act." The notice contains a table showing adjusted values for the rules and is published in January of each year.

[4] *See* § 7A(a)(2) of the Act.

[5] The Rules on when to aggregate the value of previously acquired voting securities and assets with the value of the proposed acquisition are discussed in greater detail in Guide II.

B. Acquiring and Acquired Persons/Acquired Entity

The first step in determining the size of person is to identify the "acquiring person" and "acquired person." "Person" is defined in Rules 801.1(a)(1) and is the "ultimate parent entity" or "UPE" of the buyer or seller, i.e. the entity that ultimately controls the buyer or seller.[6] The "acquired entity" is the specific entity whose assets, NCI, or voting securities are being acquired. The acquired entity may also be its own UPE or it may be an entity within the acquired person.

Thus, in an asset acquisition, the acquiring person is the UPE of the buyer, and the acquired person is the UPE of the seller. The acquired entity is the entity whose assets are being acquired. In a voting securities acquisition, the acquiring person is the UPE of the buyer, the acquired person is the UPE of the entity whose securities are being bought, and the acquired entity is the issuer of the securities being purchased. In an acquisition of NCI, the acquiring person is the UPE of the buyer, the acquired person is the UPE of the entity whose NCI are being bought, and the acquired entity is the entity whose NCI are being acquired. Often the acquired person and acquired entity are the same.

In many voting securities acquisitions, the acquiring person proposes to buy voting securities from minority shareholders of the acquired entity, rather than from the entity itself (tender offers are an example of this type of transaction). These transactions are subject to Rule 801.30, which imposes a reporting obligation on the acquiring person and on the acquired person, despite the fact that the acquired person may have no knowledge of the proposed purchase of its outstanding securities.[7] For this reason, the Rules also require that a person proposing to acquire voting securities directly from shareholders rather than from the issuer itself serve notice on the issuer of the shares to ensure the acquired person knows about its reporting obligation.[8]

C. Size of Person Test

Once you have determined who the acquiring and acquired persons are, you must determine whether the size of each person meets the Act's minimum size criteria. This "size of person" test generally measures a company based on the person's latest regularly prepared annual statement of income and expenses and its latest regularly prepared balance sheet.[9] The size of a person includes not only the entity that is making the acquisition or whose assets or securities are being acquired but also the UPE and any other entities the UPE controls.[10]

If the value of the voting securities, NCI, assets or combination thereof exceeds $50 million (as adjusted) but is $200 million (as adjusted) or less, the size of person test is met, and no exemption applies, the parties must submit a premerger notification filing and observe the waiting period before closing the transaction.

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[6] *See* "control" under 801.1(b).
[7] *See* Rule 801.1; Rule 801.30.
[8] *See* Rule 803.5.
[9] *See* Rule 801.11.
[10] *See* Rule 801.1(a)(1).

D. Notification Thresholds

The notification thresholds apply only to the buyer in acquisitions of voting securities. An acquisition that will result in a buyer holding more than $50 million (as adjusted) worth of the voting securities of an issuer crosses the first of five staggered "notification thresholds."[11] The Rules identify four additional thresholds: voting securities valued at $100 million (as adjusted) or greater but less than $500 million (as adjusted); voting securities valued at $500 million (as adjusted) or greater; 25 percent of the voting securities of an issuer, if the 25 percent (or any amount above 25% but less than 50%) is valued at greater than $1 billion (as adjusted); and 50 percent of the voting securities of an issuer if valued at greater than $50 million (as adjusted). If a buyer is acquiring all of the voting securities of an issuer, it should choose the highest notification threshold, which is the 50 percent threshold, regardless of the corresponding dollar value.

The thresholds provide a basis for exemptions that relieve the parties of the burden of making multiple filings for successive acquisitions of voting securities of the same issuer. As such, when notification is filed, the acquiring person is allowed one year from the expiration of the waiting period to cross the threshold stated in the filing.[12] If the person reaches the stated threshold (or any lower threshold) within that year, it may continue acquiring voting shares up to the next threshold for five years from the end of the waiting period.[13] If the person does not reach the stated threshold within a year from the expiration of the waiting period, the notification expires, and a new filing must be submitted prior to any new reportable acquisition. For example, if you file to acquire $100 million (as adjusted) of the voting securities of Company B and cross that threshold within one year, you would be able to continue to acquire voting securities of Company B for a total of five years without having to file again so long as your total holding of Company B's voting securities did not exceed either $500 million (as adjusted) or 50 percent, i.e., additional notification thresholds. Once an acquiring person holds 50 percent or more of the voting securities of an issuer, all subsequent acquisitions of securities of that issuer are exempt.[14]

E. Exempt Transactions

In some instances, a notification is not required even if the size of person and the size of transaction tests have been satisfied. The Act and the Rules set forth a number of exemptions, describing particular transactions or classes of transactions that need not be reported despite meeting the threshold criteria.[15] For example, certain acquisitions of assets in the ordinary course of a person's business are exempted, including new goods and current supplies (e.g., an airline purchases new jets from a manufacturer, or a supermarket purchases its inventory from a wholesale distributor.)[16] In addition, the acquisition of foreign assets are exempt where the sales in or into the U.S. attributable to those assets were $50 million (as adjusted) or less.[17] Once it has been determined that a particular transaction is reportable, each party must submit its notification to the FTC and the DOJ. In addition, each acquiring person must pay a filing fee to the FTC for each transaction that it reports (with a few exceptions, see IV below).

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[11] *See* Rule 801.1(h).
[12] *See* Rule 803.7.
[13] *See* Rule 802.21.
[14] *See* § 7A(c)(3) of the Act, 15 U.S.C. § 18a(c)(3).
[15] *See* § 7A(c) of the Act, 15 U.S.C. § 18a(c), and Part 802 of the Rules, 16 C.F.R. Part 802.
[16] *See* Rules 802.1(b) and 802.1(c).
[17] *See* Rules 802.50 and 802.51.

III. THE FORM

The Notification and Report Form ("the Form") solicits information that the enforcement agencies use to help evaluate the antitrust implications of the proposed transaction. Copies of the Form, Instructions, and Style Sheet are available from the PNO website at https://www.ftc.gov/enforcement/premerger-notification-program.

A. Information Reported

In general, a filing party is required to identify the persons involved and the structure of the transaction. The reporting person also must provide certain documents such as balance sheets and other financial data, as well as references to certain documents that have been filed with the Securities and Exchange Commission. In addition, the parties are required to submit certain planning and evaluation documents that pertain to the proposed transaction.

The Form also requires the parties to disclose whether the acquiring person and acquired entity currently derive revenue from businesses that fall within any of the same industry and product codes of the North American Industry Classification System ("NAICS") and, for manufacturing industries, the North American Product Classification System ("NAPCS"), [18] and, if so, in which geographic areas they operate. Identification of overlapping codes may indicate whether the parties engage in similar lines of business or if their products are differentiated. Acquiring persons must also describe certain previous acquisitions within the last five years of companies or assets engaged in businesses in any of the overlapping codes identified. Please note that an acquiring person must complete the Form for all of its operations; while an acquired person, on the other hand, must limit its response in Items 5 through 7 to the business or businesses being sold and does not need to answer Item 8.[19] In addition, the acquired person does not need to respond to Item 6 in an asset-only transaction.

B. Contact Person

The parties are required to identify two individuals (listed in Item 1(g) of the Form) who are representatives of the reporting person and familiar with the content of the Form. These contact persons are, in most cases, either counsel for the party or an officer of the company. The listed contact persons must be available during the waiting period.

C. Certification and Affidavits

Rule 803.5 describes the affidavit that must accompany certain Forms. In 801.30 transactions where the acquiring person is purchasing voting securities from non-controlling shareholders, only the acquiring person must submit an affidavit. The acquiring person must state in the affidavit that it has a good faith intention of completing the proposed transaction and that it has served notice on the acquired person as to its potential reporting obligations. [20] In all other transactions, each of the

[18] Information concerning NAICS and NAPCS codes is available at www.census.gov. In reporting information by 6 digit NAICS code, refer to the North American Industry Classification System - United States, 2017 published by the Executive Office of the President, Office of Management and Budget. In reporting information by 10-digit NAPCS code, refer to the concordance tables between 2012 product codes and 2017 NAPCS-based product codes published by the Bureau of the Census.

[19] *See* 803.2(b).

[20] *See* Rule 803.5(a)(i)(I) through (vi) for the full requirements of such notice. In tender offers, the acquiring person also must affirm that the intention to make the tender offer has been publicly announced. *See* Rule 803.5(a)(2).

acquired and acquiring persons must submit an affidavit with their Forms, attesting to the fact that a contract, an agreement in principle, or a letter of intent has been executed and that each person has a good faith intention of completing the proposed transaction. The affidavit is intended to assure that the transaction is sufficiently ripe for notification and that the enforcement agencies will not be presented with hypothetical transactions for review. [21]

Rule 803.6 requires that the Form be certified and specifies who must make the certification. One of the primary purposes of the certification is to preserve the evidentiary value of the filing. It also is intended to place responsibility on an officer or a similarly situated individual within the filing person to ensure that the information reported is true, correct, and complete. Both the certification and the affidavit must be notarized, or may be signed under penalty of perjury. [22]

D. Voluntary Information

The Rules provide that reporting persons may submit information that is not required by the Form. [23] If the reporting persons voluntarily provide information or documentary material that is helpful to the competitive analysis of the proposed transaction, this may expedite the enforcement agencies' review of a proposed transaction. However, voluntary submissions do not guarantee a speedy review. Voluntary submissions are included in the confidentiality coverage of the Act and the Rules.

E. Confidentiality

Neither the information submitted nor the fact that a notification has been filed is made public by the agencies except as part of a legal or administrative action to which one of the agencies is a party or in other narrowly defined circumstances permitted by the Act. [24] However, in response to inquiries from interested parties who wish to approach the agencies with their views about a transaction, the agencies may confirm which agency is handling the investigation of a publicly announced merger. [25] Additionally, the fact that a transaction is under investigation may become apparent if the parties announce it to the public or disclose it in other regulatory filings, or if the agencies interview third parties during their investigation.

F. Filing Procedures

Premerger notification filings are submitted electronically through a secure file transfer system that automatically directs the submissions to both the FTC and the DOJ premerger offices. The parties should follow the PNO Guidance for Filing Parties, available at https://www.ftc.gov/enforcement/premerger-notification-program/covid-19-guidance-filing-parties.

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[21] *See* Statement of Basis and Purpose to Rule 803.5, 43 Fed. Reg. 33510-33511 (1978).

[22] 28 U.S.C. § 1746 allows use of the following statement in lieu of a notary's jurat: "I declare (or certify, verify or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) [and] (Signature)." The italicized text is necessary only if signed outside the territorial United States.

[23] *See* Rule 803.1(b).

[24] *See* Section 7A(h) of the Act.

[25] A publicly announced merger is one in which a party to the merger has disclosed the existence of the transaction in a press release or in a public filing with a governmental body.

IV. THE FILING FEE

In connection with the submission of a premerger notification filing, Congress also mandated the collection of a fee from each acquiring person. The amount of the filing fee is based on the total value of the voting securities, NCI, or assets held as a result of the acquisition and is adjusted annually. [26] Information about the current fee tiers and fee amounts is available at https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information. The site also provides instructions about paying the fee by electronic wire transfer (check payments are discouraged, but if a check is the only option to submit a fee, it should be a bank cashier's check or certified check), as required under Rule 803.9. For transactions in which more than one person is deemed to be the acquiring person, each acquiring person must pay the appropriate fee (except in consolidations and in transactions in which there are two acquiring persons that would have exactly the same responses to Item 5 of the Form). [27] In addition, an acquiring person will have to pay multiple filing fees if a series of acquisitions are separately reported. [28] The parties may split the filing fee however they decide, but must inform the PNO of their arrangement.

V. THE WAITING PERIOD

After filing, the filing parties must observe a statutory waiting period during which they may not consummate the transaction. The waiting period is 15 days for cash tender offers and section 363(b) bankruptcies, and 30 days for all other types of reportable transactions.[29] The waiting period may be extended by issuance of a request for additional information and documentary material.[30] Also, a waiting period that would end on a Saturday, Sunday or legal public holiday will expire on the next regular business day.

A. Beginning of the Waiting Period

In most cases, the waiting period begins after both the acquiring and acquired persons file completed Forms with both agencies. However, for certain transactions subject to 801.30, the waiting period begins after the acquiring person files a complete Form. In a reportable joint venture formation, the waiting period begins after all acquiring persons required to file submit complete Forms.[31] Failure to pay the filing fee or the submission of an incorrect or incomplete filing may delay the start of the waiting period.[32]

B. Early Termination of the Waiting Period

Any filing person may request that the waiting period be terminated before the statutory period expires. Such a request for "early termination" will be granted only if (1) at least one of the persons

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[26] The filing fee tiers are adjusted annually for changes in the GNP during the previous year. The fees are also adjusted annually based on the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor, for the year then ended over the level so established for the year ending September 30, 2022. See Public Law 101–162 (15 U.S.C. 18a note), § 605.

[27] For example, if two separate UPEs jointly control an acquisition vehicle and own no other entities, their Item 5 27 responses would be identical.

[28] *See* Rule 803.9(a) - (c).

[29] *See* Rule 803.10; 11 U.S.C. § 363(b)(2), as amended (1994).

[30] *See* Section VIII(C), infra.

[31] The joint venture entity does not file. See Rule 802.41.

[32] *See* Rules 803.3 and 803.10(a).

specifies it on the Form; (2) all persons have submitted compliant Forms; and (3) both antitrust agencies have completed their review and determined not to take any enforcement action during the waiting period.[33]

The PNO is responsible for informing the parties that early termination has been granted. The Act requires that the FTC publish a notice in the Federal Register of each early termination granted. Moreover, grants of early termination also appear on the FTC's website at https://www.ftc.gov/legal-library/browse/early-termination-notices

It is important to note that early termination of the waiting period is entirely within the discretion of the enforcement agencies. For example, as of February 2021, the agencies have suspended grants of early termination, as explained in a press release at https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination .

VI. REVIEW OF THE FILING

Once parties submit their premerger notification filings, the enforcement agencies begin their review. The FTC is responsible for the administration of the Program. As a result, the PNO determines whether a filing complies with the Act and the Rules.

The premerger notification filing is assigned to a member of the PNO staff to assess whether the transaction was subject to the reporting requirements and whether the Form was completed accurately. If the filing appears to be deficient, the staff member will notify the contact person as quickly as possible so that errors can be corrected. It is important to address any errors as soon as possible because the waiting period will not commence until the Form is completed accurately, all required information and documentary material are supplied, and payment of the filing fee is received.[34]

When the PNO determines that the premerger notification filings comply with all filing requirements, letters are sent as required by the Act and the Rules, identifying the beginning and ending of the waiting period, as well as the transaction number assigned to the filing. The conclusion that the parties have complied with the Act and the Rules may be modified later, however, if circumstances warrant.

VII. ANTITRUST REVIEW OF THE TRANSACTION

Initially, both enforcement agencies undertake a preliminary substantive review of the proposed transaction. The agencies analyze the premerger notification filings to determine whether the acquiring and acquired firms are competitors, or are related in any way such that a combination of the two firms might adversely affect competition. Staff members rely not only on the information included within the filing but also on publicly available information. The individuals analyzing the

[33] *See* Formal Interpretation 13 issued August 20, 1982.

[34] For transactions in which a person buys voting securities from someone other than the issuer (third party and 34 open market transactions), the waiting period begins after the acquiring person submits a complete and accurate Form. An incorrect or incomplete Form from the acquired person will not stop the running of the waiting period. However, the acquired person still is obligated to correct any deficiencies in its filing.

Form often have experience either with the markets or the companies involved in the particular transaction. As a result, they may have industry expertise to aid in evaluating the likelihood that a merger may be harmful.

If, after preliminary review, either or both agencies decide that a particular transaction warrants closer examination, the agencies decide between themselves which one will be responsible for the investigation. Only one of the enforcement agencies will conduct an investigation of a proposed transaction. Other than members of the PNO, no one at either agency will initiate contact with any of the persons or any third parties until it has been decided which enforcement agency will be responsible for investigating the proposed transaction.[35] The clearance decision is made pursuant to an agreement that divides the antitrust work between the two agencies. This clearance procedure is designed to avoid duplication of effort and eliminate any confusion that could result if both agencies contacted individual persons at different times about the same matter.

Of course, any interested person, including either of the parties, is free to present information to either or both agencies at any time. However, if the clearance decision has not yet been resolved, the person must make a presentation, or provide written information or documents, to both agencies. If you are representing a party that wishes to make a presentation, or provide written information or documents, you may notify the PNO ; and the PNO will inform reviewing staff attorneys at both agencies that a party would like to make a presentation, or provide written information or documents.

VIII. SECOND REQUESTS

Once the investigating agency has clearance to proceed, it may ask any or all persons to the transaction to submit additional information or documentary material to the requesting agency. The request for additional information is commonly referred to as a "second request."[36] As discussed above, although both agencies review each Form submitted to them, only one agency will issue second requests to the parties in a particular transaction.

A. Information Requested

Generally, a second request will solicit information on particular products or services in an attempt to assist the investigative team in examining a variety of legal and economic questions. A typical second request will include interrogatory-type questions as well as requests for the production of documents. A model second request has been produced jointly by the FTC and DOJ for internal use by their attorneys and is available at https://www.ftc.gov/system/files/ftc_gov/pdf/Final-Rev-Model-Second-Request-01-26-2024 . However, since every transaction is unique, the model second request should be regarded only as an example.

B. Narrowing the Request

Parties that receive a second request and believe that it is broader than necessary to obtain the information that the enforcement agency needs, may discuss the possibility of narrowing the

[35] Staff at either agency may initiate contact with a person prior to the resolution of which agency will handle the matter by first notifying the other agency and offering the other agency the opportunity to participate.
[36] *See* Rule 803.20(a)(1) for the identities of persons and individuals that are subject to such request.

request with the staff attorneys reviewing the proposed transaction. Often, the investigative team drafts a second request based only on information contained in the initial filing and other availablematerial reviewed in the first 30 days after filing. At this point, the investigative team may not have access to specific information about the structure of the company or its products and services. By meeting with staff, representatives of the company have an opportunity to narrow the issues and to limit the required search for documents and other information. If second request modification issues cannot be resolved through discussion with staff, the agencies have a formal internal appeals process that centralizes in one decision maker for each agency the review of issues relating to the scope of and compliance with second requests. [37]

The enforcement agency issuing the second request may have determined that certain data sought in the request can resolve one or more issues critical to the investigation. In such a situation, the agency's staff may suggest use of the informal "quick look" procedure. Under the quick look, the staff will request the parties to first submit documents and other information, which specifically address critical issues (e.g., market participants or ease of entry). If the submitted information resolves the staff's concerns in these areas, the waiting period will be terminated on a sua sponte basis and the parties will not have to respond to the full second request. Of course, if the submitted information does not resolve the staff's concerns on determinative issues, then the parties will need to respond to the full second request.

C. Extension of the Waiting Period

The issuance of a second request extends the statutory waiting period until 30 days (or in the case of a cash tender offer or section 363(b) bankruptcy filings, 10 days) after both parties are deemed to have complied with the second request (or in the case of a tender offer and bankruptcy, until after the acquiring person has complied). [38] During this time, the staff attorneys investigating the matter may also be interviewing relevant parties and using other forms of compulsory process to obtain information.

The second request must be issued by the enforcement agency before the waiting period expires. If the waiting period expires and the agencies have not issued a second request to the parties of the transaction, then the parties are free to consummate the transaction. The fact that the agencies did not issue second requests does not preclude them from initiating an enforcement action at a later time. [39] All of the agencies' other investigative tools are available to them in investigations.[40]

[37] *See* 66 Fed. Reg. 8721-8722, February 1, 2001.
[38] *See* § 7A(e) of the Act.
[39] *See* § 7(A)(i)(1) of the Act.
[40] *See* § 7(A)(i)(1) of the Act.

IX. AGENCY ACTION

After analyzing all of the information available to them, the investigative staff will make a recommendation to either the Commission or the Assistant Attorney General (depending on which agency has clearance).

A. No Further Action

If the staff finds no evidence that competition will be reduced substantially in any market, it will recommend no further action. Assuming the agency concurs in that recommendation, the parties are then free to consummate their transaction upon expiration of the waiting period. As with a decision not to issue a second request, a decision not to seek injunctive relief at that time does not preclude the enforcement agencies from initiating a post-merger enforcement action at a later date.

B. Seeking Injunctive Relief

If the investigative staff believes that the transaction is likely to be anticompetitive, it may recommend that the agency initiate injunction proceedings in U.S. district court to halt the acquisition. If the Commission or the Assistant Attorney General concurs in the staff's recommendation, then the agency will file suit in the appropriate district court. If it is a Commission case, the FTC is required to file an administrative complaint within twenty days (or a lesser time if the court so directs) of the granting of its motion for a temporary restraining order or for a preliminary injunction.[41] The administrative complaint initiates the FTC's administrative proceeding that will decide the legality of the transaction. If it is a DOJ case, the legality of the transaction is litigated in district court.

C. Settlements

During an investigation, the investigative staff may, if appropriate, discuss terms of settlement with the parties. The proposed settlement must then be presented to the Commission, accepted by a majority vote, and placed on the public record for a notice and comment period before it can be made final. Similarly, a proposed settlement negotiated by DOJ staff must be approved by the Assistant Attorney General and also placed on the public record for a notice and comment period before it will be entered by a district court pursuant to the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).

X. FAILURE TO FILE

A. Civil Penalties

If you consummate a reportable transaction without filing the required prior notification or without waiting until the expiration of the statutory waiting period, you may be subject to civil penalties. The Act provides that "any person, or any officer, director or partner thereof" shall be liable for a penalty of up to $51,744 a day for each day the person is in violation of the Act. The enforcement agencies may also obtain other relief to remedy violations of the Act, such as an order requiring the

[41] FTC Act Section 13(b).

person to divest assets or voting securities acquired in violation of the Act.[42]

B. Reporting Omissions

If you have completed a transaction in violation of the Act, it is important to bring the matter to the attention of the PNO and to file a notification as soon as possible in order to terminate the violation. The parties should include a letter with the notification from an officer or director of the company explaining why the notification was not filed in a timely manner, how and when the failure was discovered, and what steps have been taken to prevent a violation of the Act in the future. The letter should be addressed to the Deputy Director, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington DC 20580.

For more information about post-consummation filings see the PNO guidance https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations .

C. Deliberate Avoidance

The Rules specifically provide that structuring a transaction to avoid the Act does not alter notification obligations if the substance of the transaction is reportable.[43] For example, the agencies will seek penalties where the parties split a transaction into separate parts that are each valued below the current filing threshold in order to avoid reporting the transaction, but the fair market value of everything being acquired is actually above the notification threshold.[44]

XI. GUIDES IN THIS SERIES

Guide I: What is the Premerger Notification Program? An Overview is the first guide prepared by the PNO.

Guide II: *To File Or Not To File -- When You Must File a Premerger Notification Report Form*, which explains certain basic requirements of the program and takes you through a step-by-step analysis for determining whether a particular transaction must be reported.

XII. OTHER MATERIALS

To make effective use of these guides, you must be aware of their limitations. They are intended to provide only a very general introduction to the Act and Rules and should be used only as a starting point. Because it would be impossible, within the scope of these guides, to explain all of the details and nuances of the premerger requirements, you must not rely on them as a substitute for reading the Act and the Rules themselves. To determine premerger notification requirements, you should consult the following materials, all of which are available at https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations :

[42] *See* § 7A(g) of the Act, as amended by the Debt Collection Improvements Act of 1996, Pub. L. No. 104134 (Apr. 26, 1996); 61 Fed. Reg. 54548 (Oct. 21, 1996); 61 Fed. Reg. 55840 (Oct. 29, 1996); and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, § 701; 89 Fed. Reg. 1810 Jan. 15, 2024).
[43] *See* Rule 801.90.
[44] *See*, e.g., United States v. Sara Lee Corp., 1996-1 Trade Cas. (CCH) ¶ 71,301 (D.D.C. 1996).

1. Section 7A of the Clayton Act, 15 U.S.C. § 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, and amended by Pub. L. No. 106-553, 114 Stat. 2762 and Pub. L. No. 101–162 § 605.

2. The Premerger Notification Rules, 16 C.F.R. Parts 801 – 803. (2023).

3. The Statement of Basis and Purpose for the Rules, 43 Fed. Reg. 33450 (July 31, 1978)

4. The formal interpretations issued pursuant to the Rules, available at https://www.ftc.gov/legal-library/browse/hsr-formal-interpretations

It is advisable to check the PNO web site for more recent Rules changes that have not yet been incorporated into the Code of Federal Regulations or these guides as well as other HSR resources. https://www.ftc.gov/enforcement/premerger-notification-program.

Finally, if you have questions about the program or a particular transaction not answered by the PNO's website, the staff of the PNO is available to assist you. The PNO answers thousands of inquiries each year and provides informal advice concerning the potential reportability of a transaction and completion of the Form. For questions about how the Rules may apply to a specific scenario, email the PNO at HSRHelp@ftc.gov.

HART-SCOTT-RODINO ACT

Clayton Act § 7A. Premerger notification and waiting period

(a) *Filing*. Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of $200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19 (a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)

(i) in excess of $50,000,000 (as so adjusted and published) but not in excess of $200,000,000 (as so adjusted and published); and

(ii)

(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more; or (III) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of $10,000,000 (as so adjusted and published) or more.

(III) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of $10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance, from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) *Exempt transactions*. The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;
(4) transfers to or from a Federal agency or a State or political subdivision thereof;
(5) transactions specifically exempted from the antitrust laws by Federal statute;
(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;
(7) transactions which require agency approval under section 1467a(e) of title 12, section 1828 (c) of title 12, or section 1842 of title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843 (k) of title 12; and (B) does not require agency approval under section 1842 of title 12;
(8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction
    (A) is subject to section 1843 (k) of title 12; and
    (B) does not require agency approval under section 1843 of title 12;
(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;
(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;
(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of
    (A) voting securities pursuant to a plan of reorganization or dissolution; or
    (B) assets in the ordinary course of its business; and
(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) *Commission rules*. The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1)

(A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(B)

(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—

(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with

investigative staff, in order to avoid undue delay of the merger review process.

(iii) Not later than 90 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

(iv) Not later than 120 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

(v) Not later than 180 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress— (I) which reforms each agency has adopted under this subparagraph; (II) which steps each has taken to implement such internal reforms; and (III) the effects of such reforms.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person,

(A) all the information and documentary material required to be submitted pursuant to such a request, or

(B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) *Preliminary injunctions; hearings*. If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General

(1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and

(2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court.

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) *Disclosure exemption*. Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not

bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et

(j) Omitted[1]

(k) *Extensions of time*. If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 (a) of title 5), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

[1 Omitted in original.]

received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 21, 2025.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *United Community Banks, Inc., Greenville, South Carolina;* to acquire ANB Holdings, Inc., and thereby indirectly acquire American National Bank, both of Oakland Park, Florida.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2025–01484 Filed 1–21–25; 8:45 am]

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FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Annual notice of revision.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act.

DATES: January 22, 2025.

FOR FURTHER INFORMATION CONTACT: Christopher M. Grengs (202–326–2612), Bureau of Competition, Office of Policy and Coordination.

SUPPLEMENTARY INFORMATION: Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $51,380,000 for section 8(a)(1), and $5,138,000 for section 8(a)(2)(A).

Authority: 15 U.S.C. 19(a)(5).

April J. Tabor,

Secretary.

[FR Doc. 2025–01513 Filed 1–21–25; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Annual notice of revision.

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of section 7A of the Clayton Act; and the revised filing fee schedule for the same Act required by division GG of the 2023 Consolidated Appropriations Act.

DATES: February 21, 2025.

FOR FURTHER INFORMATION CONTACT: Nora Whitehead (*nwhitehead@ftc.gov,* 202–326–3262), Bureau of Competition, Premerger Notification Office, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: This document announces updates to (1) the thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as required by the 2000 amendment of section 7A of the Clayton Act; and (2) the filing fee schedule for the same Act, as required by division GG of the 2023 Consolidated Appropriations Act. Both updates are discussed in more detail below.

(1) The Jurisdictional Thresholds

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5).

The new jurisdictional thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original jurisdictional threshold	2025 Adjusted jurisdictional threshold
7A(a)(2)(A)	$200 million	$505.8 million.
7A(a)(2)(B)(i)	$50 million	$126.4 million.
7A(a)(2)(B)(i)	$200 million	$505.8 million.
7A(a)(2)(B)(ii)(i)	$10 million	$25.3 million.
7A(a)(2)(B)(ii)(i)	$100 million	$252.9 million.
7A(a)(2)(B)(ii)(II)	$10 million	$25.3 million.
7A(a)(2)(B)(ii)(II)	$100 million	$252.9 million.
7A(a)(2)(B)(ii)(III)	$100 million	$252.9 million.
7A(a)(2)(B)(ii)(III)	$10 million	$25.3 million.

Any reference to the jurisdictional thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801 through 803) and the Antitrust Improvements Act Notification and Report Form (''the HSR Form'') and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original threshold	2025 Adjusted threshold
$10 million	$$25.3 million.
$50 million	$126.4 million.

Original threshold	2025 Adjusted threshold
$100 million	$252.9 million.
$110 million	$278.2 million.
$200 million	$505.8 million.
$500 million	$1.264 billion.
$1 billion	$2.529 billion.

(2) The Filing Fee Thresholds

Section 605 of Public Law 101–162 (15 U.S.C. 18a note) requires the Federal Trade Commission to assess and collect filing fees from persons acquiring voting securities or assets under the Act. The original filing fee thresholds are set forth in section 605. Division GG of the 2023 Consolidated Appropriations Act, Public Law 117–328, 136 Stat. 4459, requires the Federal Trade Commission to revise these filing fee thresholds and amounts based on the percentage change in the GNP for such fiscal year compared to the GNP for the year ending September 30, 2022 (for the filing fee thresholds) and the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2022 (for the fee amounts).

Any reference to the fee thresholds and related values in the HSR rules (16 CFR parts 801 through 803) and the HSR Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original filing fee	Original applicable size of transaction *	2025 Adjusted filing fee	2025 Adjusted applicable size of transaction *
$30,000	less than $161.5 million.	$30,000	less than $179.4 million.
100,000	not less than $161.5 million but less than $500 million.	105,000	not less than $179.4 million but less than $555.5 million.
250,000	not less than $500 million but less than $1 billion.	265,000	not less than $555.5 million but less than $1.111 billion.
400,000	not less than $1 billion but less than $2 billion.	425,000	not less than $1.111 billion but less than $2.222 billion.
800,000	not less than $2 billion but less than $5 billion.	850,000	not less than $2.222 billion but less than $5.555 billion.
2,250,000	$5 billion or more.	2,390,000	$5.555 billion or more.

* As determined under Section 7A(a)(2) of the Act.

By direction of the Commission.

April Tabor,

Secretary.

[FR Doc. 2025–01518 Filed 1–21–25; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[NIOSH Docket 094]

World Trade Center Health Program; Petitions 031, 036, 039, and 053—Amyotrophic Lateral Sclerosis; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, Health and Human Services (HHS).

ACTION: Denial of petitions for addition of a health condition.

SUMMARY: The Administrator of the World Trade Center (WTC) Health Program received four petitions (Petitions 031, 036, 039, and 053) to add amyotrophic lateral sclerosis (ALS) to the List of WTC-Related Health Conditions (List). Upon reviewing the scientific and medical literature, including information provided by petitioners, the Administrator determined that there is insufficient evidence to support taking further action at this time regarding ALS. The Administrator also finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying these petitions for the addition of a health condition as of January 22, 2025.

ADDRESSES: Visit the WTC Health Program website at *https://www.cdc.gov/wtc/received.html* to review Petitions 031, 036, 039, and 053.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–48, Cincinnati, OH 45226; telephone (404) 498–2500 (this is not a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113, Pub. L. 116–59, Pub. L. 117–328, and Pub. L. 118–31), added Title XXXIII to the Public Health Service (PHS) Act,[1] thereby establishing the WTC Health Program within HHS. The WTC Health Program provides medical monitoring and treatment benefits for health conditions on the List[2] to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–64. Those portions of the James Zadroga 9/11 Health and Compensation Act of 2010 found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

[2] The List of WTC-Related Health Conditions is established in 42 U.S.C. 300mm–22(a)(3)–(4) and 300mm–32(b); additional conditions may be added through rulemaking and the complete list is provided in WTC Health Program regulations at 42 CFR 88.15.

MAJOR CHANGES TO THE HSR FORM ADOPTED IN 2024

On October 10, 2024, the Federal Trade Commission (FTC), with the concurrence of the Department of Justice (DOJ), finalized sweeping amendments to the Hart-Scott-Rodino (HSR) premerger notification requirements.[1] These are the most significant changes to the HSR form and process in more than 45 years. The new rules, effective February 10, 2025, expand the scope of information required, formalize new documentation expectations, and establish differentiated requirements based on the type of transaction and the filer's role. The goal is to equip the antitrust agencies with deeper insights into competitive effects earlier in the review process.

Key Changes under the 2024 HSR Revisions

1. Separate Forms for Acquiring and Acquired Persons

For the first time, the HSR form will differ based on whether the filer is the acquiring person or the acquired person. The acquiring person must now provide significantly more detail, including:

- Ownership structure charts
- Descriptions of transaction structure and rationale
- Information on minority investors with certain control rights
- Lists of other jurisdictions where filings are required
- Identifications of officers and directors who also serve in leadership roles at other entities operating in the same industries as the target (to help the agencies spot potential interlocking directorates that may raise concerns under Clayton Act § 8)

In contrast, the acquired person generally has fewer obligations but still must supply overlap and transaction-related data.

2. New Narrative Disclosures

Filers must provide:

[1] Press Release, Fed. Trade Comm'n, FTC Finalizes Changes to Premerger Notification Form (Oct. 10, 2024). The Federal Register published the final rule on November 12, 2024, with an effective date of February 10, 2025. Premerger Notification; Reporting and Waiting Period Requirements, 89 Fed. Reg. 89216 (Nov. 12, 2024). In January 2025, the U.S. Chamber of Commerce and other business groups filed a lawsuit challenging the FTC's new HSR rules, alleging that the agencies promulgated a rule in excess of their statutory authority and as arbitrary and caprious in violation fo the Administrative Procedure Act. Notably, the plaintiffs did not seek a temporary restraining order (TRO) or a preliminary injunction to halt the implementation of the new rules. Consequently, the rules became effective on February 10, 2025, as scheduled. The lawsuit remains pending, and its outcome could potentially impact the enforcement of these rules. *See* Complaint for Declaratory and Injunctive Relief, *Chamber of Commerce v. FTC*, No. 6:25-cv-00009 (E.D. Tex. filed Jan. 10, 2025). The court granted the FTC's motion for an extension of time and set the deadline for the filing of the FTC's answer as April 10, 2025.

- Strategic rationale for the transaction, including supporting documents
- Descriptions of horizontal overlaps (current and potential), including sales figures, categories of customers, and top 10 customers
- Descriptions of vertical relationships, including top customers and suppliers and annual sales/purchases for relevant products
- A brief business description, including current and planned products or services

The FTC significantly pared back the 2023 proposal's more burdensome narrative requirement. Filers are not required to prepare a formal white paper or economic analysis, but may use business language natural to the industry.

3. Expanded Document Production

New requirements extend to:

- *Supervisory Deal Team Lead documents*: These now qualify as Item 4(c) documents. The lead is defined as the person primarily responsible for the strategic deal assessment but who is not an officer or director.
- *Ordinary course plans and reports*: Any strategic document provided to the CEO or Board within one year of filing that discusses markets, competition, or overlapping products must be submitted.
- *All transaction-related agreements*: Beyond the principal agreement, parties must submit exhibits, side letters, non-compete clauses, and similar documents (excluding clean team agreements).
- *Drafts*: While draft versions of Item 4(c)/(d) documents are not required, any document shared with even a single Board member is deemed final and must be submitted.

4. Tailored Requirements by Transaction Type

The new rule creates three categories of HSR filings:

- "*Select 801.30 transactions*"
    - For example, open market purchases that do not entail control or board rights
    - ~8% of filings. These are subject to limited disclosure obligations.
- :No-overlap" filings (e.g., deals with no horizontal or vertical relationship):
    - ~47% of filings. Providing exemptions from many of the more burdensome requirements.
- "Overlap" filings:
    - ~45% of filings. These are subject to all new requirements.

5. Additional Required Information

- Disclosure of foreign subsidies from "countries of concern"
- Identification of defense or intelligence contracts
- Disclosure of minority investors with certain control or governance rights

- Listing of prior acquisitions (now required for the acquired person as well)

Estimated Filing Burden

The FTC estimates that the average time required to prepare an HSR filing will increase by 68 to 121 hours, depending on the transaction type and role of the filer. This is two to four times longer than under the prior form, which took an estimated 37 hours on average. The burden is highest for acquiring persons in overlap transactions, who must supply the broadest range of narratives, data, and documents.

Notification and Report Form for Certain Mergers and Acquisitions

Acquiring Person

FEE INFORMATION

Total Filing Fee: Select Filing Fee. **Paid By:** ☐ Acquiring Person ☐ Acquired Person ☐ Both

Name of Payer	Amount Paid	Check Number	EWT Institution & Confirmation Number

GENERAL INFORMATION

Post-Consummation Filing? ☐ Yes ☐ No
Cash Tender Offer? ☐ Yes ☐ No
Bankruptcy? ☐ Yes ☐ No

Do you request early termination of the waiting period? ☐ Yes ☐ No
(Grants of early termination are published in the Federal Register and on the FTC website.)

ULTIMATE PARENT ENTITY (UPE) INFORMATION

► UPE Details

Name: _____

Headquarters Address: _____ **Address Line 2:** _____

City: _____ **State:** _____ **Zip Code:** _____ **Country:** _____

Website: _____

Entity Type: The UPE of the acquiring person is a(n)?

☐ Corporation ☐ Unincorporated Entity ☐ Natural Person ☐ Other (Specify): _____

FILING MADE ON BEHALF OF THE UPE	Name and address of filing notification entity, if different than UPE (Name, Address, City, State, Zip Code, and Country)
☐ Not Applicable. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a). ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4.	

	PRIMARY HSR REPORT CONTACT	SECONDARY HSR REPORT CONTACT	SECOND REQUEST CONTACT
Name:			
Firm/Company:			
Address:			
City, State, Zip Code:			
Country:			
Telephone Number:			
E-Mail Address:			

UPE Annual Reports and Financial Information	
Central Index Key (CIK) Number	
Annual/Audit Report Document # or Link	
Date of Annual/Audit Report	

Does the person filing notification stipulate that the acquiring person meets the size of person test? See 15 U.S.C. § 18a(a).

☐ Yes, the lower size of person test ☐ Yes, the higher size of person test ☐ N/A

Minority Shareholders or Interest Holders ☐ None

Entity	Minority Holder & D/B/A Name	HQ Address	Percent Held

► Acquiring Person Structure

Entities Within the Acquiring Person

Company or Operating Business d/b/a Name(s):				
Entity Name	**City**	**State**	**Zip Code**	**Country**
Company or Operating Business d/b/a Name(s):				
Entity Name	**City**	**State**	**Zip Code**	**Country**
Company or Operating Business d/b/a Name(s):				
Entity Name	**City**	**State**	**Zip Code**	**Country**

Annual Reports and Audit Reports

Acquiring Entity or Overlapping Entity	Central Index Key (CIK) Number	Annual/Audit Report File Name or Link	Date of Annual/Audit Report

Name of Acquiring Person UPE:	Date:

► Additional Acquiring Person Information

OWNERSHIP STRUCTURE

Description of the ownership structure of the acquiring entity	
Document # of organizational chart for fund or MLP (or N/A)	

OFFICERS AND DIRECTORS

Name of Entity Within Acquiring Person	Name of Officer or Director	Title	List of Other Entities

TRANSACTION INFORMATION

► Parties

ACQUIRING UPE(S)	ACQUIRED UPE(S)
Name: **Address:** **Address Line 2:** **City, State, Zip Code:** **Country:** **Website:**	**Name:** **Address:** **Address Line 2:** **City, State, Zip Code:** **Country:** **Website:**
ACQUIRING ENTITY(IES) – *(Tab to add additional "Acquiring Entity" entries.)*	**TARGET –** *(Tab to add additional "Target" entries.)*
Name: **Address:** **Address Line 2:** **City, State, Zip Code:** **Country:** **Website:**	**Name:** **Address:** **Address Line 2:** **City, State, Zip Code:** **Country:** **Website:**

► Transaction Details

Is this transaction subject to § 801.30? ☐ **Yes, Specify Type(s)** _____ ☐ **No**

TRANSACTION TYPE

Check all that apply:

☐ Acquisition of voting securities
☐ Acquisition of non-corporate interests
☐ Acquisition of assets
☐ Merger (see § 801.2)
☐ Consolidation (see § 801.2)
☐ Formation of a joint venture, other corporation, or unincorporated entity (see §§ 801.40 and 801.50)
☐ Acquisition subject to § 801.31
☐ Secondary acquisition subject to § 801.4
☐ Acquisition subject to § 801.2(e)
☐ Other, specify _____

ACQUISITION DETAILS

Percentage of voting securities already held %	Percentage of non-corporate interests already held %		
Value of voting securities already held ($MM) $	Value of non-corporate interests already held ($MM) $		
Total percentage of voting securities to be held as a result of the acquisition %	Total percentage of non-corporate to be held as a result of the acquisition %		
Total value of voting securities to be held as a result of the acquisition ($MM) $	Total value of non-corporate securities to be held as a result of the acquisition ($MM) $	Total value of assets to be held as a result of the acquisition ($MM) $	**Aggregate total value ($MM)** **$ 0.00**

NOTIFICATION THRESHOLD

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% ☐ 50% ☐ N/A

► Transaction Description

BUSINESS OF THE ACQUIRING PERSON	
BUSINESS OF THE TARGET	
NON-REPORTABLE UPE(S)	
TRANSACTION DESCRIPTION	

RELATED TRANSACTIONS

Does the transaction that is the subject of this filing have related filings? ☐ Yes ☐ No ☐ Unknown

If the transaction has related filings, indicate whether the related filing(s) (choose all that apply):

☐ Is a principal transaction that triggers one or more shareholder backside transactions
☐ Is a shareholder backside transaction
☐ Has more than one acquiring UPE
☐ Has more than one acquired UPE
☐ Has more than one reportable step
☐ Is a joint venture
☐ Is a consolidation
☐ Is an exchange of assets
☐ Has one or more filings in the alternative
☐ Other, explain:_____

Party Names or Transaction Numbers for Related Transactions:

► Transactions Subject to International Antitrust Notification

Has (or will) a non-U.S. antitrust or competition authority been (or be) notified of the transaction? ☒ No ☐ Yes (provide details below)

Jurisdiction	Date Notified

► Additional Transaction Information

TRANSACTION RATIONALE ☐ Not applicable, select 801.30 transaction	
DOCUMENT NUMBERS RELATED TO TRANSACTION RATIONALE	
DOCUMENT # FOR TRANSACTION DIAGRAM ☐ Not applicable, select 801.30 transaction	

► Joint Ventures

Complete only if acquisition is the formation of a joint venture corporation or unincorporated entity ☐ Not Applicable

CONTRIBUTIONS TO BE MADE	
DESCRIPTION OF CONSIDERATION	
DESCRIPTION OF THE BUSINESS OF THE JOINT VENTURE	

JOINT VENTURE NAICS CODES

6-Digit Code	Code Description

► Business Documents

TRANSACTION RELATED DOCUMENTS

Privileged	Document #	Document Title	Estimated Date	Author/Title
☐				
☐				
☐				

PLANS AND REPORTS ☐ Not Applicable, Select 801.30 Transaction

Privileged	Document #	Document Title	Estimated Date	Author/Title
☐				
☐				
☐				

Privilege Log Document # _____

► Agreements

TRANSACTION-SPECIFIC AGREEMENTS ☐ Not Applicable, 801.30 or Bankruptcy

Document #	Document Title

OTHER AGREEMENTS BETWEEN THE ACQUIRING PERSON AND TARGET

Does the acquiring person have (or within one year of filing, had) any agreements with the target?

☐ No ☐ Yes (provide details below)

Has Type of Agreement		Type
☐ Yes	☐ No	**Agreement with non-compete or non-solicitation terms between the acquiring person and target**
☐ Yes	☐ No	**Lease**
☐ Yes	☐ No	**Licensing Agreement**
☐ Yes	☐ No	**Master Service Agreement**
☐ Yes	☐ No	**Operating Agreement**
☐ Yes	☐ No	**Supply Agreement**
☐ Yes	☐ No	**Other**

COMPETITION DESCRIPTIONS

☐ Not Applicable, Select 801.30 Transaction

► Overlap Description

Briefly describe the acquiring person's principal categories of products or services.

List and briefly describe current and known planned products or services that compete (or could compete) with the target. (See Instructions)

Competing Product or Service Details ☐ None

Product or Service:	**Sales ($):** **Categories of Customers:** **Top 10 Customers Overall:** **Top 10 Customers by Category:**
Product or Service:	**Sales ($):** **Categories of Customers:** **Top 10 Customers Overall:** **Top 10 Customers by Category:**
Product or Service:	**Sales ($):** **Categories of Customers:** **Top 10 Customers Overall:** **Top 10 Customers by Category:**

► Supply Relationships Description

RELATED SALES

List and briefly describe the acquiring person's products, services, or assets that are supplied to the target or a business that competes with the target. (See Instructions)

Product, Service, or Asset Details ☐ None

Product, Service, or Asset:	**Sales to Target ($):** **Sales to Target's Competitors ($):** **Top 10 Customers:** **Description of Supply or Licensing Agreement:**
Product, Service, or Asset:	**Sales to Target ($):** **Sales to Target's Competitors ($):** **Top 10 Customers:** **Description of Supply or Licensing Agreement:**
Product, Service, or Asset:	**Sales to Target ($):** **Sales to Target's Competitors ($):** **Top 10 Customers:** **Description of Supply or Licensing Agreement:**

RELATED PURCHASES

List and briefly describe the products, services, or assets that are purchased by the acquiring person from the target or a business that competes with the target. (See Instructions)

Product, Service, or Asset Details ☐ None

Product, Service, or Asset:	**Purchases from Target ($):** **Purchases from Target's Competitors ($):** **Top 10 Suppliers:** **Description of Purchase or Licensing Agreement:**
Product, Service, or Asset:	**Purchases from Target ($):** **Purchases from Target's Competitors ($):** **Top 10 Suppliers:** **Description of Purchase or Licensing Agreement:**
Product, Service, or Asset:	**Purchases from Target ($):** **Purchases from Target's Competitors ($):** **Top 10 Suppliers:** **Description of Purchase or Licensing Agreement:**

REVENUE AND OVERLAPS

Does the acquiring person have US revenue? ☐ Yes ☐ No, explain: _____

► NAICS Codes

6-Digit Code	Code Description	Operating Business	Revenue Range				Overlap
			<$10MM	$10MM - $100MM	$100MM - $1B	>$1B	
							☐
							☐
							☐
							☐
							☐

► Controlled Entity Geographic Overlaps

STATE LEVEL REPORTING ☐ None

NAICS Code	Code Description	Operating Business and D/B/A Name(s)	Person or Associate?	States and Total Number

STREET LEVEL REPORTING ☐ None

NAICS Code and Description:					
Operating Business and D/B/A Name(s)	**Person or Associate**	**State**	**County**	**ZIP Code**	**Street Address**

NAICS Code and Description:					
Operating Business and D/B/A Name(s)	**Person or Associate**	**State**	**County**	**ZIP Code**	**Street Address**

NAICS Code and Description:					
Operating Business and D/B/A Name(s)	**Person or Associate**	**State**	**County**	**Zip Code**	**Street Address**

► Minority-Held Entity Overlaps

☐ None

Entity Held and D/B/A Name(s)	Percentage Held	Held By	Person or Associate?	NAICS Code or Industry Overlap with Target

► Prior Acquisitions

☐ None

Overlapping 6-Digit NAICS Code and Description or Overlap Product or Service Description	Acquired Entity and Former HQ Address	Transaction Type	Consummation Date

ADDITIONAL INFORMATION

► Subsidies from Foreign Entities or Governments of Concern

SUBSIDIES ☐ None ☐ Yes (provide details below)

Entity or Government	Description

COUNTERVAILING DUTIES IMPOSED ☐ None ☐ Yes (provide details below)

Product	Duty Imposed	Jurisdiction

COUNTERVAILING DUTY INVESTIGATIONS ☐ None ☐ Yes (provide details below)

Product	Jurisdiction Conducting Investigation

► Defense or Intelligence Contracts

☐ None ☐ Not Applicable, Select 801.30 Transaction

Entity Within Acquiring Person	Contracting Office	Contracting Office ID	Award ID	NAICS Codes

► Voluntary Waivers

INTERNATIONAL COMPETITION AUTHORITIES (VOLUNTARY)

The acquiring person agrees to waive the disclosure exemption in the HSR Act for the following competition authorities: ☐ None

1. _____ 4. _____
2. _____ 5. _____
3. _____ 6. _____

STATE ATTORNEYS GENERAL (VOLUNTARY)

The acquiring person agrees to waive the disclosure exemption in the HSR Act for the following states: ☐ None

State	Permit Disclosure of	
	Fact of Notification and Waiting Period	Information and Documents
	☐	☐
	☐	☐
	☐	☐

► End Notes

☐ None

Number	Note

Name of Acquiring Person UPE:	Date:

CERTIFICATION

PENALTIES FOR FALSE STATEMENTS

Federal law provides criminal penalties, including up to twenty years imprisonment, for any person who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence an ongoing or anticipated federal investigation (see, e.g., Section 1519 of Title 18, United States Code.). It is also a criminal offense to knowingly make a false statement in a federal investigation, obstruct a federal investigation, or conspire to obstruct justice or obstruct or impede the lawful functioning of the government (see, e.g., Sections 371, 1001, and 1505 of Title 18, United States Code).

CERTIFICATION

This NOTIFICATION AND REPORT FORM, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

I acknowledge that the Commission or the Assistant Attorney General of the Antitrust Division of the Department of Justice may, prior to the expiration of the initial waiting period pursuant to 15 U.S.C. § 18a, require the submission of additional information or documentary material relevant to the proposed transaction.

Name (Please Print or Type)	**Title**
Signature	**Date**

☐ **Sworn under penalty of perjury**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature	**Executed Date**

☐ **Notarized**

Subscribed and sworn to before me at the: Seal:

_____

City of: _____

State of: _____

This _____ day of _____ the year _____

Signature: _____

My commission expires: _____

16 C.F.R. Part 803 – Appendix **NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS**	Approved by OMB 3084-0005

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person that, by reason of a merger, consolidation, or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18a, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The rules may be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. § 18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty for each day during which such person is in violation of 15 U.S.C. § 18a. The maximum daily civil penalty amount is listed in 16 C.F.R. § 1.98(a).

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated at 105 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office
Federal Trade Commission
400 7th St. SW
Washington, DC 20024

and

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to the amount listed in 16 C.F.R. § 1.98(a) per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

GENERAL INSTRUCTIONS AND INFORMATION

These instructions specify the information that must be submitted pursuant to § 803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules"). Submitted materials must be provided to the Federal Trade Commission ("FTC") and to the Antitrust Division of the Department of Justice ("DOJ") (together, "the Agencies").

► Information

The central office for information and assistance concerning the Rules is:

Premerger Notification Office
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024
Phone: (202) 326-3100
E-mail: HSRhelp@ftc.gov for Rules questions
Premerger@ftc.gov for filing information

Copies of these Instructions, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act"), the Rules, FTC final rules (including their Statements of Basis and Purpose) published in the Federal Register, as well as information to assist in submitting the required information are available at the FTC's Premerger Notification Office ("PNO") website.

► Definitions and Explanation of Terms

Unless otherwise indicated, the definitions provided in the Rules apply to these Instructions.

Dollar Values
All financial information should be expressed in millions of dollars rounded to the nearest hundred thousand.

Fee Information
The filing fee is based on the aggregate total value of assets, voting securities, and controlling non-corporate interests to be held as a result of the acquisition. Filing fee tiers are adjusted annually pursuant to 15 U.S.C. § 18a note, based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). Filing fees increase annually by the percentage increase, if any, in the consumer price index ("CPI") over the CPI for the fiscal year ending September 30, 2022, pursuant to 15 U.S.C. § 18a note. For current fee information, see the PNO website.

North American Industry Classification System (NAICS) Data
When reporting information by 6-digit NAICS code, refer to the North American Industry Classification System - United States, 2022, published by the Executive Office of the President, Office of Management and Budget, available at https://www.census.gov/naics/. This website also provides guidance in choosing the proper code(s).

Notification Thresholds
Notification thresholds are adjusted annually based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). See § 801.1(h). The current threshold values can be found at Current Thresholds.

Person Filing and Filing Person
The terms "person filing" or "filing person" mean the ultimate parent entity ("UPE"). See § 801.1(a)(3). The terms are used herein interchangeably.

Select 801.30 Transaction
A transaction to which § 801.30 applies **and** where (1) the acquisition would not confer control, (2) there is no agreement (or contemplated agreement) between any entity within the acquiring person and any entity within the acquired person governing any aspect of the transaction, and (3) the acquiring person does not have, and will not obtain, the right to serve as, appoint, veto, or approve board members, or members of any similar body, of any entity within the acquired person or the general partner or management company of any entity within the acquired person. Executive compensation transactions also qualify as select 801.30 transactions.

Supervisory Deal Team Lead
The individual who has primary responsibility for supervising the strategic assessment of the deal, and who would not otherwise qualify as a director or officer.

Target
The target includes all entities and assets to be acquired by the acquiring person from the acquired person in the reported transaction.

Year
All references to "year" refer to calendar year. If data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period that most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recently completed calendar or fiscal year for which the requested information is available.

► Filing

If the UPE is both an acquiring and acquired person, separate filings must be submitted, one as the acquiring person and one as the acquired person, following the appropriate instructions for each. See § 803.2(a)(2).

Filings should be submitted electronically consistent with the instructions on the PNO website. If the electronic submission platform is unavailable, the Agencies may announce sites for delivery through the media and, if possible, at the PNO website.

► Responses

Documents, including the Form, should be produced as (1) a searchable PDF from which text can be copied or (2) an Excel file.

For Business Documents (see below), check the box to indicate whether any part of the document is privileged and then provide the document number, title, and estimated date. If the acquiring person has identified (1) a NAICS overlap, (2) an overlap within the Overlap Description, or (3) a supply relationship within the Supply Relationships Description, also provide the following:

1. Author(s) (and job title(s)) for documents created by the acquiring person; or
2. Recipient(s) or supervisor(s) (and job title(s)) of documents created by third parties as part of an engagement with the acquiring person.

If a group of people prepared the document, list all the authors and their titles, identifying the principal authors. Alternatively, it is acceptable to indicate that the document was prepared under the supervision of the lead author and to provide the name and title of that author. Similarly, if the acquiring person engaged a third party to prepare a document, provide the name of the third party, and the name, title, and company name for the individual within the acquiring person who supervised the creation of the document, or for whom the document was prepared. For materials received from a third party that was not engaged by the acquiring person, only the name of the third party is required.

If the acquiring person submits documents in addition to what is required, such documents should be identified as "Voluntary". See § 803.1(b).

Submit only one copy of identical responsive documents.

► Privilege

See § 803.3(d). For privileged documents, the filing person must also provide the following in a log:

1. The privilege type (redacted or withheld);
2. The privilege claim;
3. Addressee(s) and all recipients, with company name and title, of the original and any copies;
4. Subject matter;
5. Document's present location; and
6. Who has control over it.

If a privileged document was circulated to a group, such as the board or an investment committee, the name of the group is sufficient, but the filing person should be prepared to disclose the names and titles/positions of the individual group members, if requested.

If the claim of privilege is based on advice from inside and/or outside counsel, the name of the inside and/or outside counsel providing the advice (and the law firm, if applicable) must be provided. If several lawyers participated in providing advice, identifying lead counsel is sufficient. In identifying who controls a document, the name of the law firm is sufficient.

► Translations

Materials or information in a language other than English must be translated into English, with the English translation attached to the original version. See § 803.8.

► Non-Compliance

If unable to answer any item fully, provide such information as is available and a statement of reasons for non-compliance as required by § 803.3. If exact answers to any item cannot be given, enter best estimates and indicate the source or basis of such estimates. Add an endnote with the notation “est.” to any item where data are estimated.

► Limited Response

Information need not be supplied regarding assets, voting securities, or non-corporate interests currently being acquired when their acquisition is exempt under the Act or Rules. See § 803.2(c).

FEE INFORMATION

Total Expected Filing Fee
Indicate the value of the total required fee for the transaction.

Parties Paying the Fee
Indicate which filing person(s) is paying the filing fee and, if applicable, whether the fee is being paid by multiple entities. For each entity within the acquiring person paying a portion of the fee, provide the name of the payer, the amount paid, the payment method, and the Electronic Wire Transfer (EWT) confirmation number or check number.

Note on Paying by EWT
In order for the FTC to track payment, the payer must provide information required by the Fedwire Instructions to the financial institution initiating the EWT. A template of the Fedwire Instructions is available at the PNO website on the Filing Fee Information page.

Note on Paying by Check
The FTC strongly discourages check payments because handling a physical check will create a delay in processing the Form. However, if an EWT cannot be arranged, the FTC will accept a check, sent to Financial Operations. Cashiers' or certified checks are preferred. Make the check payable to the Federal Trade Commission and deliver to:

Federal Trade Commission
Financial Operations Division
600 Pennsylvania Ave, Drop H-790
Washington, DC 20580

Please note that the waiting period may be delayed until the fee has been confirmed.

GENERAL INFORMATION

Special Filing Types
Indicate whether the filing is a post-consummation filing, or whether the transaction is a cash tender offer or bankruptcy that is subject to Section 363(b) of the Bankruptcy Code (11 U.S.C. § 363).

Early Termination
Indicate whether the acquiring person requests early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register, as required by 15 U.S.C. § 18a(b)(2), and on the PNO website. Note that if either person in any transaction requests early termination, it may be granted and published.

ULTIMATE PARENT ENTITY (UPE) INFORMATION

► UPE Details

Name
Provide the name, headquarters address, and website (if one exists) of the person filing notification. The name of the person filing is the name of the UPE of the acquiring person. See § 801.1(a)(3).

Entity Type
Specify whether the UPE is a corporation, unincorporated entity, natural person, or other entity type (specify). See § 801.1.

Filing Made on Behalf of the UPE
If the filing is being made on behalf of the UPE by another entity within the acquiring person authorized by the UPE to file the notification on its behalf pursuant to § 803.2(a) or filed pursuant to § 803.4 on behalf of a foreign person, provide the name and mailing address of the entity filing the notification on behalf of the UPE.

Contact Information
Provide the name, firm/company name, address, telephone number, and e-mail address of two individuals (primary and secondary) to contact regarding the filing. See § 803.20(b)(2)(ii).

Additionally, provide the name, firm/company name, address, telephone number, and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. See § 803.20(b)(2).

UPE Annual Reports and Financial Information

- **Central Index Key**
  If the UPE of the acquiring person files annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission (SEC), provide the Central Index Key (CIK) number.

- **Annual Reports and Audit Reports**
  Provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the UPE of the acquiring person.

  Natural person UPEs should not provide personal balance sheets or tax returns. Natural person UPEs should leave this section blank and instead provide the most recent reports for the highest-level entity(ies) that controls the acquiring entity under “UPE Structure.”

  The person filing notification may incorporate a document responsive to this item by reference to an internet address directly linking to the document. See § 803.2(e).

- **Date of Report(s)**
  Provide the date of the most recent annual report(s) and/or audit reports (or, if audited is unavailable, unaudited) of the UPE of the acquiring person.

- **Size of Person**
  If applicable, indicate whether the person filing notification stipulates that the acquiring person meets either the higher or lower size of person test. See 15 U.S.C. § 18a(a), § 801.11.

Minority Shareholders or Interest Holders
This section requires the acquiring person to report the name, headquarters mailing address, and approximate percentage held by certain minority holders of (1) the acquiring entity, (2) any entity directly or indirectly controlled by the acquiring entity, (3) any entity that directly or indirectly controls the acquiring entity, and (4) any entity within the acquiring person that has been or will be created in contemplation of, or for the purposes of, effectuating the transaction (each a “covered entity”).

If a covered entity is not a limited partnership, provide the required information for each individual or entity that currently holds, or will hold as a result of the transaction, 5% or more but less than 50% of the voting securities or non-corporate interests of any covered entity, starting with the UPE.

If a covered entity is a limited partnership, provide the required information for its (a) general partner, regardless of the percentage it holds, and (b) limited partners that (i) currently hold, or will hold as a result of the transaction, 5% or more but less than 50% of the non-corporate interests of the covered entity, and (ii) have or will have the right to serve as, nominate, appoint, veto, or approve board members, or individuals with similar responsibilities, of any covered entity, or of the general partner or management company of a covered entity.

If a minority holder is related to a master limited partnership, fund, investment group, or similar entity that does business under a common name, the d/b/a or "street name" of such group should also be listed, if known to the acquiring person.

If the identity of minority investors or percentages to be held of a covered entity is not finalized at the time of filing, provide good faith estimates and explain in an endnote.

► Acquiring Person Structure

Entities Within the Acquiring Person
List the name, city, state, zip code, and country of all U.S. entities, and all foreign entities that have sales in or into the United States, that are included within the acquiring person. Entities with total assets of less than $10 million may be omitted. Alternatively, the acquiring person may report all entities within it. The acquiring person must also list all names under which the entities do business (e.g., d/b/a names).

The list of entities should be organized by operating company or operating business ("top-level entity"), if applicable. Filings for select 801.30 transactions need not include d/b/a names and the list of entities can be organized as kept in the ordinary course of business.

Annual Reports and Audit Reports
For the acquiring entity(ies) and any entity controlled by the acquiring person whose revenues contribute to a NAICS overlap or any overlap identified in the Overlap Description, provide the CIK number(s) if annual reports (Form 10-K or Form 20-F) are filed with the SEC, and the most recent annual or audit report(s).

Natural person UPEs must also provide the most recent annual report or audit report and CIK number for the highest-level entity that controls the acquiring entity.

► Additional Acquiring Person Information

Ownership Structure
Describe the ownership structure of the acquiring entity.

For transactions where a fund or master limited partnership is the UPE, provide any existing organizational chart that shows the relationship of any entities that are affiliates or associates. If such an organizational chart does not exist, there is no requirement to create one.

Officers and Directors
For all entities within the acquiring person responsible for the development, marketing, or sale of products or services that are identified as overlaps within the Overlap Description or as supply relationships within the Supply Relationships Description:

- List all current officers and directors (or in the case of unincorporated entities, individuals exercising similar functions) and those who have served in one of these positions within the three months before filing that also serve as an officer or director of another entity that derives revenue in the same NAICS codes reported by the target. For each, provide the name of all such entities. If NAICS codes are unavailable, list all such entities that have operations in the same industry, based on the knowledge or belief of the acquiring person or the identified individual.

For the acquiring entity, entities the acquiring entity directly or indirectly controls, entities that directly or indirectly control the acquiring entity, and entities within the acquiring person that have been or will be created as a result of or as contemplated by the transaction:

- List all current officers and directors (or in the case of unincorporated entities, individuals exercising similar functions) as well as those who are likely to serve in one of these positions that also serve as an officer or director of another entity that derives revenue in the same NAICS codes reported by the target. For each, provide the name of all such entities. If NAICS codes are unavailable, list all such entities that have operations in the same industry, based on the knowledge or belief of the acquiring person or the identified individual. If the identities of the prospective officers or directors are unknown, briefly describe in an endnote who will have the authority to select them.

No filer is required to disclose any individual's role as an officer, director, or member of any non-profit entity organized for a religious or political purpose, even if that entity carries on substantial commerce. Organize the response by entity and include entities that are not yet created but are expected to be created as a result of or as contemplated by the transaction.

TRANSACTION INFORMATION

► Parties

List the name and mailing address of each acquiring and acquired person and each acquiring and acquired entity. Do not list entities controlled by an acquired entity.

Acquiring UPE
Provide the name, headquarters address, and website of the acquiring person.

Acquiring Entity(ies)
If an entity other than the acquiring UPE is making the acquisition, provide the name, mailing address, and website of that entity.

Acquired UPE
Provide the name, headquarters address, and website of the acquired person.

Target(s)
If the assets, voting securities, or non-corporate interests of an entity other than the acquired UPE are being acquired, provide the name, mailing address, and website of that entity.

► Transaction Details

801.30 Transaction
Indicate whether the transaction is subject to § 801.30 and if so, what type(s), including select 801.30.

Transaction Type
Indicate whether the transaction is any of the following (select all that apply):

- Acquisition of voting securities;
- Acquisition of non-corporate interests;
- Acquisition of assets;
- Merger (see § 801.2);
- Consolidation (see § 801.2);
- Formation of a joint venture, other corporation, or unincorporated entity (see §§ 801.40 and 801.50);
- Acquisition subject to § 801.31;
- Secondary acquisition subject to § 801.4;
- Acquisition subject to § 801.2(e); or
- Other (specify)

Acquisition Details
Provide the requested information for the value and percentage of assets, voting securities, and non-corporate interests to be acquired. If a combination of assets, voting securities, and/or non-corporate interests is being acquired and allocation is not possible, note such information in an endnote.

For determining the percentage of voting securities, evaluate total voting power per § 801.12. For determining the percentage of non-corporate interests, evaluate the economic interests per § 801.1(b)(1)(ii).

To complete this item:

- State the percentage of voting securities already held by the acquiring person. See § 801.12.
- State the value of voting securities already held by the acquiring person. See § 801.10.
- State the total percentage of voting securities to be held by the acquiring person as a result of the acquisition. See § 801.12.
- State the total value of voting securities to be held by the acquiring person as a result of the acquisition. See § 801.10.
- State the percentage of non-corporate interests already held by the acquiring person. See § 801.1(b)(1)(ii).
- State the value of non-corporate interests already held by the acquiring person. See § 801.10.
- State the total percentage of non-corporate interests to be held by the acquiring person as a result of the acquisition. See §§ 801.10 and 801.1(b)(1)(ii).
- State the total value of non-corporate interests to be held by the acquiring person as a result of the acquisition. See § 801.10.
- State the total value of assets to be held by the acquiring person as a result of the acquisition. See § 801.10.
- State the aggregate total value of assets, voting securities, and non-corporate interests of the acquired person to be held by the acquiring person as a result of the acquisition. See §§ 801.10, 801.12, 801.13 and 801.14.

Notification Threshold
This item should only be completed when voting securities are being acquired. If more than voting securities are being acquired, respond to this item only regarding voting securities. Indicate the highest applicable threshold for which notification is being filed. See § 801.1(h).

- $50 million (as adjusted);
- $100 million (as adjusted);
- $500 million (as adjusted);
- 25% (if the value of voting securities to be held is greater than $1 billion, as adjusted);
- 50%; or
- N/A.

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities. For instance, an acquisition of 100% of the voting securities of an issuer valued in excess of $500 million (as adjusted) would cross the 50% notification threshold, not the $500 million (as adjusted) threshold.

► Transaction Description

Business of the Acquiring Person
Describe the business operation(s) of the acquiring person.

Business of the Target
Describe the business operation(s) being acquired. If assets, describe the assets and whether they comprise an operating business.

Non-Reportable UPE(s)
Provide the names of any UPE that does not have a reporting obligation.

Transaction Description
Briefly describe the transaction, indicating whether assets, voting securities, or non-corporate interests (or some combination) are being acquired. Indicate what consideration will be received by each person and the scheduled consummation date of the transaction. Also identify any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Part 802.

If any attached transaction documents use code names to refer to the parties, provide an index identifying the code names.

Related Transactions
If the transaction that is the subject of this filing has related filings, indicate whether the related filing(s) (choose all that apply):

- Is a principal transaction that triggers one or more shareholder backside transactions;
- Is a shareholder backside transaction;
- Has more than one acquiring UPE;
- Has more than one acquired UPE;
- Has more than one reportable step;
- Is a joint venture;
- Is a consolidation;
- Is an exchange of assets;
- Has one or more filings in the alternative; or
- Has other circumstances that require more than one filing and if so, explain.

Provide all additional details regarding the related filings(s), including party names and transaction numbers, necessary to identify and connect all related filings.

► Transactions Subject to International Antitrust Notification

Indicate whether, to the knowledge or belief of the filing person at the time of filing, a non-U.S. antitrust or competition authority has been or will be notified of the transaction.

If yes, list the name of each such authority. Identify, to the knowledge or belief of the filing person at the time of filing, any jurisdiction where (1) a merger notification has been filed, (2) a merger notification is being prepared for filing, or (3) the parties have a good faith belief that a merger notification will be made, along with the dates of the filing or planned filing.

► Additional Transaction Information

Transaction Rationale

Except for select 801.30 transactions, identify and explain each strategic rationale for the transaction discussed or contemplated by the filing person or any of its officers, directors, or employees. If the rationale of acquiring entity is different from the UPE, submit an explanation for each. Identify each document produced in the filing that confirms or discusses the stated rationale(s). If documents produced in the filing are referenced, identify the specific page(s) that discusses the stated rationale(s).

Transaction Diagram

Except for select 801.30 transactions, submit a diagram of the transaction, if one exists. If such a diagram does not exist, there is no requirement to create one.

► Joint Ventures

Complete only if the acquisition is the formation of a joint venture corporation or unincorporated entity. See §§ 801.40 and 801.50.

Contributions

List the contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Consideration

Describe fully the consideration that each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Business Description

Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including its principal types of products or activities, and the geographic areas in which it will do business.

NAICS Codes

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues.

► Business Documents

Transaction-Related Documents

- **Competition Documents**
  Provide all studies, surveys, analyses, and reports prepared by or for any officer(s), director(s), or supervisory deal team lead for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets. For unincorporated entities, provide such documents prepared by or for individuals exercising similar functions as officers and directors, as well as the supervisory deal team lead.

- **Confidential Information Memoranda**
  Provide all confidential information memoranda prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring or of the acquiring entity(s) that specifically relate to the sale of the target. If no such confidential information memorandum exists, submit any document(s) given to any officer(s) or director(s) of the acquiring person meant to serve the function of a confidential information memorandum. This does not include ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials served the purpose of a confidential information memorandum when no such confidential information memorandum exists. Documents responsive to this item are limited to those produced within one year before the date of filing.

- **Third-Party Studies, Surveys, Analyses, and Reports**
  Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants, or other third-party advisors ("third-party advisors") for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring person or of the acquiring entity(s) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the target. This item requires only materials developed by third party advisors during an engagement or for the purpose of seeking an engagement. Documents responsive to this item are limited to those produced within one year before the date of filing.

- **Synergies and Efficiencies**
  Provide all studies, surveys, analyses, and reports evaluating or analyzing synergies, and/or efficiencies prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided.

Plans and Reports
Except for select 801.30 transactions, provide all regularly prepared plans and reports that were provided to the Chief Executive Officer (CEO) of the acquiring entity or any entity that it controls or is controlled by that analyze market shares, competition, competitors, or markets pertaining to any product or service of the acquiring person also produced, sold, or known to be under development by the target, as identified in the Overlap Description. Documents responsive to this item are limited to those prepared or modified within one year of the date of filing.

Except for select 801.30 transactions, provide all plans and reports that were provided to the Board of Directors of the acquiring entity or any entity that it controls or is controlled by that analyze market shares, competition, competitors, or markets pertaining to any product or service of the acquiring person also produced, sold, or known to be under development by the target, as identified in the Overlap Description. Documents responsive to this item are limited to those prepared or modified within one year of the date of filing.

► Agreements

Transaction-Specific Agreements
Furnish copies of all documents that constitute the agreement(s) related to the transaction, including, but not limited to, exhibits, schedules, side letters, agreements not to compete or solicit, and other agreements negotiated in conjunction with the transaction that the parties intend to consummate, and excluding clean team agreements.

Documents that constitute the agreement(s) (e.g., Agreement and Plan of Merger, Letter of Intent, Purchase and Sale Agreement, Asset Purchase Agreement, Stock/Securities Purchase Agreement) must be executed, while supporting agreements, such as employment agreements and agreements not to compete may be provided in draft form if that is the most recent version.

If the executed agreement is not the definitive agreement, submit a dated document that provides sufficient detail about the scope of the entire transaction that the parties intend to consummate, such as an agreement in principle, or term sheet, or the most recent draft agreement. See § 803.5. Such document should include information regarding some combination of the following terms: the identity of the parties; the structure of the transaction; the scope of what is being acquired; calculation of the purchase price; an estimated closing timeline; employee retention policies, including with respect to key personnel; post-closing governance; and transaction expenses or other material terms.

Note that transactions subject to § 801.30 and bankruptcies under 11 U.S.C. § 363(b) do not require an executed agreement. For bankruptcies, provide the order from the bankruptcy court.

Other Agreements Between the Acquiring Person and Target
Indicate whether the acquiring person has, or had within one year of filing, any contractual agreement(s) with the target. If so, indicate which type(s). If an agreement has terms that apply to more than one category, indicate each category that applies.

COMPETITION DESCRIPTIONS

This section is not applicable to select 801.30 transactions.

► Overlap Description

Briefly describe each of the principal categories of products and services (as reflected in documents created in the ordinary course of business) of the acquiring person.

In addition, list and briefly describe each of the current or known planned products or services of the acquiring person that competes with (or could compete with) a current or known planned product or service of the target, based on documents created in the ordinary course of business. Current or known planned products or services include those that the acquiring person or target researches, develops, manufactures, produces, sells, offers, provides, supplies, or distributes. Known planned products or services may be limited to those referenced in any submitted Business Document and should reflect the acquiring person's existing knowledge of the target's business. The acquiring and acquired person should not exchange information for the purpose of answering this item.

For each such product or service listed, provide:

1. The sales (in dollars) for the most recent year. For those products or services not generating revenue or whose performance is not measured by revenue in the ordinary course of business, provide projected revenue, estimates of the volume of products to be sold, time spent using the service, or any other metric by which the acquiring person measures performance (e.g., daily users, new signups).

2. A description of all categories of customers of the acquiring person that purchase or use the product or service (e.g., retailer, distributor, broker, government, military, educational, national account, local account, commercial, residential, or institutional). If no customers have yet used the product or service, provide the date that development of the product or service began; a description of the current stage in development, including any testing and regulatory approvals and any planned improvements or modifications; the date that development (including testing and regulatory approvals) was or will be completed; and the date that the product or service is expected to be sold or otherwise commercially launched.

3. The top 10 customers in the most recent year (as measured in dollars), and the top 10 customers for each customer category identified.

► Supply Relationships Description

Related Sales
List and briefly describe each product, service, or asset (including data) that the acquiring person has sold, licensed, or otherwise supplied, and which represented at least $10 million in revenue (including internal transfers) in the most recent year (1) to the target, or (2) to any other business that, to the acquiring person's knowledge or belief, uses the acquiring person's product, service, or asset to compete with the target's products or services, or as an input for a product or service that competes or is intended to compete with the target's products or services. Responses to this item should reflect the acquiring person's existing knowledge of the target's business; the acquiring and acquired person should not exchange information for the purpose of answering this item.

For each product, service, or asset listed, for the most recent year, provide:

1. The sales (in dollars) to (1) the target and (2) any other business that, to the acquiring person's knowledge or belief, uses the acquiring person's product, service, or asset to compete with the target's products or services, or as an input for a product or service that competes or is intended to compete with the target's products or services.

2. The top 10 customers (as measured in dollars) of the acquiring person that use the acquiring person's product, service, or asset to compete with the target's products or services, or as an input for a product or service that competes or is intended to compete with the target's products or services. For each such customer, describe the acquiring person's supply or licensing agreement (or other comparable terms of supply).

Related Purchases
List and briefly describe each product, service, or asset (including data) that the acquiring person incorporates as an input into any product or service and that the acquiring person has purchased, licensed, or otherwise obtained, and which represented at least $10 million in revenue (including internal transfers), in the most recent year (1) from the target or (2) from any other business that, to the acquiring person's knowledge or belief, competes with the target to provide a substantially similar product, service, or asset. Responses to this item should reflect the acquired person's existing knowledge of the acquiring person's business; the acquiring and acquired person should not exchange information for the purpose of answering this item.

For each product, service, or asset listed, for the most recent year, provide:

1. The purchased amount (in dollars) for (1) the target and (2) any other business that, to the acquiring person's knowledge or belief, competes with the target to provide a substantially similar product, service, or asset.

2. The top 10 suppliers (as measured in dollars) for the associated input product, service, or asset, and a description of the acquiring person's purchase or licensing agreement (or other comparable terms of purchase).

REVENUES AND OVERLAPS

► NAICS Codes

This item requests information regarding the industry categories for the acquiring person's products and services that derived revenue in the most recent year.

No Revenue
If there is no revenue to report, explain why.

NAICS Codes Describing U.S. Operations with Estimates of Revenue
Identify all 6-digit NAICS industry codes that describe the U.S. operations of the acquiring person, inclusive of all entities included within the acquiring person at the time the filing is made.

Responses must be organized by NAICS code in ascending order. For each code, provide the name of the operating business(es) that derive(s) revenue in that code and the estimated revenue range: less than $10 million; $10 million or more but less than $100 million; $100 million or more but less than $1 billion; or $1 billion or more.

Identify each 6-digit NAICS industry code in which both the acquiring person and target derive revenue by checking the overlap box.

For products and services that derived revenue in the most recent year in a non-manufacturing NAICS code, if the revenue is estimated at less than one million dollars, that code may be omitted so long as the code does not overlap with a code in which the target derived revenue from U.S. operations.

► Controlled Entity Geographic Overlaps

If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate of the acquiring person (see § 801.1(d)(2)), derived any amount of dollar revenues in the most recent year from operations:

1. In industries within any 6-digit NAICS industry code in which the target also derived any amount of dollar revenues in the most recent year; or
2. In which a joint venture corporation or unincorporated entity will derive dollar revenues;

then for each such 6-digit NAICS industry code follow the instructions below for this section.

Note that if the target is a joint venture, the only overlaps that should be reported are those between the assets to be held by the joint venture and any assets of the acquiring person or its associates not contributed to the joint venture.

NAICS Overlaps of Controlled Entities
List each overlapping NAICS code and description. For each, list the name of each operating business within the acquiring person or associate of the acquiring person that has U.S. operations in the same NAICS code as the target and the name(s) under which the operating business does business, whether the listed entity is controlled by the acquiring person or an associate of the acquiring person, and provide the appropriate Geographic Market Information, based upon the NAICS code. Organize responses by NAICS code in ascending order.

Geographic Market Information
For each identified overlapping NAICS code, provide geographic information, as described below. Use the 2-digit postal codes for states and territories and provide the total number of states and territories at the end of the response.

Except in the case of those NAICS industries in the sectors, subsectors, and codes that require street-address level reporting, the person filing notification may respond with the word “national” if business is conducted in all 50 states.

- **State-Level Reporting**
  - Manufacturing Industries
    For each 6-digit NAICS code within the industry sector, subsector, or code listed below, list the states in which, to the knowledge or belief of the person filing the notification, the products in that 6-digit NAICS industry code produced by the acquiring person or associate of the acquiring person are sold without a significant change in their form (whether they are sold by the acquiring person or associate of the acquiring person or by others to whom such products have been sold or resold).

    31** through 33**** Manufacturing**, *except*:
    3115** Dairy Product Manufacturing
    311611 Animal (except Poultry) Slaughtering
    311613 Rendering and Meat Byproduct Processing
    311615 Poultry Processing
    31181* Bread and Bakery Product Manufacturing
    321*** Wood Product Manufacturing
    32221* Paperboard Container Manufacturing
    324*** Petroleum and Coal Products Manufacturing
    3251** Basic Chemical Manufacturing

325521 Plastics Materials and Resin Manufacturing
3271** Clay Product and Refractory Manufacturing
3272** Glass and Glass Product Manufacturing
3273** Cement and Concrete Product Manufacturing

- Wholesale Trade
  For each 6-digit NAICS code within the industry sector, subsector, or code listed below, list the states or, if desired, portions thereof in which the customers of the acquiring person or associate of the acquiring person are located.

42** **Wholesale Trade**, *except*:
42331* Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
42333* Roofing, Siding, and Insulation Material Merchant Wholesalers
42344* Other Commercial Equipment Merchant Wholesalers
42345* Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
42346* Ophthalmic Goods Merchant Wholesalers
42349* Other Professional Equipment and Supplies Merchant Wholesalers
4239** Miscellaneous Durable Goods Merchant Wholesalers
4241** Paper and Paper Product Merchant Wholesalers
4242** Drug and Druggists' Sundries Merchant Wholesalers
42441* General Line Grocery Merchant Wholesalers
42442* Packaged Frozen Food Merchant Wholesalers
42451* Grain and Field Bean Merchant Wholesalers
42452* Livestock Merchant Wholesalers
4247** Petroleum and Petroleum Products Merchant Wholesalers
4248** Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers
42491* Farm Supplies Merchant Wholesalers
42495* Paint, Varnish, and Supplies Merchant Wholesalers

- Insurance Carriers
  For the 6-digit NAICS code within the industry subsector listed below, list the state(s) in which the acquiring person or associate of the acquiring person is licensed to write insurance.

5241 Insurance Carriers**

- Other NAICS Sectors
  For each 6-digit NAICS code within the industry sector, subsector, or code listed below, list the states or, if desired, portions thereof in which the acquiring person or associate of the acquiring person conducts such operations.

11** **Agriculture, Forestry, Fishing, and Hunting**, *except*:
113*** Forestry and Logging

21** **Mining, Quarrying, and Oil and Gas Extraction**, *except:*
2123** Nonmetallic Mineral Mining and Quarrying

2213 Water, Sewage, and Other Systems**

23** **Construction**

44912* Home Furnishing Retailers
4492 Electronics and Appliance Retailers**

48** and 49**** Transportation and Warehousing**, *except*:
493*** Warehousing and Storage

51** **Information**, *except*:
512*** Motion Picture and Sound Recording Industries

5222 Nondepository Credit Intermediation**
523* Securities, Commodity Contracts, and Other Financial Investments and Related Activities**
5242 Agencies, Brokerages, and Other Insurance Related Activities**
525* Funds, Trusts, and Other Financial Vehicles**

531* Real Estate**
533* Lessors of Nonfinancial Intangible Assets (Except Copyrighted Works)**

54** **Professional, Scientific and Technical Services**, *except*:
54138* Testing Laboratories and Services
54194* Veterinary Services

55** **Management of Companies and Enterprises**

561* **Administrative and Support Services**

61** **Educational Services**

71** **Arts, Entertainment, and Recreation**, *except*:
7132** Gambling Industries
71394* Fitness and Recreational Sports Centers

7212 RV (Recreational Vehicle) Parks and Recreational Camps**
7213 Rooming and Boarding Houses, Dormitories, and Workers' Camps**
8114 Personal and Household Goods Repair and Maintenance**
813* Religious, Grantmaking, Civic, Professional, and Similar Organizations**
814* Private Households**

- **Street-Level Reporting**
  For each 6-digit NAICS code within the industry sector, subsector, or code listed below, provide the street address, arranged by state, zip code, county and city or town of each establishment from which dollar revenues were derived (either directly by the acquiring person or associate of the acquiring person or by a franchisee) in the most recent year.

113* Forestry and Logging**
2123 Nonmetallic Mineral Mining and Quarrying**

22** **Utilities**, *except*:
2213** Water, Sewage and Other Systems

3115 Dairy Product Manufacturing**
311611 Animal (except Poultry) Slaughtering
311613 Rendering and Meat Byproduct Processing
311615 Poultry Processing
31181* Bread and Bakery Product Manufacturing
321* Wood Product Manufacturing**
32221* Paperboard Container Manufacturing
324* Petroleum and Coal Products Manufacturing**
3251 Basic Chemical Manufacturing**
325521 Plastics Materials and Resin Manufacturing
3271 Clay Product and Refractory Manufacturing**
3272 Glass and Glass Product Manufacturing**
3273 Cement and Concrete Product Manufacturing**
42331* Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
42333* Roofing, Siding, and Insulation Material Merchant Wholesalers
42344* Other Commercial Equipment Merchant Wholesalers
42345* Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
42346* Ophthalmic Goods Merchant Wholesalers
42349* Other Professional Equipment and Supplies Merchant Wholesalers
4239 Miscellaneous Durable Goods Merchant Wholesalers**
4241 Paper and Paper Product Merchant Wholesalers**
4242 Drug and Druggists' Sundries Merchant Wholesalers**
42441* General Line Grocery Merchant Wholesalers
42442* Packaged Frozen Food Merchant Wholesalers
42451* Grain and Field Bean Merchant Wholesalers
42452* Livestock Merchant Wholesalers

4247** **Petroleum and Petroleum Products Merchant Wholesalers**
4248** **Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers**
42491* **Farm Supplies Merchant Wholesalers**
42495* **Paint, Varnish, and Supplies Merchant Wholesalers**

44** and 45**** Retail Trade**, *except*:
44912* Home Furnishings Retailers
4492** Electronics and Appliance Retailers

493*** **Warehousing and Storage**
512*** **Motion Picture and Sound Recording Industries**
521*** **Monetary Authorities-Central Bank**
5221** **Depository Credit Intermediation**
5223** **Activities Related to Credit Intermediation**
532*** **Rental and Leasing Services**
54138* **Testing Laboratories and Services**
54194* **Veterinary Services**
562*** **Waste Management and Remediation Services**
62**** **Health Care and Social Assistance**
7132** **Gambling Industries**
71394* **Fitness and Recreational Sports Centers**

72**** **Accommodation and Food Services**, *except:*
7212** RV (Recreational Vehicle) Parks and Recreational Camps
7213** Rooming and Boarding Houses, Dormitories, and Workers' Camps

811*** **Repair and Maintenance**, except
8114** Personal and Household Goods Repair and Maintenance

812*** **Personal and Laundry Services**

► Minority-Held Entity Overlaps

This section requires the disclosure of holdings of the acquiring person and its associates (see § 801.1(d)(2)) of 5% or more but less than 50% of certain entities that derive dollar revenues in any 6-digit NAICS code reported by the target. If NAICS codes are unavailable, holdings in entities that have operations in the same industry as the target, based on the knowledge or belief of the filing person, should be listed. Holdings in those entities that have total assets of less than $10 million may be omitted.

Minority Holdings of Acquiring Person and Its Associates
If the acquiring person holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS code(s) reported by the target, list the name of such entity and d/b/a names (if known), the percentage held, the entity within the acquiring person that holds the minority interests, and the overlapping 6-digit NAICS code(s) or industry(ies).

Additionally, based on the knowledge or belief of the acquiring person, for each associate of the acquiring person holding:
1. 5% or more but less than 50% of the voting securities or non-corporate interests of an acquired entity; and/or
2. 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the target also derived dollar revenues in the most recent year,

list the name of such entity and d/b/a names (if known), percentage held, the associate of the acquiring person that holds the minority interests, and the overlapping 6-digit NAICS code(s) or industry(ies).

Responses should be organized alphabetically by the name of the entity in which minority interests are held.
The acquiring person may rely on its regularly prepared financials that list its investments, and those of its associates that list their investments, provided the financials are no more than three months old.

► Prior Acquisitions

This item pertains only to prior acquisitions of U.S. entities or assets and foreign entities or assets with sales in or into the U.S. by the acquiring person that in the most recent year (1) derived revenue in an identified 6-digit NAICS industry code overlap, **or** (2) provided or produced a competitive overlap product or service as described in the Overlap Description.

For each such overlap, list all acquisitions of entities or assets deriving dollar revenues in an overlapping 6-digit NAICS industry code or overlapping product or service made by the acquiring person in the five years prior to the date of the instant filing, even if the transaction was non-reportable. List only acquisitions of 50% or more of the voting securities of an issuer, 50% or more of non-corporate interests of an unincorporated entity, or all or substantially all the assets of an operating business if the entity or business had annual net sales or total assets greater than $10 million in the year prior to the acquisition and any acquisitions of assets that did not constitute all or substantially all of an operating business valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

1. the overlapping 6-digit NAICS code(s) (by number and description) identified above in which the acquired entity or assets derived dollar revenues, or the competitive overlap product(s) or service(s) in the Overlap Description;
2. the name of the entity from which the assets, voting securities, or non-corporate interests were acquired;
3. the headquarters address of that entity prior to the acquisition;
4. whether assets, voting securities, or non-corporate interests were acquired; and
5. the consummation date of the acquisition.

ADDITIONAL INFORMATION

► Subsidies from Foreign Entities or Governments of Concern

Indicate whether, to the knowledge or belief of the filing person, within the two years prior to filing, the acquiring person has received any subsidy (or a commitment to provide a subsidy in the future) from any foreign entity or government of concern (see § 801.1(r)). If yes, list each entity or government from which such subsidy was received (or which has made the commitment) and provide a brief description of the subsidy.

Indicate whether, for products the acquiring person produced in whole or in part in a country that is a covered nation under 42 U.S.C. § 18741(a)(5)(C), any product is subject to countervailing duties imposed by any jurisdiction. If yes, list each product, the countervailing duty imposed, and the jurisdiction that imposed the duty.

Indicate whether, to the knowledge or belief of the filing person, for products the acquiring person produced in whole or in part in a country that is a covered nation under 42 U.S.C. § 18741(a)(5)(C), any product is the subject of a current investigation for countervailing duties in any jurisdiction. If yes, list each product and the jurisdiction conducting the investigation.

► Defense or Intelligence Contracts

Except for select 801.30 transactions, identify (1) pending requests for proposals from the U.S. Department of Defense or any member of the U.S. intelligence community, as defined by 10 U.S.C. § 101(a)(6) or 50 U.S.C. § 3003(4) for which the acquiring person has submitted a proposal and (2) awarded procurement contracts with the U.S. Department of Defense or any member of the U.S. intelligence community, as defined by 10 U.S.C. § 101(a)(6) or 50 U.S.C. § 3003(4) valued at $100 million or more if such pending requests for proposals or such awarded procurement contracts (a) are or will be the source of revenues in any identified 6-digit NAICS industry code overlap; or (b) involve or will involve an overlap product or service as described in the Overlap Description or the Supply Relationships Description. Limit the response to the acquiring entity and any entity within the acquiring person that directly or indirectly controls the acquiring entity. Include (1) the name of the entity within the filing person (2) the contracting office, as defined by 48 C.F.R. § 2.101(b); (3) the Contracting Office ID; (4) the Award ID; and (5) the NAICS code(s), if any, listed in the System for Award Management database. Do not include classified information but note that responsive information was withheld on that basis.

► Voluntary Waivers

- **HSR Confidentiality Waiver for International Competition Authorities (VOLUNTARY)**
  Indicate whether the acquiring person agrees to waive the disclosure exemption contained in the Act, 15 U.S.C. § 18a(h), to permit the DOJ and FTC to disclose to non-U.S. competition authority/authorities listed by the filing person (1) the fact that a notification was filed, (2) the waiting period associated with the notification, and (3) information and documents filed with the notification. This waiver will not cover materials provided in response to a request for additional information issued pursuant to 15 U.S.C. § 18a(e) and does not preclude the acquiring person from providing a full waiver as provided for under FTC and DOJ practice as reflected in the Model Waiver. The acquiring person should list the jurisdictions to which the waiver applies. This item is voluntary.

- **HSR Confidentiality Waiver for State Attorneys General (VOLUNTARY)**
  Indicate whether the acquiring person agrees to waive any part of the disclosure exemption contained in the Act, 15 U.S.C. § 18a(h). If yes, list the applicable State Attorneys General and whether the acquiring person permits the DOJ and FTC to disclose (1) the fact that a notification was filed and the waiting period associated with the notification, (2) information and documents filed with the notification, or (3) both (1) and (2). This waiver will not cover materials provided in response to a request for additional information

issued pursuant to 15 U.S.C. § 18a(e) and does not preclude the acquiring person from providing a full waiver as provided for under FTC and DOJ practice as reflected in the Model Waiver. The acquiring person should list the jurisdictions to which the waiver applies. This item is voluntary.

CERTIFICATION

See § 803.6 for requirements.

The certification must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury. The Form includes the following language:

Penalties for False Statements
Federal law provides criminal penalties, including up to twenty years imprisonment, for any person who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence an ongoing or anticipated federal investigation (see, e.g., Section 1519 of Title 18, United States Code.). It is also a criminal offense to knowingly make a false statement in a federal investigation, obstruct a federal investigation, or conspire to obstruct justice or obstruct or impede the lawful functioning of the government (see, e.g., Sections 371, 1001, and 1505 of Title 18, United States Code).

CERTIFICATION
This NOTIFICATION AND REPORT FORM, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

I acknowledge that the Commission or the Assistant Attorney General of the Antitrust Division of the Department of Justice may, prior to the expiration of the initial waiting period pursuant to 15 U.S.C. § 18a, require the submission of additional information or documentary material relevant to the proposed transaction.

AFFIDAVITS

Affidavit(s) required by § 803.5 must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury. If an entity is filing on behalf of the acquiring person, the affidavit must still attest to the good faith intent of the UPE.

In non-§ 801.30 transactions, the affidavit(s) (submitted by both persons filing) must attest that an agreement to merge or acquire has been executed, and if the executed agreement is not the definitive agreement, that a dated document that provides sufficient detail about the scope of the entire transaction that the parties intend to consummate has been submitted. The affidavit(s) must further attest to the good faith intention of the person filing notification to complete the transaction. See § 803.5(b).

In § 801.30 transactions, the affidavit (submitted only by the acquiring person) must attest:
1. That the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice, as described below, from the acquiring person;
2. In the case of a tender offer, that the intention to make the tender offer has been publicly announced; and
3. The good faith intention of the person filing notification to complete the transaction.

Acquiring persons in § 801.30 transactions are also required to submit a copy of the notice received by the acquired person pursuant to § 803.5(a)(3) along with the filing. This notice must include:
1. The identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity;
2. The specific notification threshold that the acquiring person intends to meet or exceed in an acquisition of voting securities;
3. The fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act;
4. The anticipated date of receipt of such notification by the Agencies; and
5. The fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act. See § 803.5(a).

PRIVACY ACT STATEMENT

Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to the amount listed in 16 C.F.R. §1.98(a) per day.

We also may be unable to process the Form unless you provide all of the requested information.

DISCLOSURE NOTICE

Public reporting burden for this report is estimated to average 105 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024

and

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The operative OMB control number, 3084-0005, appears within the Notification and Report Form and these Instructions.

PREMERGER NOTIFICATION REPORTING UNDER THE HSR ACT

INSTRUCTIONS FOR AN ACQUIRING PERSON: BUSINESS DOCUMENTS REQUIRED BY THE 2024 HSR FORM[1]

BUSINESS DOCUMENTS

Transaction-Related Documents

- **Competition Documents**
  Provide all studies, surveys, analyses, and reports prepared by or for any officer(s), director(s), or supervisory deal team lead for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets. For unincorporated entities, provide such documents prepared by or for individuals exercising similar functions as officers and directors, as well as the supervisory deal team lead.

- **Confidential Information Memoranda**
  Provide all confidential information memoranda prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring or of the acquiring entity(s) that specifically relate to the sale of the target. If no such confidential information memorandum exists, submit any document(s) given to any officer(s) or director(s) of the acquiring person meant to serve the function of a confidential information memorandum. This does not include ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials served the purpose of a confidential information memorandum when no such confidential information memorandum exists. Documents responsive to this item are limited to those produced within one year before the date of filing.

- **Third-Party Studies, Surveys, Analyses, and Reports**
  Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants, or other third-party advisors ("third-party advisors") for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the UPE of the acquiring person or of the acquiring entity(s) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the target. This item requires only materials developed by third party advisors during an engagement or for the purpose of seeking an engagement.

[1] The instructions for the acquired person are analogous.

Documents responsive to this item are limited to those produced within one year before the date of filing.

- **Synergies and Efficiencies**
  Provide all studies, surveys, analyses, and reports evaluating or analyzing synergies, and/or efficiencies prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided.

Plans and Reports

Except for select 801.30 transactions, provide all regularly prepared plans and reports that were provided to the Chief Executive Officer (CEO) of the acquiring entity or any entity that it controls or is controlled by that analyze market shares, competition, competitors, or markets pertaining to any product or service of the acquiring person also produced, sold, or known to be under development by the target, as identified in the Overlap Description. Documents responsive to this item are limited to those prepared or modified within one year of the date of filing.

Except for select 801.30 transactions, provide all plans and reports that were provided to the Board of Directors of the acquiring entity or any entity that it controls or is controlled by that analyze market shares, competition, competitors, or markets pertaining to any product or service of the acquiring person also produced, sold, or known to be under development by the target, as identified in the Overlap Description. Documents responsive to this item are limited to those prepared or modified within one year of the date of filing.

PREMERGER NOTIFICATION REPORTING UNDER THE HSR ACT

ITEMS 4(c) AND 4(d) OF THE HSR FORM

Item 4(c)(and 4(d) documents

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), parties submitting premerger notification reports are required to submit so-called "4(c) documents" in response to Item 4(c) of the HSR Form. Item 4(c) requires the filing party to include the following materials with its initial premerger notification filing:

> [Any] studies, surveys, analyses and reports prepared by or for an officer or director for the purpose of analyzing the proposed transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.

The documents submitted under this section can include offering memoranda or analyses prepared by investment bankers, capital authorization requests, board memoranda, slide presentations, and other internal analyses,

In addition, effective as of August 18, 2011, the HSR form added a new Item 4(d) requiring reporting parties to submit three other classes of documents:

- **Confidential Information Memoranda ("CIM")**:[1] Item 4(d)(i) requires a filing party to submit any CIM prepared by or for any officers or directors that specifically relate to the sale of the target. If no CIM exists, the parties have to submit any documents given to officers or directors of the buyer meant to serve the function of a CIM. Only documents prepared within a year of the HSR filing date need to be submitted.
- **Third-party advisor documents**: Item 4(d)(ii) requires a filing party to submit all studies, surveys, analyses and reports prepared by investment

[1] A "confidential information memorandum" is a sales document, usually prepared by the seller's investment bankers and typically from 50 to 100 pages long, given to prospective buyers that describes the business to be sold (the "target"). It typically includes an executive summary, an investment thesis (i.e., why the target is valuable), an overview of the market in which the target operates (perhaps including competitors), an overview of the target's business and a more detail description of its products and services, customer profitles, financial statements, and a description of the management team. As a sales document, CIMs are prepared to make the company look attractive as attrative as possible and sell for maximum value. This often means that the investment bankers will want to define the target's markets narrowly to maximize their market share and minimize their competitors. The bankers may also try to emphasize any possible barriers to entry that shield the target from potential competition. Not surprisingly, the antitrust agencies want a copy of any CIMs in the initial filing. Also not surprisingly, there can be a significant tension between the investment bankers and the merger antitrust lawyers over what the CIM should contain.

bankers, consultants, or other third-party advisors for any of its officers or directors for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the target. Only materials developed by third-party advisors during an engagement or for the purpose of seeking an engagement, including unsolicited materials, are required.[2]

- **Synergy and efficiency documents**: Item 4(d)(iii) requires a filing party to submit all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies prepared by or for any officers or directors for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

Many parties were already submitting these documents in response to Item 4(c), but to ensure that all parties submitted the documents, the FTC made the requirement explicit in Item 4(d).

The content of 4(c) and 4(d) documents can be instrumental in determining whether the U.S. antitrust agencies decide to conduct an in-depth investigation of a transaction, issue a second request for information, or seek to block or restructure a transaction. This is particularly true if the documents support a possible theory of anticompetitive harm.

The following is a non-exhaustive list of topics that are likely to attract the attention of the antitrust agencies and subject a transaction to closer regulatory scrutiny:

- Documents indicating that the price of some product will increase as a result of the transaction.
- Characterizing the market in which the firms compete (since such comments may be misread to endorse a view of the market that overstates the competitive impact of a transaction).
- Exaggerated claims about the extent to which the transaction will enhance the competitive position of the parties or disadvantage competitors.

[2] A sensitive part of merger antitrust counseling for buyers is modeling the likely financial impact of any divestiture that may be necessary to close the deal without litigation with the investigating agency. Investment bankers usually will need to be part of this process. It is critical that any assignment to the investment bankers or any other third-party advisor should be given by the general counsel or, even better, outside merger antitrust counsel. The bankers should be instructed that this work is to enable the lawyers to give legal advice to the company, that the work is highly confidential and should not be shared with anyone in the investment bank outside of those bankers working on this particular assignment or with anyone in the company other than the assigning lawyers without express authorization from the assigning lawyers. They should also be instructed that any document they prepare should contain the legend "PRIVILEGED AND CONFIDENTIAL-Prepared at the request of counsel for the purpose of giving legal advice." The idea is to ensure to the maximum extent that the work product of the bankers will be shielded from discovery in the merger investigation on attorney-client privilege and work product grounds. (This should also shield the investment bankers from depositions on the project.)

- Comments minimizing the strength of competitors, including smaller competitors or potential new competitors.
- Referring to the acquisition target as the closest competitor or suggesting that there are any market segments or niches in which the purchaser and the target are uniquely strong and do not face significant competition from others.
- Suggestions that there are high barriers to entry or expansion in the market.
- Suggestions that following the transaction, it will be easier for the parties or anyone else to raise prices or reduce any non-price aspect of competition.
- Suggestions that customers will be harmed or concerned about lack of competition as a result of the transaction.
- Suggestions that few synergies, efficiencies, or other cost-savings will be achieved as a result of the transaction.
- Suggestions that the transaction will lessen the pressure on either party to innovate or make quality or other improvements.

Consequences of failing to include all Item 4(c) and 4(d) documents

The agencies consider a filing that does not contain all 4(c) or 4(d) documents to be incomplete and ineffective. When the agencies discover a 4(c) or 4(d) document in a second request submission that was missing from the original premerger filing, the agencies frequently require the filing party to refile its premerger notification, restart all of the waiting periods, and subject all parties to another (or second) second request and substantial delay. The deficient company can also lose significant credibility and leverage at what is usually the worse possible time in the investigation.

Moreover, if the waiting period for the filing putatively expired and the missing documents emerge after the transaction closed, the agency can seek civil penalties for consummating the transaction without an effective HSR filing. Civil penalties accrue for each day after a transaction has closed where HSR Act's reporting and waiting requirements were not observed. The maximum civil penalty is adjusted annually.[3] Currently, the maximum civil penalty for violating the HSR Act is $46,517 per day.[4]

In *ADP/AutoInfo*,[5] ADP submitted an HSR filing on December 7, 1994, for the acquisition of AutoInfo. ADP's HSR filing contained no 4(c) documents. The investigating agency issued no second request and the transaction closed on April 1,

[3] *See* Federal Civil Penalties Inflation Adjustment Act, 74 Fed. Reg. 857 (Jan. 9, 2009) (effective Feb. 9, 2009). Curiously, the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA''), 28 U.S.C. § 2461 note, contains specific rules for rounding each increase based on the size of the penalty. Increases in civil penalties of greater than $10,000 and less than or equal to $100,000 must be in $5,000 increments, and the increase in the CPI between June 2009 and June 2013 was not high enough to round up any adjustment to $5,000.

[4] Adjustments to Civil Penalty Amounts, 87 Fed. Reg. 1070 (Jan. 10, 2022) (effective Jan. 10, 2022).

[5] United States v. Automatic Data Processing, Inc., No. 96 0606, 1996 WL 224758 (D.D.C. Apr. 10, 1996).

1995. Following the closing, however, a number of customers complained to the FTC about price increases. The FTC opened a non-HSR postclosing investigation into the transaction. In the course of the new investigation, the FTC discovered a number of Item 4(c) documents that were missing from ADP's original filing. One of these documents was a marketing plan that explained how the acquisition would enable ADP to "monopolize the [automobile] salvage [yard information services] industry in an expeditious and timely manner." The FTC concluded that the missing documents made ADP's original filing ineffective and hence the transaction violated the HSR Act because it closed without satisfying the Act's reporting and waiting period requirements.

In its complaint seeking civil penalties, the government alleged that ADP made little effort to locate its Item 4(c) documents for inclusion in the filing for the AutoInfo transaction and that it did not search the files of either its officers or directors or those persons who may have generated documents responsive to Item 4(c) for the officers or directors. ADP's in-house counsel, who had prepared the Notification and Report Form and was responsible for collecting 4(c) documents, at most asked only three persons whether they had documents like those covered by Item 4(c). Those persons did not search or have their files searched for Item 4(c) documents and did not produce 4(c) documents. As a result, ADP's in-house counsel was unaware of whether and what potentially responsive 4(c) documents were typically created by or for ADP officers during an ADP acquisition. In addition, ADP's chief financial officer, who certified the accuracy and completeness of the Notification and Report Form, did not supervise the preparation of the Notification and Report Form or review the completed Notification and Report Form, did not know what documents were required by Item 4(c), did not read the instructions to the Notification and Report Form, and had no understanding of the statute or rules referred to in the certification. The complaint alleged that ADP was in violation of the HSR Act from April 1, 1995, the date of the AutoInfo acquisition, to January 23, 1996, when ADP refiled its HSR form. At the time, the maximum penalty for violating the HSR Act was $10,000 per day for each day the company was in violation. This period comprised 297 calendar days, which would subject ADP to a maximum penalty of $2,970,000. The FTC obtained this maximum penalty in a settlement.[6]

In *Blackstone Capital/Prime Succession*,[7] Blackstone Capital Partners II Merchant Banking Fund L.P. and its general partner, Howard A. Lipson, settled an FTC investigation into violations of the HSR Act after the FTC discovered that a filing made by Blackstone and signed by Lipson in 1996 for Blackstone's involvement in the leveraged buyout of Prime Succession, Inc. did not include an important 4(c) document. The omission was discovered when a subsequent filing in 1997 by another

[6] Separately, at the end of the merits investigation the FTC challenged the acquisition as a violation of Section 7. Ultimately, the parties entered into a consent settlement requiring ADP to divest the computer systems and automobile salvage-yard parts trading network it acquired from AutoInfo. *See In re* Automatic Data Processing, Inc., 124 F.T.C. 456 (1977).

[7] United States v. Blackstone Capital Partners II Merchant Banking Fund L.P. & Howard Andrew Lipson, 99–CV–0795 R, 1999 WL 34814751 (D.D.C. Mar. 31, 1999).

party involved in the LBO included a memorandum authored by Lipson describing competitive issues in the 1996 transaction. This was the first time that the agencies sought to impose penalties against an individual. Given Lipson's personal involvement in the Prime transaction and the fact that he authored the Item 4(c) document in question, the agencies concluded that he knew or should have known that the filing was inaccurate when he signed it, and at the least had had "reckless disregard" for his obligations under the HSR Act. Blackstone paid a penalty of $2,785,000 and Lipson paid $50,000 in the settlement.

In *Hearst Trust/Medi-Span*,[8] Hearst Corporation settled charges of making an incomplete HSR filing for its 1998 acquisition of Medi-Span. As in the *ADP* case, in the wake of postmerger customer complaints, the FTC opened an investigation of the transaction. In the course of the investigation, Hearst submitted three documents the FTC concluded were responsive to Item 4(c) at the time of the original filing but were not submitted with the notification. On August 21, 2000, Hearst resubmitted its HSR Notification with the missing Item 4(c) documents, along with a privilege log identifying six other documents that had not been identified in the original filing. The waiting period for the resubmitted filing apparently expired on November 22, 2000. To settle the resulting civil penalties action, Hearst agreed to pay $4 million, the largest penalty ever by a single company to date for violating the premerger notification rules.[9]

Most recently, in *Iconix/Rocawear*,[10] Iconix Brand Group agreed to a $550,000 fine to settle charges of making an incomplete filing for its acquisition of Rocawear Brand. Iconix failed to submit any Item 4(c) documents with its filing, prompting the FTC to call the company's counsel to confirm that a thorough search was done. Although the agencies did not have any substantive antitrust concerns with the transaction and granted early termination of the HSR waiting period, the DOJ opened an investigation to determine whether Iconix had in fact undertaken an acquisition requiring more than $200 million in financing without its officers or directors having prepared or reviewed a single Item 4(c) document. In response to the DOJ's civil investigatory demand, Iconix produced several documents, including an email between its officers and directors, a presentation reviewed by an executive vice president, and materials prepared for an Iconix board, all of which evaluated and analyzed the Iconix' proposed acquisition with respect to market shares, competition, competitors, markets, and potential for sales growth or expansion into product or geographic markets and should have been submitted at 4(c) documents with the original filing.

[8] United States v. Hearst Trust, No. 1:01CV02119, 2001 WL 1478814 (D.D.C. Oct. 15, 2001).

[9] Also as in the *ADP* case, the FTC challenged the transaction on the merits and obtained a consent settlement requiring Hearst to divest the former Medi-Span business and to pay $19 million as disgorgement of unlawful profits. *See* FTC v. Hearst Trust, No.1:01CV00734 (TPJ) (D.D.C. Dec. 18, 2001) (consent decree).

[10] United States v. Iconix Brand Group, Inc., Civ. A. No. 1:07-cv-01852-ESH, 2007-2 Trade Cas. (CCH) ¶ 75,900 (D.D.C. 2007).

Failure to File

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Monday, April 4, 2016

Justice Department Sues ValueAct for Violating Premerger Notification Requirements

ValueAct Invested Over $2.5 Billion in Halliburton and Baker Hughes, Failed to Notify Antitrust Authorities, Wrongly Claiming No Intent to Influence Companies' Business Decisions

The Department of Justice today filed a civil antitrust lawsuit in the U.S. District Court for the Northern District of California against certain ValueAct Capital entities for violating the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The Antitrust Division's lawsuit seeks civil penalties and an injunction against further HSR Act violations.

On Nov. 17, 2014, Baker Hughes and Halliburton – two of the three largest providers of oilfield products and services in the world – announced their plan to merge in a deal valued at $35 billion. Thereafter, ValueAct, an activist investment firm, purchased over $2.5 billion of Halliburton and Baker Hughes voting shares without complying with the HSR Act's notification requirements. According to the complaint, ValueAct purchased these shares with the intent to influence the companies' business decisions as the merger unfolded and therefore could not rely on the limited "investment-only" exemption to HSR notification requirements. The complaint details how ValueAct used its access to senior executives of both Halliburton and Baker Hughes to formulate merger and other business strategies with the companies.

"ValueAct's substantial stock purchases made it one of the largest shareholders of two competitors in the midst of our antitrust review of the companies' proposed merger, and ValueAct used its position to influence decision-making at both companies," said Assistant Attorney General Bill Baer of the Justice Department's Antitrust Division. "ValueAct was not entitled to avoid HSR requirements by claiming to be a passive investor. Given the seriousness of the violation and ValueAct's prior HSR violations, we will be seeking significant civil penalties and an injunction against further violations."

The HSR Act imposes notification and waiting period requirements for transactions meeting certain size thresholds so that such transactions can undergo premerger antitrust review by the department and the Federal Trade Commission. The HSR Act has a narrow exemption for acquisitions of less than 10 percent of a company's outstanding voting securities if that acquisition is made "solely for the purposes of investment" with no intention of participating in the company's business decisions.

Federal courts can assess civil penalties for premerger notification violations under the HSR Act in lawsuits brought by the department. The maximum civil penalty for an HSR violation is $16,000 per day.

ValueAct is an investment firm headquartered in San Francisco that advertises a strategy of "active, constructive involvement" in the management of the companies in which it invests. According to ValueAct's website, ValueAct's business model focuses on "acquiring significant ownership stakes in a limited number of companies," and "[t]he goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders." ValueAct manages over $16 billion on behalf of

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. VA PARTNERS I, LLC VALUEACT CAPITAL MASTER FUND, L.P. VALUEACT CO-INVEST INTERNATIONAL, L.P., Defendants.	Civil Action No.:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain civil penalties and equitable relief against the Defendants (collectively, "ValueAct") for failing to comply with the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), and alleges as follows:

I. INTRODUCTION

1. The Hart-Scott-Rodino Act, 15 U.S.C. §18a, is an essential part of modern antitrust enforcement. It requires purchasers of voting securities in excess of a certain value to notify the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating the transaction. These obligations extend to acquisitions of minority interests. One limited exemption to these obligations applies if the purchaser's holdings constitute less than ten percent of the stock of the company and the acquisition is "solely for the purpose of investment" – that is, the purchaser has no intention of participating in the company's business decisions.

2. ValueAct promotes itself as having a strategy of "active, constructive involvement" in the management of the companies in which it invests. This case concerns recent acquisitions by two ValueAct investment funds of over $2.5 billion of voting securities of Halliburton Company and Baker Hughes Incorporated. Halliburton and Baker Hughes are head-to-head competitors and two of the largest providers of oilfield products and services in the world. On November 17, 2014, Halliburton and Baker Hughes announced their intent to merge. Their proposed merger is the subject of an ongoing antitrust review in the United States and several other countries.

3. ValueAct began acquiring significant holdings of the two companies on the heels of the Halliburton/Baker Hughes merger announcement. From the beginning, ValueAct anticipated influencing the business decisions of the companies as the merger process unfolded. ValueAct sent memoranda to its investors outlining this strategy and explaining that purchasing a stake in each of these firms would allow it to "be a strong advocate for the deal to close," which would in turn "[i]ncrease probability of deal happening." If the deal encountered "regulatory issues," ValueAct "would be well positioned as an owner of both companies to help develop the new terms." ValueAct executives also discussed internally a back-up plan to "sell at least some of Baker's pieces" if the deal were blocked or abandoned.

4. ValueAct's purchases of Halliburton and Baker Hughes shares did not qualify for the narrow exemption from the requirements of the HSR Act for acquisitions made solely for the

purpose of investment. ValueAct planned from the outset to take steps to influence the business decisions of both companies, and met frequently with executives of both companies to execute those plans.

5. These HSR Act violations allowed ValueAct to become one of the largest shareholders of both Halliburton and Baker Hughes, without providing the government its statutory right to notice and prior review of the stock purchases. ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatens to substantially lessen competition in numerous markets. ValueAct intended to use its position as a major shareholder of these companies to obtain access to management, to learn information about the merger and the companies' strategies in private conversations with senior executives, to influence those executives to improve the chances that the merger would be completed, and to influence other business decisions whether or not the merger went forward.

6. The Court should assess a civil penalty of at least $19 million to address ValueAct's violations of the HSR Act, and should restrain ValueAct from further violations.

II. JURISDICTION AND VENUE

7. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, added by Title II of the HSR Act, to recover civil penalties and equitable relief for violations of that section.

8. This Court has jurisdiction over the Defendants and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355. Each of the Defendants is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1).

9. Venue is properly based in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(b)(2), (c)(2). Each of the Defendants transacts or has transacted business in this district and has its principal place of business here.

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III. INTRADISTRICT ASSIGNMENT

10. Assignment to the San Francisco Division is proper because this action arose primarily in San Francisco County. Many of the events that gave rise to the claims occurred in San Francisco, and Defendants' headquarters and principal places of business were during the relevant events, and continue to be, located in San Francisco.

IV. THE DEFENDANTS

11. This case arises from acquisitions of stock over several months by two investment funds – ValueAct Master Capital Fund, L.P. ("Master Fund") and ValueAct Co-Invest International, L.P. ("Co-Invest Fund"). Though separate entities for purposes of the HSR Act, both funds have the same general partner – VA Partners I, LLC ("VA Partners"). Master Fund and Co-Invest Fund are organized under the laws of the British Virgin Islands, and VA Partners is organized under the laws of Delaware. Master Fund, Co-Invest Fund, and VA Partners (collectively, "ValueAct" or "Defendants") all have the same principal office and place of business in San Francisco, California.

12. ValueAct is well known as an activist investor. In contrast to other large funds that focus on passive investment strategies to generate returns, ValueAct's website explains that it pursues a strategy of "active, constructive involvement" in the management of the companies in which it invests. The website further states, "The goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders."

13. ValueAct tracks its "activism" in these investments by various metrics, such as success in changing executive compensation, and touts these statistics in its presentations to potential investors as illustrated by the following slide from ValueAct's June 2015 presentation:

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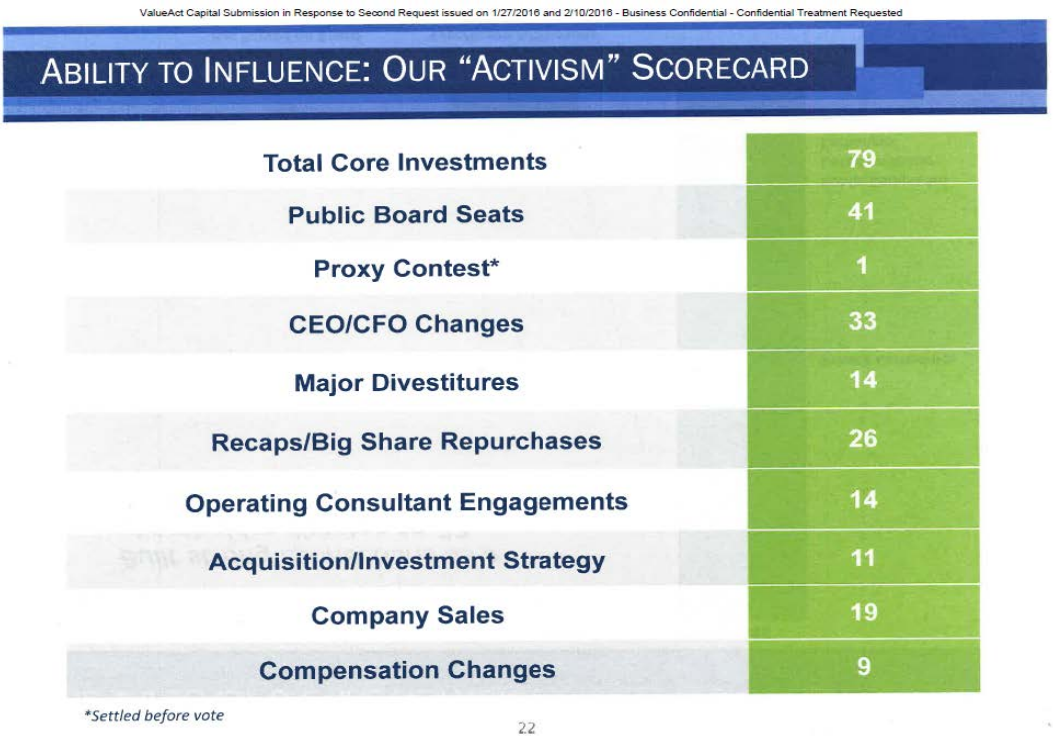

14. In presentations, ValueAct has explained that it likes "disciplined oligopolies" and looks to invest in businesses in "[o]ligopolistic markets, high barriers-to-entry."

15. ValueAct funds have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

V. BACKGROUND

A. The Hart-Scott-Rodino Antitrust Improvements Act

16. The HSR Act requires parties to file a notification with the Federal Trade Commission and the Department of Justice and to observe a waiting period before consummating acquisitions of voting securities or assets that exceed certain value thresholds.

These requirements give the antitrust enforcement agencies prior notice of, and information about, proposed transactions. The waiting period also provides the antitrust enforcement agencies with an opportunity to investigate and to seek an injunction to prevent the consummation of anticompetitive transactions.

17. The HSR Act contains certain limited exemptions to the notification and waiting period requirements. The acquirer of voting securities has the burden of showing eligibility for an exemption. One such exemption applies narrowly to acquisitions made "solely for the purpose of investment" if the voting securities held do not exceed ten percent of the outstanding voting securities of the issuer. 15 U.S.C. § 18a(c)(9). The regulations implementing the Act explain that, to qualify for this exemption, the acquiring party must have "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 16 C.F.R. § 801.1(i)(1).

B. ValueAct's Initial Investment Decision and Strategy

18. After Halliburton and Baker Hughes announced their intent to merge on November 17, 2014, ValueAct began purchasing stock in each company through its Master Fund and Co-Invest Fund. ValueAct continued to make purchases in both companies for several months, eventually acquiring over $2.5 billion in securities of the two companies combined.

19. As ValueAct was acquiring stock in these two companies in December 2014 and early January 2015, its executives were developing strategies to use ValueAct's ownership position to influence management of each firm as necessary to increase the probability of the deal being completed. ValueAct's Master Fund crossed the applicable HSR Act reporting thresholds for Baker Hughes and Halliburton on December 1 and December 5, 2014, respectively, and Master Fund continued to build up its position as its executives discussed strategy. These discussions culminated in the drafting of memoranda that ValueAct sent to its investors on January 16, 2015. These memoranda – one about Baker Hughes and one about Halliburton – explained ValueAct's decision to acquire stakes in these competitors through its Master Fund, and offered investors the opportunity to increase their stakes in these firms through additional share purchases by ValueAct's Co-Invest Fund.

20. These memoranda and other contemporaneous documents show that ValueAct's most senior executives planned from the outset to play an active role at Halliburton and Baker Hughes. The lead ValueAct partner responsible for the Baker Hughes investment internally circulated a draft of an investor memorandum explaining that "our activist approach limits our downside in the unlikely case that the merger does not close." The draft further noted that if the merger were not completed, ValueAct "would likely seek to take a more active role in overseeing the company." ValueAct's CEO then requested an insertion into the memorandum highlighting that ValueAct's "[a]ctive role" is an additional reason to invest in both companies.

21. Although the memoranda ultimately shared with investors watered down the words used to describe ValueAct's activist strategy, they still emphasized that purchasing a stake in Halliburton and Baker Hughes would "increase probability of deal happening" and would allow ValueAct to be "a strong advocate for the deal to close." ValueAct identified this as one of three "key considerations" supporting its investment decision. A contemporaneous email among ValueAct partners remarked that if Halliburton's shareholders threatened to vote against the deal, ValueAct's "position in HAL should be meaningful enough to have a substantial role in those conversations."

22. ValueAct also intended to help restructure the merger if it hit roadblocks. On December 16, 2014, ValueAct's CEO emailed his partners: "if we own both we can drive new terms to get the deal done if weird [expletive] is happening." ValueAct also expressed this view in its memos to investors: "In the event of further fundamental dislocation or regulatory issues, it is possible the deal would need to be restructured and we believe ValueAct Capital would be well positioned as an owner of both companies to help develop the new terms."

23. In a December 2014 internal email, a ValueAct partner observed that "[i]f the deal failed, the back-up plan would seem to be to sell at least some of Baker's pieces, and we think that we could get up to 12x EBITDA for just 2 of BHI's businesses – artificial lift and chemicals." ValueAct's memoranda to investors noted, "Recent transactions in each of those industries [specialty chemicals and artificial lift] suggest that these businesses are worth north of 10 times EBITDA." Moreover, the Baker Hughes memorandum explained that there are

"numerous levers for the company to pull to drive margin expansion," and identified Baker Hughes's pressure pumping business as a good candidate for margin improvement.

24. Regardless of how the merger process unfolded, ValueAct intended to influence the business decisions of both companies. For example, on December 5, 2014, the day Master Fund's holdings in Halliburton crossed the HSR Act threshold, a ValueAct partner wrote an email to ValueAct's CEO about Halliburton: "Wonder if it would be possible to get the VRX [Valeant Pharmaceuticals] comp plan in from outside the board room?" The CEO responded "Yes. Good idea." (ValueAct had recently convinced management to change the executive compensation plan at another of its investments, Valeant Pharmaceuticals.)

25. ValueAct also intended to play a role in Halliburton's efforts to integrate the two firms. ValueAct told its investors that its stake in Halliburton "helps to further enhance our relationship with management and the board of directors as they work to complete the merger and integrate the business into Halliburton's existing operations."

C. ValueAct's Efforts to Influence the Management of Both Companies

26. Consistent with its investment strategy of "active, constructive involvement," ValueAct established a direct line to senior management at both Halliburton and Baker Hughes and met with them frequently from the time it started acquiring stock. From December 2014 through January 2016, ValueAct met in person or had teleconferences more than fifteen times with senior management of Halliburton or Baker Hughes, including meeting multiple times with the CEOs of both companies. ValueAct partners also exchanged a number of emails with management at both firms about the merger and the companies' respective operations.

27. ValueAct reached out to Baker Hughes immediately after it began purchasing shares. On December 1, 2014, the day Master Fund's holdings crossed the HSR Act threshold for Baker Hughes, a ValueAct partner told a Baker Hughes executive that ValueAct was positive on the merger but also liked "that 20% of [Baker Hughes's] revenue comes from non-capital intensive business lines which could command a big multiple if sold." A few days later, ValueAct's CEO met in person with the CFO of Baker Hughes. According to Baker Hughes's notes of the meeting, ValueAct's CEO "highlighted that it was critical that BHI continued

focused [*sic*] on many of these improvement opportunities despite the acquisition. He specifically emphasized with graphs the largest gap/opportunities he saw." With respect to the gap in Baker Hughes's North American margins, ValueAct's CEO stated, "Looking to learn with BHI on how to close that GAP [*sic*]." ValueAct's CEO also discussed other areas "that he thought BHI should continue to focus on as there was a lot of improvement opportunity." According to the notes, the meeting ended with ValueAct's CEO "stating that they would remain in contact and sharing that they plan to be large shareholders of BHI."

28. On January 16, 2015, ValueAct filed a Beneficial Ownership Report (Schedule 13D) with the Securities and Exchange Commission publicly disclosing its substantial stake in Baker Hughes and reporting that it might discuss "competitive and strategic matters" with Baker Hughes management, and might "propos[e] changes in [Baker Hughes's] operations." Before submitting the Schedule 13D, ValueAct's CEO notified Halliburton's CEO of the impending filing on Baker Hughes, explaining that the filing "gives us the flexibility to engage with the company [Baker Hughes] on all issues." Later the same day, ValueAct's CEO emailed Halliburton's CEO a copy of its investment memoranda for both Halliburton and Baker Hughes.

29. By February, after ValueAct had completed its outreach to investors seeking capital for additional share purchases, ValueAct began acquiring stock in Halliburton and Baker Hughes through Co-Invest Fund. On March 10, 2015, Co-Invest Fund's holdings in Halliburton crossed the applicable HSR Act reporting threshold.

30. Also in early March, ValueAct contacted Halliburton to offer assistance in advance of the shareholder vote on the merger. ValueAct offered Halliburton "to speak with any of [Halliburton's] top shareholders about [ValueAct's] view of the merger prior to the vote." Halliburton responded that it would let ValueAct know if ValueAct's help became necessary.

31. In May 2015, ValueAct further engaged with Halliburton on the company's plans for post-merger integration. On May 13, ValueAct met with Halliburton's CEO to discuss actions that Halliburton could take in an attempt to achieve its target merger synergies. On May 27, a ValueAct partner called Halliburton's Chief Integration Officer to recommend a firm

for real estate integration services. In a subsequent email exchange, another ValueAct partner emphasized the need to engage on these issues at the executive level, and stated that Halliburton's plan was "a traditional approach likely to leave value on the table." Instead, the partner identified alternative ways the real estate firm could work with Halliburton to help achieve the synergy goals.

32. ValueAct also followed through on its idea for changing Halliburton's executive compensation plan. On July 14, 2015, ValueAct contacted Halliburton's CEO to schedule a meeting to discuss executive compensation. At the meeting, which ultimately occurred in September, ValueAct delivered a thirty-five-page presentation detailing ValueAct's preferred approach, commenting on Halliburton's current plan, and proposing specific changes.

D. Consistent with Its Initial Plans, ValueAct Worked to Restructure the Merger or to Sell Parts of Baker Hughes

33. ValueAct carefully monitored the status of the antitrust review process and intended to intervene with the management of each firm as necessary to increase the probability of the deal being completed. ValueAct met with Baker Hughes's CEO in May 2015 and according to ValueAct's notes of that meeting, Baker Hughes's CEO "seemed pretty worried about anti-trust, and implied odds deal goes through 70% or lower in his mind." ValueAct then continued to push management of both companies to preserve the deal or, if these efforts failed, to sell off pieces of Baker Hughes.

34. On August 31, 2015, ValueAct met with Baker Hughes's CEO "to plant the seed to seek alternative options with other buyers if the deal falls through." In its initial investment analysis, the ValueAct partners had discussed selling individual Baker Hughes businesses as a back-up plan if the merger failed. ValueAct presented an updated analysis to argue this case to Baker Hughes. ValueAct also proposed restructuring the deal with Halliburton, suggesting that Baker Hughes should sell its pressure pumping, artificial lift, and specialty chemical businesses to Halliburton at a premium in lieu of receiving the merger termination fee.

35. According to ValueAct notes from the meeting, Baker Hughes's CEO was "very committed to running BHI stand-alone if the deal fails and did not seem to entertain the idea of

shopping the business piecemeal to other buyers." The notes explain that ValueAct agreed that the Baker Hughes CEO's plan to "focus on technology-based product lines, and grow the business organically in these areas seems like the right areas to focus for the stand-alone company." But this plan was not what the ValueAct executives hoped for: "the problem is that this story seems like a 4-5 year period with the stock not generating a great return over that period." According to Baker Hughes's notes of the meeting, the ValueAct executives registered disappointment with Baker Hughes's CEO, and informed him that Halliburton and Baker Hughes were "the only investment ValueAct had where they did not have board seats."

36. On September 18, 2015, ValueAct pitched its restructuring plan to Halliburton's CEO, advocating that Halliburton pursue selective acquisitions of Baker Hughes's production chemicals and artificial lift businesses. According to Halliburton's notes of the call, ValueAct suggested that Halliburton should offer a substantial sum to acquire these businesses and settle the $3.5 billion merger break-up fee at the same time.

37. During this conversation with the CEO of Halliburton, ValueAct shared Baker Hughes's plans if the merger could not close. According to Halliburton's notes of the call, ValueAct stated that if the merger could not be consummated, Baker Hughes's CEO intended to "run the company like he did before." Halliburton's CEO then asked whether Baker Hughes's CEO was "listening to VA." A ValueAct partner replied that Baker Hughes's CEO "realize [*sic*] can go to his board directly." ValueAct also asked Halliburton's CEO if there was "anything we [ValueAct] can do to be helpful," and explicitly offered to "apply pressure to BHI CEO regarding unhappiness if he continues to run co. if deal does not go through." In short, ValueAct offered to use its position as a shareholder to pressure Baker Hughes's management to change its business strategy in ways that could affect Baker Hughes's competitive future.

38. ValueAct and Halliburton's willingness to discuss the competitive future of Baker Hughes in the absence of a merger is further confirmed by notes contained in ValueAct's files. These notes list "3 options that Lazard [presumably Halliburton's CEO, David Lesar] discussed" with respect to Baker Hughes. One of those options was "Cripple a competitor."

39. On November 5, 2015, ValueAct made a detailed fifty-five page presentation to Baker Hughes's CEO proposing operational and strategic changes to the company. The same day, ValueAct lobbied Halliburton's senior management to pursue alternative ways to get the deal done.

VI. VIOLATIONS ALLEGED

40. Plaintiff alleges and incorporates paragraphs 1 through 39 as if set forth fully herein.

41. The HSR Act provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Master Fund and Co-Invest Fund are each considered a separate person under the Act and are each obligated to comply with its requirements.

A. Count 1: Master Fund's Acquisition of Halliburton

42. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

43. On or about December 4, 2014, Master Fund began purchasing Halliburton voting securities. On or about December 5, 2014, Master Fund's aggregate value of Halliburton voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Halliburton voting securities until June 30, 2015, by which time Master Fund's aggregate value of Halliburton voting securities exceeded $1.4 billion.

44. Master Fund failed to file the required notification or to observe the required waiting period.

45. On or about January 27, 2016, Master Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

46. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning December 5, 2014, and ending on or about January 27, 2016.

B. Count 2: Co-Invest Fund's Acquisition of Halliburton

47. The HSR Act and applicable implementing regulations required that Co-Invest Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Co-Invest Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($76.3 million beginning in February 2016).

48. On or about February 24, 2015, Co-Invest Fund began purchasing Halliburton voting securities. On or about March 10, 2015, Co-Invest Fund's aggregate value of Halliburton voting securities exceeded the $76.3 million threshold. Co-Invest Fund continued to purchase Halliburton voting securities until March 12, 2015, by which time Co-Invest Fund's aggregate value of Halliburton voting securities exceeded $138 million.

49. Co-Invest Fund failed to file the required notification or observe the required waiting period.

50. On or about January 22, 2016, Co-Invest Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

51. Co-Invest Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning March 10, 2015, and ending on or about January 22, 2016.

C. Count 3: Master Fund's Acquisition of Baker Hughes

52. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Baker Hughes that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

53. On or about November 28, 2014, Master Fund began purchasing Baker Hughes voting securities. On or about December 1, 2014, Master Fund's aggregate value of Baker Hughes voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Baker Hughes voting securities until January 15, 2015, by which time Master Fund's aggregate value of Baker Hughes voting securities exceeded $1.2 billion.

54. Master Fund failed to file the required notification or to observe the required waiting period.

55. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Baker Hughes voting securities each day beginning on December 1, 2014, and remains in violation of the HSR Act to the present.

VII. REQUEST FOR RELIEF

Wherefore, Plaintiff requests:

(a) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(b) That the Court adjudge and decree that Defendant Co-Invest Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(c) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Baker Hughes, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(d) That the Court order Defendants to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 74 Fed. Reg. 858 (Jan. 9, 2009);

(e) That the Court enjoin Defendants from any future violations of the HSR Act;

(f) That the Court order such other and further relief as the Court may deem just and proper; and,

(g) That the Court award the Plaintiff its costs of this suit.

Dated:

Respectfully submitted,

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Tuesday, July 12, 2016

Justice Department Obtains Record Fine and Injunctive Relief against Activist Investor for Violating Premerger Notification Requirements

ValueAct to Pay $11 Million for Investing in Halliburton and Baker Hughes without Notifying Antitrust Authorities

The Department of Justice announced today that ValueAct has agreed to pay $11 million to settle allegations that certain ValueAct entities violated the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). As part of the settlement, ValueAct has also agreed to injunctive relief designed to prevent future violations.

On Nov. 17, 2014, Baker Hughes and Halliburton – two of the three largest providers of oilfield products and services in the world – announced their plan to merge in a deal valued at $35 billion. Thereafter, ValueAct, an activist investment firm, purchased over $2.5 billion of Halliburton and Baker Hughes voting shares without complying with the HSR Act's notification requirements. According to a complaint filed on April 4, 2016 in the U.S. District Court for the Northern District of California, ValueAct purchased these shares with the intent to influence the companies' business decisions – including decisions related to the merger – and therefore could not rely on the limited "investment-only" exemption to the HSR Act's notification requirements. The complaint details how ValueAct used its access to senior executives of both Halliburton and Baker Hughes to attempt to influence the companies' proposed merger and other aspects of their businesses. Halliburton and Baker Hughes abandoned their proposed merger on May 2, 2016 after the Antitrust Division sued to block it in U.S. District Court for the District of Delaware.

"ValueAct acquired substantial stakes in Halliburton and Baker Hughes in the midst of our antitrust review of the companies' proposed merger, and used its position to try to influence the outcome of that process and certain other business decisions," said Principal Deputy Assistant Attorney General Renata Hesse, head of the Justice Department's Antitrust Division. "ValueAct was not entitled to avoid the HSR requirements by claiming to be a passive investor, while at the same time injecting itself in this manner. The HSR notification requirements are the backbone of the government's merger review process, and crucial to our ability to prevent anticompetitive mergers and acquisitions. Today's record penalty and important injunctive relief demonstrate our continued commitment to vigorous enforcement of these important notification and waiting period requirements."

The HSR Act imposes notification and waiting period requirements for transactions meeting certain size thresholds to ensure that such transactions undergo premerger antitrust review by the department and the Federal Trade Commission. The HSR Act has a narrow exemption for acquisitions of less than 10 percent of a company's outstanding voting securities if the acquisition is made "solely for the purposes of investment" and the purchaser has no intention of participating in the company's business decisions.

Federal courts can assess civil penalties for premerger notification violations under the HSR Act in lawsuits brought by the department. The current maximum civil penalty for an HSR violation is $16,000 per day; however, the maximum penalty will increase to $40,000 per day effective Aug. 1, 2016.

As part of the settlement, ValueAct agreed to pay a record $11 million. The highest fine previously paid for an HSR violation was $5.67 million. ValueAct is also enjoined from relying on the "investment-only" exemption when it intends to influence, or is considering influencing, certain basic business decisions, including those relating to merger and acquisition strategy, corporate restructuring, and the company's pricing, production capacity, or production output.

ValueAct is an investment firm headquartered in San Francisco that manages over $16 billion on behalf of investors.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the Northern District of California may enter the final judgment upon finding that it serves the public interest.

ValueAct Explanation

ValueAct CIS

ValueAct PFJ

ValueAct Stipulation with Proposed Order

16-800

Topic:
Antitrust

Antitrust Division

Updated July 12, 2016

Gun Jumping

Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, OCTOBER 1, 2014
WWW.JUSTICE.GOV

AT
(202) 514-2007
TTY (866) 544-5309

FLAKEBOARD ABANDONS ITS PROPOSED ACQUISITION OF SIERRAPINE

Decision to Abandon Deal Preserves Competition in the MDF Industry

WASHINGTON, D.C. — Flakeboard America Ltd. abandoned its plan to acquire one medium-density fiberboard (MDF) and two particleboard mills from SierraPine, after the Department of Justice expressed concerns about the transaction's likely anticompetitive effects in MDF. The department said that the transaction likely would have substantially lessened competition in the market for the production of MDF sold to customers in the West Coast states of California, Oregon, and Washington.

MDF is a manufactured wood product widely used in furniture, kitchen cabinets, and decorative mouldings. An increase in the price of MDF would likely result in significant harm to MDF consumers on the West Coast, the department said.

"This deal threatened to weaken competition and raise MDF prices for customers on the West Coast," said Bill Baer, Assistant Attorney General of the Department of Justice's Antitrust Division. "The companies' decision to abandon the deal is a victory for consumers, who will continue to enjoy the benefits of MDF competition between Flakeboard and SierraPine."

Flakeboard and SierraPine are two of only four significant suppliers of MDF to the West Coast. Both companies operate MDF mills in Oregon—Flakeboard in Eugene; SierraPine in Medford—and the nearest competing mill is several hundred miles away. For many customers, Flakeboard and SierraPine are the two closest sellers of MDF. The proposed merger would have given the combined firm a 58 percent market share for the thicker and denser grades of MDF that Flakeboard and SierraPine sell on the West Coast.

According to the department, the acquisition would have eliminated significant head-to-head competition between Flakeboard and SierraPine. In addition, by gaining control over SierraPine's MDF mill, the department said that Flakeboard would have been in a better position to raise prices by restricting the amount of MDF available to the West Coast. The acquisition also would have enhanced the risk of coordination between Flakeboard and its few remaining rivals on output and prices, the department said.

Flakeboard is a Delaware corporation headquartered in Ontario, Canada. Flakeboard's parent company is Celulosa Arauco y Constitución (Arauco), which is held by Inversiones

Angelini y Compañia Limitada, a Chilean corporation headquartered in Santiago, Chile. In 2013, Flakeboard's annual revenues from its MDF business were approximately $380 million. SierraPine is a California limited partnership headquartered in Roseville, California. In 2013, SierraPine's annual revenues from its MDF business were approximately $70 million.

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14-1071

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, NOVEMBER 7, 2014
WWW.JUSTICE.GOV TTY (866) 544-5309

AT
(202) 514-2007

JUSTICE DEPARTMENT REACHES $5 MILLION SETTLEMENT WITH FLAKEBOARD, ARAUCO, INVERSIONES ANGELINI AND SIERRAPINE FOR ILLEGAL PREMERGER COORDINATION

Department Obtains Civil Penalties of $3.8 Million and Disgorgement of $1.15 Million

WASHINGTON —The department today announced a settlement with Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución S.A. and Inversiones Angelini y Compañía Limitada; and SierraPine. The settlement requires the companies to pay a combined $3.8 million in civil penalties for violating the Hart–Scott–Rodino (HSR) Act of 1976. In addition, for violating Section 1 of the Sherman Act, Flakeboard must disgorge $1.15 million in illegally obtained profits and both Flakeboard and SierraPine must establish antitrust compliance programs and agree to certain restrictions.

The settlement resolves the department's allegations that Flakeboard, Arauco and SierraPine engaged in illegal premerger coordination while Flakeboard's proposed acquisition of three SierraPine mills was under antitrust review by the Department of Justice.

Flakeboard and SierraPine abandoned the proposed acquisition on Sept. 30, 2014, after the department expressed concerns about the transaction's likely anticompetitive effects in the production of medium-density fiberboard (MDF). MDF is a manufactured wood product widely used in furniture, kitchen cabinets, and decorative mouldings.

The department today filed, in U.S. District Court for the Northern District of California, a civil antitrust complaint alleging violations of the HSR Act (Section 7A of the Clayton Act) and Section 1 of the Sherman Act. At the same time, the department filed an agreement that, if approved by the court, would resolve the lawsuit.

"Companies proposing to merge must remain separate and independent during the government's investigation," said Bill Baer, Assistant Attorney General of the Department of Justice's Antitrust Division. "These two competitors did not. Instead they closed a plant and allocated customers when they should have been competing vigorously. As a result both companies are paying substantial civil penalties and Flakeboard is being forced to surrender the ill-gotten profit it gained from violating the antitrust laws."

According to the complaint, before the proposed acquisition, SierraPine operated particleboard mills in Springfield, Oregon, and Martell, California, that competed directly with Flakeboard's particleboard mill in Albany, Oregon. Particleboard is an unfinished wood product that is widely used in countertops, shelving, low-end furniture, and other finished products. The Springfield and Martell mills were included in the proposed acquisition along with a third SierraPine mill that produced MDF. The

complaint alleges that after announcing the proposed acquisition on Jan. 14, 2014, and before the expiration of the HSR Act's mandatory premerger waiting period, Flakeboard, Arauco, and SierraPine illegally coordinated to close SierraPine's particleboard mill in Springfield, Oregon, and move the mill's customers to Flakeboard. This unlawful coordination led to the permanent shutdown of the Springfield mill on March 13, 2014, and enabled Flakeboard to secure a significant number of Springfield's customers for its Albany mill. The defendants' conduct constituted an illegal agreement to restrain trade in violation of Section 1 of the Sherman Act, and prematurely transferred operational control, and therefore beneficial ownership, of SierraPine's business to Flakeboard in violation of the HSR Act.

The HSR Act requires companies planning acquisitions or mergers that meet certain thresholds to file premerger notification documents with the department and the Federal Trade Commission. The HSR Act also requires that the merging parties observe a mandatory waiting period before proceeding with the transaction. If the government determines that a transaction violates the antitrust laws, it may seek to block that transaction before the waiting period expires. Each party is subject to a maximum civil penalty of $16,000 per day for each day they violate the HSR Act.

The complaint alleges that the defendants' HSR Act violation occurred from January 17, 2014, when Flakeboard and SierraPine began coordinating on the closure of the Springfield mill, until the expiration of the waiting period on Aug. 27, 2014. The companies cooperated with the investigation by voluntarily providing the department with evidence of their unlawful premerger conduct, which was a significant factor in the department's decision to reduce the maximum HSR penalty. The $1.15 million in disgorgement under the Sherman Act represents a reasonable approximation of the ill-gotten profit Flakeboard received as a result of the parties' coordination to close Springfield and move the mill's customers to Flakeboard.

Flakeboard is a Delaware corporation with its U.S. headquarters in Fort Mill, South Carolina. Flakeboard's parent company is Celulosa Arauco y Constitución (Arauco), which is held by Inversiones Angelini y Compañía Limitada, a Chilean corporation headquartered in Santiago, Chile, and the ultimate parent entity named on the HSR filing.

SierraPine is a California limited partnership headquartered in Roseville, California.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to Peter Mucchetti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, N.W., Suite 4100, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may enter the proposed final judgment upon finding that it is in the public interest.

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14-1246

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLAKEBOARD AMERICA LIMITED,

CELULOSA ARAUCO Y CONSTITUCIÓN, S.A.,

INVERSIONES ANGELINI Y COMPAÑÍA LIMITADA,

and

SIERRAPINE,

Defendants.

Case No. 3:14-cv-4949

COMPLAINT

The United States of America brings this civil antitrust action to challenge unlawful conduct by Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución, S.A., and Inversiones Angelini y Compañía Limitada; and SierraPine that occurred while the U.S. Department of Justice was reviewing Flakeboard's proposed acquisition of certain assets from SierraPine.

I. NATURE OF THE ACTION

1. On January 13, 2014, Flakeboard and SierraPine executed an asset purchase agreement in which Flakeboard agreed to acquire SierraPine's particleboard mills in Springfield, Oregon, and Martell, California, and a medium-density fiberboard (MDF) mill in Medford, Oregon. The total value of the proposed transaction was approximately $107 million, plus a variable amount for inventory.

2. SierraPine's Springfield and Martell particleboard mills competed directly with Flakeboard's particleboard mill in Albany, Oregon. Particleboard is an unfinished wood product that is widely used in countertops, shelving, low-end furniture, and other finished products. Both companies also compete in the sale of MDF, a higher-end wood product that is widely used in furniture, kitchen cabinets, and decorative mouldings.

3. The transaction exceeded thresholds established by Section 7A of the Clayton Act, 15 U.S.C. § 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976, as amended ("Section 7A" or "HSR Act"). Consequently, the HSR Act required that the defendants make premerger notification filings with the Federal Trade Commission and Department of Justice and observe a waiting period before Flakeboard obtained beneficial ownership of SierraPine's business. The waiting period seeks to ensure that the parties to a proposed transaction are preserved as independent entities while the reviewing agency—here, the Department of Justice—investigates the transaction and determines whether to challenge it.

4. Instead of preserving SierraPine as an independent business, however, Flakeboard, Arauco, and SierraPine coordinated during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard. The mill was permanently shut down on March 13, 2014, months before the HSR waiting period expired. On September 30, 2014, Flakeboard and SierraPine abandoned their proposed transaction in response to concerns expressed by the Department of Justice about the transaction's likely anticompetitive effects in the sale of MDF.

5. The defendants' coordination to close Springfield and move the mill's customers to Flakeboard constituted a per se unlawful agreement between competitors to reduce output and allocate customers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and prematurely transferred operational control of SierraPine's business to Flakeboard during the HSR waiting period in violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, seeking relief for the violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and under Section 7A of the Clayton Act, 15 U.S.C. § 18a, to recover civil penalties for the violation of the HSR Act. This Court has jurisdiction over this action and the defendants under Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

7. The defendants are engaged in, and their activities substantially affect, interstate commerce.

8. The defendants have stipulated to venue and personal jurisdiction in this District.

III. THE DEFENDANTS

9. Flakeboard America Limited is a Delaware corporation with its U.S. headquarters in Fort Mill, South Carolina. Flakeboard and its related entities own numerous mills in North America that produce particleboard and MDF, including a particleboard mill in Albany, Oregon.

10. Flakeboard's parent company is Celulosa Arauco y Constitución, S.A., a Chilean company headquartered in Santiago, Chile, that also produces particleboard and other products. Arauco oversees Flakeboard's operations in North America.

11. Inversiones Angelini y Compañía Limitada is a Chilean corporation headquartered in Santiago, Chile. Inversiones Angelini is a holding company and Flakeboard's ultimate parent entity, as defined by the Premerger Notification Rules, 16 C.F.R. § 800 *et seq.* Inversiones Angelini is also the ultimate parent entity of Arauco.

12. SierraPine is a California limited partnership with its headquarters in Roseville, California. SierraPine owns an operating particleboard mill in Martell, California; the closed particleboard mill in Springfield, Oregon; a closed particleboard mill in Adel, Georgia; and an operating MDF mill in Medford, Oregon.

IV. THE HSR ACT AND THE ASSET PURCHASE AGREEMENT

13. The HSR Act imposes notification and waiting-period requirements on certain transactions that result in an acquiring person holding assets or voting securities valued above certain thresholds. Section 801(c)(1) of the Premerger Notification Rules, 16 C.F.R. § 800 *et seq.*, defines "hold" to mean to have "beneficial ownership." One way that an acquiring person may prematurely obtain beneficial ownership of assets or voting securities it plans to acquire is by obtaining operational control of the acquired person's business before the end of the HSR waiting period. This conduct, sometimes referred to as "gun jumping," violates Section 7A.

14. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), states that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which the person is in violation. For the period relevant to the Complaint, the maximum civil penalty was $16,000 per defendant, per day, according to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C.

§ 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

15. Flakeboard's proposed acquisition of SierraPine's mills was subject to the HSR Act. On January 22, 2014, Flakeboard's ultimate parent entity, Inversiones Angelini, and SierraPine submitted premerger notification filings to the antitrust agencies as required by Section 7A. The HSR waiting period expired on August 27, 2014, 30 days after Flakeboard and SierraPine certified compliance with the Antitrust Division's requests for additional information.

16. Before negotiating the proposed acquisition, SierraPine had no plans to shut down the Springfield mill. But during negotiations, Flakeboard made clear that it did not intend to operate Springfield after the transaction closed. Flakeboard insisted that SierraPine close the mill because Flakeboard did not want to manage the shutdown, and its parent company, Arauco, was concerned that its reputation might be harmed if it announced the closure.

17. Accordingly, SierraPine agreed in the asset purchase agreement (APA) to "take such actions as are reasonably necessary to shut down and close all business operations at its Springfield, Oregon facility five (5) days prior to the Closing." The APA further provided that "in no event shall [SierraPine] be required to shut down or close its business operations at its Springfield, Oregon facility" until "[a]ny required waiting periods and approvals…under applicable Antitrust Law shall have expired or been terminated." Consistent with these provisions, when Flakeboard and SierraPine executed the APA, they anticipated that SierraPine would announce and implement the Springfield closure immediately after the HSR waiting period expired, but before the transaction was consummated.

V. THE DEFENDANTS' UNLAWFUL CONDUCT

18. Despite the defendants' intentions under the APA, they subsequently entered into a series of agreements and took other actions during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard—conduct that together constituted

an unlawful agreement between competitors and prematurely transferred operational control of SierraPine's business to Flakeboard.

19. On January 14, 2014, the day after executing the APA, the defendants announced Flakeboard's proposed acquisition of SierraPine's mills. SierraPine did not announce the Springfield closure at that time because it intended to continue operating Springfield if the acquisition was not consummated and knew that employees and customers would start leaving the mill as soon as news of the planned closure became public.

20. Within two days of the transaction's announcement, however, a labor issue arose that SierraPine believed would likely require it to publicly disclose the Springfield closure earlier than planned, while the transaction was still being reviewed by the Department of Justice. SierraPine immediately informed Flakeboard that the labor issue would require them to "share the pending news on Springfield…before we have early determination on [the] HSR." The following week, SierraPine and Flakeboard discussed the Springfield closure announcement, its timing, and its ramifications. During these discussions, the companies considered the possibility that Flakeboard might waive the provision requiring SierraPine to close the mill, which they expected would avert the need to announce the Springfield closure during the HSR waiting period.

21. After consulting with Arauco, however, Flakeboard informed SierraPine that it would not waive the Springfield closure provision. As a result, the companies understood that SierraPine would announce the Springfield closure during the HSR waiting period and that the mill would close within weeks of that announcement, without regard to whether the HSR waiting period had expired and regardless of whether the underlying transaction was ultimately consummated. Consistent with this understanding, at the end of January, Flakeboard and SierraPine agreed on the content and timing of a press release announcing that Springfield would "cease operations in an orderly manner over the next few weeks" and that the mill would be "permanent[ly] clos[ed]." SierraPine issued the press release on February 4, 2014, and ceased production at Springfield on March 13, 2014, months before the HSR waiting period expired.

22. Flakeboard and SierraPine also agreed to transition Springfield's customers to Flakeboard's competing mill in Albany, Oregon. In the period leading up to the Springfield closure announcement, SierraPine gave Flakeboard competitively sensitive information about Springfield's customers—including the name, contact information, and types and volume of products purchased by each Springfield customer—and Flakeboard distributed this information to its sales employees. SierraPine also agreed to Flakeboard's request to delay the issuance of the press release from February 3 to February 4 so that Flakeboard could better position its sales personnel to contact Springfield's customers.

23. In addition, at Flakeboard's request, SierraPine instructed its own sales employees to inform Springfield customers following the Springfield closure announcement that Flakeboard wanted to serve their business and would match SierraPine's prices. Also at Flakeboard's request, SierraPine relayed assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct SierraPine's Springfield customers to Flakeboard. A top Flakeboard sales manager underscored the purpose of these employment assurances: "Once that [Springfield closure] announcement is made the 74 [million square feet of particleboard] from Springfield becomes fair game. I…want to make sure that the SierraPine sales group will be trying to direct the business to their new employer and to [Flakeboard's Albany mill]."

24. After the Springfield closure announcement, SierraPine did not compete for most of Springfield's customers from its remaining particleboard mill in Martell, California, but instead directed these customers to Flakeboard, telling them that Flakeboard could meet their needs and would honor SierraPine's prices. As SierraPine informed one Springfield customer, "We will try and transition all business to [Flakeboard's] Albany [mill]."

25. With SierraPine's assistance, Flakeboard successfully secured a substantial amount of Springfield's business, including a significant number of new customers that Flakeboard had not previously served and additional business from customers that Springfield and Flakeboard's Albany mill both previously served. The increased sales volumes from SierraPine's Springfield customers significantly increased Flakeboard's profits.

26. Although Flakeboard and SierraPine subsequently abandoned their transaction on September 30, 2014, SierraPine's Springfield mill remains closed. Virtually all of its employees have voluntarily left or been terminated. Reopening the Springfield mill would be costly and time-consuming, and SierraPine has no plans to do so.

VI. VIOLATIONS ALLEGED

FIRST CAUSE OF ACTION
(Violation of Section 1 of the Sherman Act)

27. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 26 of this Complaint.

28. Flakeboard and SierraPine are horizontal competitors in the sale of particleboard.

29. Flakeboard, Arauco, and SierraPine's coordination to close SierraPine's particleboard mill in Springfield, Oregon, and to move the mill's customers to Flakeboard constituted a contract, combination, or conspiracy in restraint of trade that was unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. Their unlawful agreement was not reasonably necessary to achieve the procompetitive benefits of any legitimate business collaboration.

30. Flakeboard, Arauco, and SierraPine's actions to close the Springfield mill and move its customers to Flakeboard were undertaken without any assurance that their transaction would be consummated and constituted an agreement between competitors to reduce output and allocate customers that is per se unlawful under Section 1 of the Sherman Act.

SECOND CAUSE OF ACTION
(Violation of Section 7A of the Clayton Act)

31. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 26 of this Complaint.

32. Flakeboard's acquisition of SierraPine's mills was subject to Section 7A's premerger notification and waiting-period requirements.

33. Flakeboard, after contracting to acquire SierraPine's assets under the APA, exercised operational control, and therefore obtained beneficial ownership, over SierraPine's business in violation of the HSR Act by:

(a) Coordinating with SierraPine to close the Springfield mill without regard to the HSR waiting period;

(b) Coordinating with SierraPine to move Springfield's customers to Flakeboard during the HSR waiting period, by, among other things:

(i) obtaining competitively sensitive information from SierraPine, including a customer list with the name, contact information, and types and volume of products purchased by each Springfield customer, and distributing this confidential information to Flakeboard sales employees;

(ii) delaying the Springfield closure announcement so that Flakeboard could better position its sales team to contact Springfield's customers;

(iii) directing SierraPine sales employees to inform Springfield customers that Flakeboard sought their business and would match SierraPine's prices; and

(iv) coordinating with SierraPine to offer assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct Springfield's customers to Flakeboard.

34. Through these actions, Flakeboard exercised operational control, and therefore obtained beneficial ownership, of SierraPine's business before the HSR waiting period expired.

35. The defendants were continuously in violation of Section 7A from on or about January 17, 2014, until the HSR waiting period expired on August 27, 2014. Thus, Inversiones Angelini, as Flakeboard's ultimate parent entity (together with Arauco and Flakeboard) and SierraPine are each liable to the United States for a maximum civil penalty of $16,000 per day.

VII. REQUEST FOR RELIEF

36. The United States requests that this Court:

(a) adjudge and decree that Flakeboard, Arauco, and SierraPine engaged in an agreement, combination, or conspiracy that was unlawful under Section 1 of the Sherman Act;

(b) award the United States such other relief, including equitable monetary relief, as the nature of this case may require and as is just and proper to prevent the recurrence of the alleged violation of Section 1 of the Sherman Act and to dissipate the anticompetitive effects of the violation;

(c) adjudge and decree that the defendants violated the HSR Act and were in violation of the HSR Act during the period beginning on or about January 17, 2014, and ending on August 27, 2014;

(d) order that Inversiones Angelini (together with Arauco and Flakeboard) and SierraPine each pay to the United States an appropriate civil penalty as provided under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18(a)(g)(1), and 16 C.F.R. § 1.98(a); and

(e) award the United States the costs of this action.

Dated: November 7, 2014

Respectfully Submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ William J. Baer
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Assistant Attorney General for Antitrust

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Attorneys for the United States

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CERTIFICATE OF SERVICE

I certify that on November 7, 2014, I electronically filed this Complaint with the Clerk of Court using the CM/ECF system. A copy has also been sent via e-mail to:

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Falsification of documents

CRIMINAL CODE

18 U.S.C. § 1521. Tampering with a witness, victim, or an informant

. . .

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

. . .

Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, AUGUST 15, 2011
WWW.JUSTICE.GOV

AT
(202) 514-2007
TTY (866) 544-5309

NAUTILUS HYOSUNG HOLDINGS AGREES TO PLEAD GUILTY TO OBSTRUCTION OF JUSTICE FOR SUBMITTING FALSE DOCUMENTS IN A MERGER INVESTIGATION

WASHINGTON – Nautilus Hyosung Holdings Inc. has agreed to plead guilty and pay a $200,000 criminal fine for obstruction of justice in connection with a premerger filing and investigation by the Antitrust Division, the Department of Justice announced today. Nautilus Hyosung Holdings, an automated teller machine (ATM) manufacturer, is a wholly-owned subsidiary of Korea-based Nautilus Hyosung Inc. (NHI). The false documents were submitted to the government by NHI on behalf of Nautilus Hyosung Holdings in contemplation of the acquisition of Triton Systems of Delaware Inc., a competing manufacturer of ATM systems. The department said that the parties abandoned the proposed acquisition of Triton before the Antitrust Division reached a decision whether to challenge the transaction.

According to a two-count felony charge filed today in U.S. District Court in Washington, D.C., in or about July and August 2008, NHI, as the parent company of Nautilus Hyosung Holdings, submitted false documents to the Department of Justice and the Federal Trade Commission (FTC) in conjunction with mandatory premerger filings made under the Hart-Scott-Rodino Antitrust Improvement Act. After receiving the premerger filings, the Antitrust Division opened a civil merger investigation of the proposed acquisition. The department said that in September 2008, NHI submitted additional false documents in response to a document request from the Antitrust Division.

According to court documents, an executive of a company affiliated with, and acting on behalf of, Nautilus Hyosung Holdings and NHI altered and directed other corporate employees to alter existing corporate documents with the intent to impair their integrity and availability for use in an official proceeding. The department said that, among other things, the alterations misrepresented and minimized the competitive impact of the proposed acquisition on the market for ATMs in the United States.

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, requires companies contemplating mergers and acquisitions valued above certain thresholds to make filings with the Department of Justice and the FTC. The federal antitrust agencies have authority to investigate and challenge such proposed transactions under Section 7 of the Clayton Act and Section 1 of the Sherman Act, if the transactions may substantially lessen competition or create a monopoly.

According to court documents, subsequent to these false submissions to the Antitrust Division in connection with its merger investigation, NHI and Nautilus Hyosung Holdings voluntarily disclosed that numerous documents had been altered before being submitted to the government. Since the time of that admission, NHI and Nautilus Hyosung Holdings have cooperated in the department's criminal investigation of the full nature and scope of the alleged obstructive conduct, and have committed to continue their cooperation in the department's ongoing investigation.

Nautilus Hyosung Holdings is charged with obstruction of justice, which carries a maximum criminal fine of $500,000 per count. Nautilus Hyosung Holding's agreed-upon criminal fine of $100,000 per count is subject to court approval and takes into consideration the nature and extent of the company's disclosure of wrongdoing and its cooperation in the department's investigation.

The ongoing investigation is being conducted by the Antitrust Division's National Criminal Enforcement Section. Anyone with information concerning anticompetitive conduct or obstruction of justice in antitrust matters is urged to call the Antitrust Division's National Criminal Enforcement Section at 202-307-6694 or visit www.justice.gov/atr/contact/newcase.htm.

# # #

11-1047

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	Criminal No.
	)	
	)	Filed:
v.	)	
	)	Violation: 18 U.S.C. § 1512(c)(1)
NAUTILUS HYOSUNG HOLDINGS, INC.,	)	(Counts 1-2)
	)	
Defendant.	)	

INFORMATION

COUNT I

The United States of America, acting through its attorneys, charges:

THE DEFENDANT

1. NAUTILUS HYOSUNG HOLDINGS, INC. ("Defendant") is a corporation organized and existing under the laws of the State of Delaware, and is a wholly-owned subsidiary of NAUTILUS HYOSUNG INC. ("NHI"), a corporation organized and existing under the laws of the Republic of Korea.

2. Whenever in this Information reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents or other representatives while they were actively engaged in the management, direction, control, or transaction of business or affairs.

BACKGROUND OF THE OFFENSE

3. Automated teller machines ("ATMs") are used by financial institutions and other business entities to dispense cash, accept deposits, and conduct other financial transactions with customers at various locations, including but not limited to retail establishments and other non-bank locations. During the period covered by this Information, NHI was a producer of ATMs and, directly or through its subsidiaries, was engaged in the sale of ATMs in the United States and elsewhere.

4. During the period covered by this Information, NHI negotiated for and entered into an agreement for the defendant to acquire Triton Systems of Delaware, Inc. ("Triton"), a corporation organized and existing under the laws of the State of Delaware. Defendant, as a wholly-owned subsidiary of NHI, was to directly acquire Triton and conduct various of NHI's business operations in the United States following the acquisition.

5. In conjunction with the proposed acquisition of Triton, NHI, as the ultimate parent entity of Defendant, was required to make premerger notification filings with the United States Federal Trade Commission ("FTC") and the United States Department of Justice ("DOJ") in the District of Columbia pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18(a), and the implementing regulations promulgated thereunder at 16 C.F.R. Part 801, *et seq*. ("HSR filings").

6. Employees of NHI and other corporations affiliated with and acting on behalf of Defendant, directed and participated in the identification, review, and collection of documents required to be submitted as part of the HSR filings pursuant to 16 C.F.R. § 803.1, *et. seq*.,

including "studies, surveys, analyses and reports . . . evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets." 16 C.F.R. Part 803 Appendix, at Item 4(c) (the "4(c) documents").

7. On or about August 7, 2008 and August 29, 2008, NHI made HSR filings with the FTC and DOJ in the District of Columbia for the benefit of Defendant in conjunction with the proposed acquisition of Triton.

8. Subsequent to receipt of the HSR filings, DOJ reviewed the HSR filings and subsequently commenced a preliminary inquiry into whether the proposed acquisition of Triton violated Section 7 of the Clayton Act, 15 U.S.C. § 18, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. The HSR filings, review and preliminary inquiry constituted an official proceeding within the meaning of 18 U.S.C. §§ 1512(c), 1515(a)(1)(C).

DESCRIPTION OF THE OFFENSE

9. In or about July and August 2008, the exact dates being unknown to the United States, Executive A of a corporation affiliated with and acting on behalf of NHI and the defendant did, and did direct others to, corruptly alter, destroy, mutilate and conceal records, documents, and other objects, to wit, the 4(c) documents submitted to the FTC and DOJ as part of the HSR filings, and attempted to do so, with the intent to impair the objects' integrity and availability for use in an official proceeding. In doing so, Executive A misrepresented the market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets relating to the proposed acquisition in the United States and other statements

relevant and material to analyses of the proposed acquisition of Triton by the FTC and DOJ.

JURISDICTION AND VENUE

10. The offense charged in this Information was carried out in the District of Columbia within five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 1512(c)(1).

COUNT II

The United States of America, acting through its attorneys, further charges that:

11. Each and every allegation contained in Paragraphs 1-10 of Count I of this Information is here realleged as if fully set forth in this Count.

BACKGROUND

12. In conjunction with its review and preliminary inquiry, on or about August 19, 2008, DOJ requested that NHI produce copies of additional documents, to wit, pre-existing business and strategic plans for the years 2006, 2007, and 2008 relating to the sale of ATMs.

13. On or about September 4, 2008, NHI produced such business plans to DOJ in the District of Columbia.

DESCRIPTION OF THE OFFENSE

14. In or about August and September 2008, the exact dates being unknown to the United States, Executive A of a corporation affiliated with and acting on behalf of NHI and the defendant did, and did direct others to, corruptly alter, destroy, mutilate and conceal records, documents, and other objects, to wit, pre-existing business and strategic plans for the years 2006, 2007, and 2008, and attempted to do so, with the intent to impair the objects' integrity and

availability for use in an official proceeding. In doing so, Executive A misrepresented statements concerning NHI's business and competition among vendors of ATMs that were relevant and material to DOJ's analysis of the proposed acquisition of Triton.

JURISDICTION AND VENUE

15. The offense charged in this Information was carried out in the District of Columbia within five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 1512(c)(1).

DATED:

CHRISTINE A. VARNEY
Assistant Attorney General

SCOTT D. HAMMOND
Deputy Assistant Attorney General

JOHN TERZAKEN
Director of Criminal Enforcement

LISA M. PHELAN
Chief
National Criminal Enforcement Section
Antitrust Division
U.S. Department of Justice

Kenneth W. Gaul
Attorney
U.S. Department of Justice
Antitrust Division
450 5th Street, N.W.
Washington, D.C. 20530
Tel: 202-307-6147

AO 245E (Rev. 12/03) Judgment in a Criminal Case for Organizational Defendants
Sheet 1

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA
V.
NAUTILUS HYOSUNG HOLDINGS, INC.

JUDGMENT IN A CRIMINAL CASE
(For Organizational Defendants)

CASE NUMBER: 11-cr-00255-RLW

Carey R. Dunne ;Arthur J. Burke
Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

☑ pleaded guilty to count(s) Counts 1 & 2

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 1512(c)(1)	corruptly altering, destroying, mutlilating or concealing	8/31/2008	1
18 USC 1512(c)(1)	corruptly altering, destroying, mutlilating or concealing	9/30/2008	2

The defendant organization is sentenced as provided in pages 2 through 6 of this judgment.

☐ The defendant organization has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I D. No.. _____

Defendant Organization's Principal Business Address:

Nautilus Hyosung America
6641 N. Belt Line Road Suite 100
Irving, TX 75063

10/20/2011
Date of Imposition of Judgment

Robert L. Wilkins
Signature of Judge

Robert L. Wilkins — U.S. District Judge
Name of Judge — Title of Judge

10/26/2011
Date

Defendant Organization's Mailing Address

DEFENDANT ORGANIZATION: NAUTILUS HYOSUNG HOLDINGS, INC.
CASE NUMBER: 11-cr-00255-RLW

CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	Assessment	Fine	Restitution
TOTALS	$ 800.00	$ 200,000.00	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☑ The defendant organization shall pay interest on restitution or a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT ORGANIZATION: NAUTILUS HYOSUNG HOLDINGS, INC.
CASE NUMBER: 11-cr-00255-RLW

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Immediately upon filing of the plea agreement with the Court, the defendant corporation will post a letter of credit or standby letter of credit issued by a United States bank or a United States branch of a foreign bank to the benefit of the United States or its designee to guarantee the entire balance of the fine.

DEFENDANT ORGANIZATION: NAUTILUS HYOSUNG HOLDINGS, INC.
CASE NUMBER: 11-cr-00255-RLW

SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 800.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C or ☐ D below; or

B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☑ Special instructions regarding the payment of criminal monetary penalties:

It is further ordered that Nautilus Hyosung Holdings, Inc. pay a special assessment of $400 on each of Counts One and Two, for a total of $800.00. The special assessment is due within 30 days of sentence imposition.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant organization shall pay the cost of prosecution.

☐ The defendant organization shall pay the following court cost(s):

☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Aside: Some Notes on Privilege

Able & Baker LLP
123 K Street NW Suite 1000
Washington, DC 20001
202-321-4000

WRITER'S EMAIL ADDRESS:
bruce.springsteen@ablebakerlaw.com

January 5, 2000

BY FACSIMILE
BY U.S. MAIL

David R. Bowie, Esq.
Joan M. Jett, Esq.
U.S. Department of Justice
Antitrust Division
City Center Building
1401 H Street, N.W.
Washington, DC 20530

Re: Acquisition by ABC Corp. of XYZ Corp.
DOJ File No. XX-XXXX-XXXX

Dear David and Joan:

This letter provides the legal basis for asserting privilege for the documents withheld or redacted in our client ABC's HSR filing of December 15. It also responds to David's letter to me dated December 29.

We believe that this letter will clarify what we deem to be a fundamental misunderstanding about the claims of privilege made in connection with ABC's HSR filing and the information we provided the staff with respect to those claims. Once this misunderstanding is corrected, we anticipate that the staff will agree that ABC substantially complied with the requirements of Item 4(c) of the Notification and Report Form and that ABC's initial filing was effective on the date it was made.

As reflected both in our conversations and in David's letter to me, the core of the staff's concern is that ABC is claiming privilege for communications by non-lawyer employees and advisors, including representatives of Investment Bank, which the staff apparently believes cannot be protected because of the identity of the communicants regardless of the purpose or subject matter of the communication. For example, without identifying any particular entries on ABC's privilege log, David asserts that any privilege claim is "suspect" when the documents are

prepared by non-lawyers, including ABC's investment bankers, putatively "under the direct supervision" of non-lawyers.

The misunderstanding resides in the role of the non-lawyers in connection with the privileged communications. In each case, the non-lawyer employee or advisor in the communication in question functioned as an agent of ABC in providing information at *the specific request* of the General Counsel and the company's outside legal advisors that was necessary and appropriate to enable the lawyers to provide legal advice regarding the transaction to ABC or, alternatively, as agent of ABC under the direction, supervision, and control of the General Counsel and acting as a conduit of the legal advice given by the General Counsel and the company's outside legal advisors in connection with the transaction. None of the withheld or redacted communications would have been made except for the purpose of obtaining or conveying legal advice from counsel. Moreover, but for the regulatory questions presented by the transaction, none of the withheld or redacted communications would have occurred. I should also note that these non-lawyer employees and advisors were few in number, and that each was bound by strict contractual confidentiality obligations not to disclose to third parties the privileged communications to which they were privy.

Turning to the legal analysis, it is well established that both the attorney-client privilege and the work product doctrine apply to communications involving non-lawyer employees and advisors of the nature of the ones withheld or redacted by ABC in its HSR filing.

Attorney-Client Privilege

It is well established that the attorney-client privilege applies when communications are made through agents of the attorney or the client, or when an expert is retained by either to facilitate the rendering of legal advice. *See, e.g.*, THE RESTATEMENT OF LAW GOVERNING LAWYERS §§ 120-21 (1996) ("[P]rivileged persons . . . are the client, the client's lawyer, agents of either who facilitate communications between them, and agents of the lawyer who facilitate the representation[.]"); WEINSTEIN'S FEDERAL EVIDENCE § 503.10 (1996); *see also In re Bieter Co.*, 16 F.3d 929, 935 (1994) (proposed Supreme Court Standard 503(b) applies attorney-client privilege to communications "(1) between [the client] and his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and his lawyer's representative, or (3) by him or his lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.").

The "non-lawyers" that the staff suspects of engaging in unprivileged communications are either ABC employees who gathered information at the direction of counsel or prepared presentations of legal advice for the ABC Board of Directors, or investment banking experts retained by the ABC Legal Department for the purpose of assisting its lawyers in rending legal advice and presenting that advice to ABC's Board of Directors. Specifically, ABC's Strategic Planning Department gathered information at the direction of lawyers to enable them to provide legal counsel to Senior Management and the Board. *See Upjohn Company v. United*

States, 449 U.S. 383, 391 (1981) (attorney-client privilege includes "[m]iddle-level – and indeed lower-level – employees [who] can . . . have the relevant information needed by corporate counsel if he is adequately to advise the client with respect to actual and potential difficulties."); *Carter v. Cornell University*, 173 F.R.D. 92, 94-95 (S.D.N.Y. 1997) (attorney-client privilege includes fact investigation by corporate employee at direction of attorney, following *Upjohn*). ABC's Strategic Planning Department also prepared presentations to ABC's Board of Directors that included legal advice. *See United States v. American Telephone and Telegraph Co.*, 86 F.R.D. 603, 620 (D.D.C. 1980) (privilege includes "conduits" for information).

Investment Bank, separate and apart from its role as an investment banker in the transaction, was retained to assist ABC's lawyers in rendering legal advice on certain regulatory issues in connection with this transaction. In that role, Investment Bank analyzed information gathered by ABC's Strategic Planning Department, combined it with additional information of its own, and at the direction of counsel prepared presentations to ABC's Board of Directors and Senior Management. *See United States v. Kovel*, 296 F.2d 918, 921 (2d Cir. 1961) (Friendly, J.) (holding that client's communications with law firm's accountant outside the lawyer's presence were privileged because "the privilege must include all the persons who act as the attorney's agents") (quoting Wigmore); *see also United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989) (following *Kovel* and permitting retained accountant to wear "two hats" and disclose information included in filed tax return without waiving the attorney-client privilege as to undisclosed communications); *Byrnes v. Empire Blue Cross/Blue Shield*, No. 98 Civ. 8520, 1999 WL 1006312, at *4-*5 (S.D.N.Y. Nov. 4, 1999) (communications directly to and from actuary retained by client with client's counsel privileged where actuary provided information and assisted counsel in rendering legal advice to client).[1]

Work Product Doctrine

Not only are the communications involving non-lawyer employees and advisors listed on ABC's privilege log protected by the attorney-client privilege, they are also protected by work product immunity. The purpose of the work product doctrine is to establish a zone of privacy for strategic litigation planning and to prevent one party from piggybacking on its adversary's preparation. *United States v. Nobles*, 422 U.S. 225, 238 (1975). In *United States v. Adlman*, 134 F.3d 1194, 1202-03 (2d Cir. 1998), the Court of Appeals held that documents are protected by the work-product immunity if they were prepared "because of" anticipated litigation. Actual or threatened litigation is not a prerequisite for such immunity. In particular, the *Adlman* court held that work-product immunity applies to legal work performed in connection with a proposed transaction which, if it went forward, could pose the threat of

[1] OPQ & Associates, another non-lawyer advisor to ABC whose employees appear in the privilege log provided to you today under separate cover, similarly analyzed information gathered by ABC's Strategic Planning Department, combined it with additional information of its own, and prepared presentations at the direction of counsel to ABC's counsel and Senior Management. As reported in the privilege log, the purpose of these communications was to provide data and other information requested by ABC's counsel to enable them to provide legal advice to ABC.

litigation. The court stated that "where a party faces the choice of whether to engage in the conduct based on its assessment of the likely result of the anticipated litigation . . . the preparatory documents should receive protection." *Id*. at 1196. *See also Delaney, Migdail & Young, Chartered v. IRS*, 826 F.2d 124, 126-27 (D.C. Cir. 1987).

The withheld documents and redacted communications listed in ABC's privilege log were all prepared to analyze and respond to the regulatory risk of the proposed acquisition of XYZ, and thus, fall squarely within the work-product immunity. In the absence of this risk, none of the withheld or redacted communications would have occurred. *See United States v. Adlman*, 134 F.3d 1194, 1195 (2d Cir. 1995) ("Where a document was created because of anticipated litigation, and would not have been prepared in substantially similar form but for the prospect of that litigation, it falls within [Federal Rule of Civil Procedure] 26(b)(3)."). Work product prepared in anticipation of a government agency investigation is plainly protected by the work-product immunity. *See Martin v. Monfort, Inc.*, 150 F.R.D. 172, 173 (D. Colo. 1993). As one court of appeals recently explained in rejecting government lawyers' attempt to discover attorney work-product:

> [To adopt the government's reasoning] would undermine lawyer effectiveness at a particularly critical stage of a legal representation. It is often prior to the emergence of specific claims that lawyers are best equipped either to help clients avoid litigation or to strengthen available defenses should litigation occur. For instance, lawyers routinely . . . consider whether business decisions might result in antitrust . . . lawsuits . . . If lawyers had to wait for specific claims to arise before their writings could enjoy work-product protection, they would not likely risk taking notes about such matters or communicating in writing with colleagues, thus severely limiting their ability to advise clients effectively.

In re Sealed Case, 146 F.3d 881, 886 (D.C. Cir. 1998). The *Sealed Case* court continued by explaining the importance of protecting antitrust advice from government inspection:

> Likewise, asked by a client to evaluate the antitrust implications of a proposed merger and advised that no specific claim had yet surfaced, a lawyer knowing that work product is unprotected would not likely risk preparing an internal legal memorandum assessing the merger's weaknesses, jotting down on a yellow legal pad possible areas of vulnerability, or sending a note to a partner – "After reviewing the proposed merger, I think it's O.K., although I'm a little worried about . . . What are your views?" Nor would the partner respond in writing, "I disagree. This merger is vulnerable because . . ." Discouraging lawyers from engaging in the writing, note-taking, and communications so critical to effective legal thinking would, in *Hickman*'s words,

> "demoraliz[e]" the legal profession, and "the interests of the clients and the cause of justice would be poorly served." 329 U.S. at 511.

In re Sealed Case, 146 F.3d at 886-87 (ellipses and brackets in original).

We also note that, as reported in the privilege log, many of the documents prepared by non-lawyer employees or advisors contain or reflect the legal advice and legal theories of ABC's inside and outside legal counsel. The original communication of this advice and the legal theories was necessary in order for the non-lawyer employees and advisors to understand the attorney's request for data and other information necessary for the attorney to provide further legal advice to ABC, and the advice and theories were naturally reflected in the responses from the non-lawyer employees and advisors. This advice and legal theories represent the "opinion work product" of ABC's legal counsel and as such are entitled to the highest level of work product protection. *See, e.g., Duplan Corp. v. Moulinage et Retorderie de Chavanoz*, 509 F.2d 730, 734 (4th Cir. 1974); *United States v. Adlman*, 134 F.3d 1194, 1203 (2d Cir. 1995). The fact that counsel's legal advice and theories are summarized in communications created by a non-lawyer outside advisor does not negate the work product protection. *National Education Training Group, Inc. v. Skillsoft Corp.*, No. M8-85, 1999 WL 378337, at *5-*6 (S.D.N.Y. June 10, 1999) (notes of outside director's assistant protected by work product doctrine where they summarized the legal advice of company's attorneys concerning pending litigation).

Turning to the question of technical compliance, in the response to Item 4(c) in its December 15 HSR filing, ABC included copies of all studies, surveys, analyses, and reports prepared by or for its officers or directors for the purpose of evaluating or analyzing its proposed acquisition of XYZ having the requisite subject matter, with the exception of a handful of privileged communications. For documents reflecting privileged communications, we provided a privilege log pursuant to the instructions for Item 4(c) and 16 C.F.R. § 803.3. Since our HSR filing, we listened carefully to your concerns and prepared a supplemental privilege log at your request. We also have prepared an additional log, which we are sending to you today under separate cover, that provides even more information on the Item 4(c) documents at issue and presents the data in the form we will use for ABC's response to the Second Request.

Most of the "examples of the deficiencies" listed in the first full paragraph on page two of David's September 21 letter are, at most, minor technical defects of form that were corrected in ABC's supplemental privilege log. For example, each one of the nineteen entries at issue on ABC's supplemental privilege log is a communication protected by the attorney-client privilege *and* attorney work-product immunity. The entries that list the ABC Strategic Planning Department or Investment Bank as authors are jointly authored documents for which we cannot list a single individual. We have provided you with the names of the members of the ABC Strategic Planning Department and the individuals at Investment Bank who contributed to those documents.

ABC submits that the original privilege log included in the July 31 filing substantially complied with the requirements of Item 4(c) and the HSR Act's implementing regulations, so

that the filing was proper and effective as of the date it was made. To the extent there was any technical deficiency, the deficiency was immaterial and corrected in the supplemental submissions. It appears that the privilege questions in this matter result not from any deficiency in the privilege log, but rather from a misunderstanding of the applicability of the privilege to communications by non-lawyer employees and advisors in the circumstances presented here.

In sum, the staff was provided in the initial filing with the documents that explain ABC's decision to pursue the proposed acquisition. Moreover, the staff is entitled to – and we will promptly provide – whatever additional information it may reasonably need to analyze the transaction. What the staff is not entitled to – and what we cannot divulge – are the privileged communications and attorney work product revealed only to ABC's officers and directors through its strategic planning staff and investment bankers, who gathered and analyzed information essential to the legal analysis and prepared presentations of the resulting legal advice.

Very truly yours,

Bruce F.J. Springsteen

Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

July 21, 2009

VIA FACSIMILE AND EXPRESS MAIL

HeartWare International, Inc.
c/o Beau W. Buffier, Esquire
Shearman & Sterling LLP
599 Lexington Ave.
New York, NY 10022

PUBLIC

Re: *Petition to Limit or Quash Subpoenas* Ad Testificandum *Dated April 24, 2009,* File No. 091-0064

Dear Mr. Buffier:

On June 26, 2009, HeartWare International, Inc. ("HW") filed its Petition to Limit or Quash Subpoenas *Ad Testificandum* Dated April, 24, 2009 ("Petition").[1] The challenged subpoenas were issued in the Commission's investigation to determine whether there is reason to believe that Thoratec Corp.'s acquisition of HW would violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or Section 7 of the Clayton Act, 15 U.S.C. § 18. This letter advises you of the Commission's disposition of the Petition seeking to limit or quash subpoenas issued to Messrs. Douglas Godshall and James Schuermann for oral testimony at investigational hearings conducted (and to be continued) in accordance with the provisions of Commission Rules 2.8, 2.8A and 2.9, 16 C.F.R. §§ 2.8, 2.8A, 2.9.[2] The Petition was referred to the full Commission for determination by Commissioner Pamela Jones Harbour, acting in her sole

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[1] Commission Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1), requires that a petition to limit or quash a subpoena be filed prior to the subpoena's return date or within twenty days after service, whichever first occurs. Even though this Petition may be untimely under a technical reading of the rule, the Commission will entertain it because the events giving rise to HW's claims for relief did not occur until after the expiration of the filing deadline, and HW's Petition was filed promptly after receipt of staff's June 24 letter announcing the reconvening of the investigational hearings.

[2] In ruling on the Petition, the Commission does not reach the issue of whether HW has standing to file the Petition without joining Messrs. Godshall and Schuermann as parties to the Petition. While the Commission understands that counsel for Petitioner also represents Messrs. Godshall and Schuermann, no statement to that effect appears in the Petition. The Commission assumes that the individuals subpoenaed are aware of the instant Petition and have elected not to raise any additional objections particular to themselves regarding further compliance with the subpoenas.

discretion as the Commission's delegate pursuant to the provisions of Rule 2.7(d)(4), 16 C.F.R. § 2.7(d)(4).

I. Background and Summary

The Federal Trade Commission issued subpoenas *ad testificandum* on April 24, 2009 ("subpoenas"), to Douglas Godshall and James Schuermann for oral testimony at investigational hearings. Mr. Godshall is HW's President and Chief Executive Officer. Mr. Schuermann is the Vice President for Sales and Marketing for HW. Investigational hearings were held on June 5th (Godshall) and June 11th (Schuermann). During the course of these investigational hearings, testimony was withheld by the witnesses upon advice of counsel because the admission of an exhibit, or the testimony being sought, would have elicited information that might be subject to claims of attorney-client privilege and/or the work-product doctrine. Counsel objected to the use of Godshall Exhibit No. 10 (two emails and an attached revenue model spreadsheet) on the ground that the documents had been inadvertently produced, and were subject to both attorney-client privilege and the work-product doctrine.[3] HW's counsel requested the return of the inadvertently produced documents. Commission counsel briefly questioned the witness regarding the factual bases for the privilege claim, and obtained information indicating this exhibit was produced at the "explicit" request of Mr. Buffier,[4] and that it had been requested as part of the "joint defense" of the proposed merger.[5] Commission counsel then stated that the privilege and work-product issues would be submitted to the Commission's General Counsel for an evaluation of the protections claimed and instructions regarding the proper disposition of the documents. At the same time, staff reserved the right to recall Mr. Godshall for further

[3] Godshall IH 245:12-249:20, Jun. 5, 2009. The exhibit was described by Commission counsel as consisting of two emails and a spreadsheet "entitled HeartWare revenue model." *Id.* at 245:20. The top email was from Godshall to Schuermann dated April 15, 2009, "subject re e-mailing HVAD financials JFApril09.XLS." *Id.* at 245:21-23. The transcript provides no further information regarding either the identity of the second email or the contents of either email or the attachment.

[4] *Id.* at 246:4

[5] *Id.* at 248:7-12.

testimony, depending on the determination of the General Counsel regarding the documents.[6] HW's counsel also reserved its right to object.[7]

Later during the Godshall investigational hearing, counsel instructed the witness not to respond to questions regarding the substance of his conversations with customers regarding their reaction to the proposed merger transaction on the grounds that communications at the request of counsel were protected by the work-product doctrine.[8] HW's counsel made a clear distinction between (1) the substance of the conversations between the witness and customers undertaken at the behest and under the supervision of counsel, and (2) the identity of the third parties with whom the conversations were held.[9] Mr. Godshall identified ten customers with whom he spoke on behalf of HW's counsel, and one further person with whom he might have had such a conversation. He was not, however, permitted to testify as to the substance of those conversations, regarding either the questions asked or the answers given.

In similar manner, Mr. Schuermann was permitted to testify regarding conversations he had with customers regarding their reactions to the transaction when those conversations were not pursuant to counsel's request and direction.[10] The witness did provide some limited information regarding conversations with third parties about the transaction when those discussions had not been undertaken at the direction of counsel. Counsel for HW advised

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[6] *Id.* at 249:10-18. Staff subsequently advised HW's counsel that the staff would delete these documents from their files, and advised that such deletion did not constitute the Commission's agreement as to the validity of the protections being asserted. Petition, Exhibit E at 1 (Letter from James Southworth to Beau Buffier, dated June 12, 2009). Staff also requested "a written description of the process used to review HeartWare's submission for privileged materials." *Id.* The Commission understands that HW has not provided either the requested information regarding HW's privilege review processes or an updated privilege log that includes the deleted documents.

[7] *Id.* at 249:19-20.

[8] *Id.* at 287:7-12, and 20-21.

[9] The conversation between the witness and third parties was subject to work-product protection, but the identities of the third parties were not subject to such protections, according to HW's counsel. *Compare id.* at 288:17-20 (Mr. Buffier: "I'm going to instruct Mr. Godshall not to answer if any of [the substance of] those communications were held at the direction of legal counsel.") *with id.* at 287:20-21 (Mr. Buffier: "You can answer if you remember which doctors [you spoke with].").

[10] Schuermann IH 235:12-15, Jun. 11, 2009 (Ms. Delbaum: "At this point, Mr. Schuermann, I'll just caution you not to reveal any communications that you had at our request. If you have knowledge of customer reaction outside of that, feel free to answer.").

Mr. Schuermann not to answer any questions about the substance of any conversations that he had with third parties at the direction of counsel.[11]

Subsequent conversations between Bureau of Competition staff and HW's counsel were not successful in resolving the dispute regarding the witnesses' right to withhold answers regarding the substance of conversations undertaken at the request of counsel, and the revenue model and associated documents. On June 24, staff sent a letter to HW's counsel directing the reappearance of the witnesses "to provide testimony regarding communications they had with customers about the proposed acquisition," stating staff's belief that HW had not "established the necessary factual predicate to show that this information is protected work product."[12] The letter further directed the witnesses to reappear to answer questions about "sales and market shares with respect to any relevant product being developed by HeartWare," citing HW's privilege claims respecting the revenue model as the reason for not having examined Mr. Schuermann about sales and market shares during his investigational hearing on June 11.[13]

The Petition, dated June 26, 2009, was filed on June 29. The Petition seeks to limit or quash the reappearance of the witnesses for further investigational hearing examination. Petition at 19. In addition to reiterating HW's claims of attorney-client privilege and work-product protections, the Petition claims that it would be unduly burdensome to require Mr. Schuermann "to return to Washington, D.C. for further hearings," Petition at 18, because staff already had an extended opportunity in which these issues could have been raised with Mr. Schuermann.

II. Third-Party Interviews by HeartWare's Managers at the Direction of Counsel in Anticipation of Litigation Are Entitled to Protection as Trial Preparation Materials.

Commission Rule 2.9(b)(2), 16 C.F.R. § 2.9(b)(2), permits a witness at an investigational hearing to refuse to answer questions the answers to which are privileged. That rule, however, does not provide any guidance regarding the perimeters of the privileges that may be asserted. The Commission will read Rule 2.9(b)(2) *in pari materia* with Rule 3.31(c)(3)(Hearing preparations: Materials.), 16 C.F.R. § 3.31(c)(3). The latter rule protects trial preparation materials from discovery if they were "prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, or agent)." *Id.* The protections afforded by this rule are not absolute; they may be overcome upon a showing

[11] *Id.* at 250:18-25.

[12] Petition, Exhibit C (Letter from James Southworth to Beau Buffier, dated Jun. 24, 2009) at 1.

[13] *Id.* at 1-2.

> that the party seeking discovery has substantial need of the materials in preparation of its case and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of such materials when the required showing has been made, the Administrative Law Judge *shall* protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

Id. (emphasis added). The protections afforded to trial preparation materials under Rule 3.31(c)(3) are substantially similar to the work-product doctrine. *See* 8 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE 2D §§ 2021 - 2028 at 313-415 (1994); *Hickman v. Taylor*, 329 U.S. 495 (1947). Our rule should be construed accordingly.

Commission staff do not appear to question that some third-party interviews undertaken by these two witnesses were done in anticipation of litigation for HW or its attorneys, and at the direction of counsel. Mr. Godshall's testimony on the latter point stands unrebutted in this record:

> Q: Have you talked to any customers about this transaction?
>
> A: I've spoken with many customers and have been advised by – have been requested by counsel to speak to customers, to help educate counsel as well as to collect customer opinion. So since the transaction, my customer discussions on the subject of this deal have been at the direction of counsel.

Godshall IH at 286:18-25. On the current record, HW has provided an adequate factual basis to support its assertion that customer interviews conducted by HW managers at the direction of counsel in anticipation of litigation are entitled to trial preparation materials protections within the meaning of Rules 2.9(b)(2) and 3.31(c)(3).

Commission staff could only overcome the qualified protections of Rule 3.31(c)(3) by showing that there was a "substantial need [for the customer interview materials] . . . and that [staff are] unable without undue hardship to obtain substantial equivalent materials by other means." Customer reactions to prospective mergers are important to the merger review process; however, that importance, standing alone, is not sufficient to overcome the protections of our rule under the circumstances. The Commission understands that staff have had a reasonable opportunity to interview each of HW's customers identified in the investigational hearing testimony of Messrs. Godshall and Schuermann. The record does not support a finding that staff are "unable without undue hardship to obtain the substantial equivalent of the [customer interviews identified by the testimony of Messrs. Godshall and Schuermann] by other means." *Id.* The Commission also believes that staff can obtain comparable information from other third-

party interviewees, at least to the extent that the identity of those third parties has been provided by HW.[14] Accordingly, the Petition shall be granted in part.[15]

III. Additional Investigative Hearing Time Is Not Unduly Burdensome.

HW has not demonstrated that resumption of the investigational hearings is unwarranted. Directing the witnesses to reappear for further examination regarding sales and market shares does not necessarily raise any claim of privilege.[16] HW's does not dispute staff's right to question Mr. Schuermann regarding sales and market share information.[17] Rather, it objects to the resumption of Mr. Schuermann's investigational hearing on the grounds that staff had, and failed to avail themselves of, the opportunity to examine Mr. Schuermann regarding those subjects during the first 9½ hours (including breaks) of his investigational hearing on June 11. Petition at 18. HW claims that staff should not have a "second bite of the apple" because doing so would constitute an "abuse of process" and would be "presumptively unreasonable" in light of the 7-hour limitation on civil litigation depositions conducted pursuant to Fed. R. Civ. P. 30(d)(1). Petition at 18-19.

The mistake lies in HW's assumption that Commission investigational hearings should be governed, by analogy, by the limitations included within the Federal Rules of Civil Procedure. To the extent that the scope of the Commission's Rules of Practice regarding its conduct of investigations should be construed by analogy to some other legal activities, the

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[14] HW does not contest its obligation to identify the customers whose interviews were conducted by its managers at the request of counsel in anticipation of litigation. Godshall IH at 287:20-21. *See also Upjohn Co. v. United States*, 449 U.S. 383, 396 (1981) ("Upjohn has provided the IRS with a list of such employees, and the IRS has already interviewed some 25 of them.").

[15] Granting the Petition in part recognizes the validity of the privilege claim, but is not a limitation upon staff's right to ask questions regarding customer interviews, including without limitation issues related to: (1) the unprivileged details of otherwise privileged conversations, (2) issues related to the scope of privilege being claimed with respect to otherwise privileged conversations, or (3) the further examination of the factual bases for such claims of privilege. In any subsequent questioning, HW may assert further privilege claims, and staff may seek resolution of such claims through a district court enforcement action commenced by the FTC's General Counsel in accordance with the provisions of Rule 2.13, 16 C.F.R. § 2.13.

[16] Staff's request to resume the investigational hearings of the witnesses may be based in part on HW's assertion that Godshall Exhibit 10 is protected by claims of privilege and the work-product doctrine, but that does not provide a ground for prohibiting the resumed examination of these witnesses. It is not necessary to resolve whether that exhibit is privileged to dispose of the Petition.

[17] Petition at 17-18.

Supreme Court has observed that the appropriate analogy is to the grand jury, not to civil litigation.[18] Commission rules applicable to the conduct of investigational hearings do not include time limitations comparable to those cited by HW's Petition.[19] Rule 2.9(b)(6) vests the person conducting an investigational hearing with broad discretion to "take all necessary action[s] to regulate the course of the hearing;" that, of necessity, includes the discretion to adjourn and reconvene a hearing at a later date, especially when, as here, doing so will permit all parties to the hearing to become better informed regarding the scope and validity of any claimed rights to withhold particular evidence or testimony.

HW claims that the Commission should prohibit reconvening these adjourned investigational hearings because reconvening them will impose a "substantial burden and expense" for these witnesses. Petition at 3 and 18. HW cites no legal authority for its burdensomeness claim.[20] Accordingly, the Commission finds that the burdens claimed are not of a magnitude sufficient to justify the discretionary quashing of these subpoenas by the Commission.[21] That said, the Commission is aware that reconvening investigational hearings will impose some burden. The Commission encourages staff to consider reconvening these

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[18] *Fed. Trade Comm'n v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950) ("[The FTC] has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurances that it is not. When investigatory and accusatory duties are delegated to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law.").

[19] *See* Rules 2.8 (Investigational Hearings), 2.8A (Withholding Requested Materials), and 2.9 (Rights of Witnesses in Investigations), 16 C.F.R. §§ 2.8, 2.8A, 2.9.

[20] Furthermore, HW does not contest the relevance of the subject area to be covered in the resumed investigational hearing. Petition at 17-18 ("[HW] has never disputed or objected to Mr. Schuermann being questioned as to his views on 'sales and market shares with respect to any relevant product being developed by HeartWare.' [HW's] sole objection has been with respect to questions about the substance of the document (and communications surrounding the document) to the extent that such questions would divulge information protected by the work-product doctrine or the attorney-client privilege.").

[21] *See Fed. Trade Comm'n v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (*en banc*) ("Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. . . . Thus, courts have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business."). HW has provided the Commission with no cognizable justification for why it should afford HW greater relief than it could obtain from a district court in a subpoena enforcement action initiated by the Commission.

investigational hearings at a location that will mitigate some of the travel burden for the witnesses.[22]

IV. CONCLUSION AND ORDER

For all the foregoing reasons, **IT IS ORDERED THAT** the Petition be, and it hereby is, **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED THAT Commission staff may, subject to Petitioner's right to withhold information in accordance with the terms of the Commission's Rules of Practice and this Letter Ruling, reconvene the adjourned investigational hearings of Messrs. Godshall and/or Schuermann at such dates and times as they may direct in writing, in accordance with the powers delegated to them by 16 C.F.R. § 2.9(b)(6).

By direction of the Commission.

Donald S. Clark
Secretary

[22] The Commission does not know whether staff will need to recall both witnesses in light of this ruling, or whether they ever intended to re-examine Mr. Godshall concerning sales and market shares; the latter point was unclear from the June 24 letter to HW's counsel.

Investigations

U.S. Department of Justice

Antitrust Division

[Counsel for the Antitrust Division]
450 5th St., NW, Suite [X]
Washington, DC 20530
[Counsel's e-mail]

****This Model Voluntary Request Letter is provided as a resource to parties preparing for the review of a proposed transaction by the Antitrust Division. The model is intended to give parties a head start in identifying the kinds of information they should be gathering for the Division, so that parties can be proactive and submit the information as early as possible during the initial waiting period. Parties anticipating a potential investigation by the Division should be prepared to provide the information sought in the voluntary request letter within the first few days of their HSR filing. The model specifications below are examples. The circumstances of a particular investigation will dictate whether any or some of these model specifications may be appropriate for a particular investigation. Based on the unique facts and circumstances of a transaction, the Antitrust Division may seek different or additional information on a voluntary basis.*

[DATE]

Via e-mail
[COUNSEL]

Re: Proposed Merger of [PARTY A] and [PARTY B]
DOJ File No. [XX]

Dear [COUNSEL]:

The Antitrust Division is requesting voluntary information from [Party] ("the company") regarding the proposed merger between [Party A] and [Party B] (the "transaction"). This request is not to be construed as a "request for additional information or documentary materials" under the Hart–Scott–Rodino Antitrust Improvements Act ("HSR").

You should be prepared to submit this key information within a few days of receipt of this letter. The earlier the Division receives this information, the sooner and more effectively the Division can determine whether a competitive concern exists, whether the Division can narrow the areas of inquiry, or whether the investigation can be closed.

Unless specifically noted otherwise, this letter seeks information relating only to products or services sold, purchased, or used in the United States. Where the specification

calls for data, please provide the data in an electronic form that is both searchable and sortable, such as an Excel spreadsheet.

1. Identify as narrowly as practical (for example, with the names used by the company and others in the industry to describe the products or services, such as brand names) each product or service, or category of products or services, manufactured, offered, or sold by the company for which there is a competing product or service manufactured, offered, or sold by [Party] ("overlap products").

2. For each overlap product:

   (a) identify each area (e.g., U.S., region, county, metropolitan statistical area (MSA)) in which the company and [Party] offer each overlap product;

   (b) provide lists of the company's 20 largest U.S. customers (in dollars and by units/volume) during the last [X] year(s) and the company's 20 most recent customers during the last [X] year(s), and, for each customer, identify a contact person, physical address, e-mail address, phone number, and the units/volume and dollar value of the customer's purchases during the last [X] year(s);

   (c) provide the company's actual and estimated [world, U.S., MSA, other area] sales by [units, dollars, and revenues] for the current and past [X] year(s), any projections of future sales, and any estimated market shares for the company and other significant competitors;

   (d) identify all other significant competitors (including entrants or potential entrants) and competing products; and

   (e) [*Where applicable*] identify each facility that produces an overlap product, and state the capacity utilization for each facility for the current year and past [X] years(s).

3. Submit all surveys, win-loss reports, and other documents or data showing the competitors from or to which the company won or lost sales/customers of overlap products for the past [X] year(s).

4. Submit a copy of all presentations and accompanying materials relating to the transaction that were provided to industry analysts, investors, or government or regulatory agencies, including transcripts of any investor calls.

5. Submit documents analyzing, describing, or quantifying the efficiencies or synergies that the company believes will be generated by the transaction.

6. Submit a copy of the company's current organization chart and personnel directory for the company as a whole and for each of the company's facilities or divisions that manufactures, offers, or sells an overlap product.

7. Provide a list of all the company's agents and representatives, including investment bankers and third-party consultants, retained in relation to the transaction, and produce all draft or final Confidential Information Memoranda (or documents meant to serve the function of a Confidential Offering Memoranda), bankers' books, and other third-party consultants' materials relating to the transaction. This includes any ordinary course of business documents and financial data shared in the course of due diligence that describe or reflect competition or the competitive position of the company in the business relating to the overlap products.

8. *[For Non-Reportable Transactions]* Submit all agreements, including any side agreements, between the company and [Party] relating to the transaction.

9. *[For Non-Reportable Transactions]* Submit all studies, surveys, forecasts, analyses, business plans, and reports which were prepared by or for any officer or director of the company for the purpose of evaluating or analyzing the transaction with respect to market shares, competition, competitors, markets, cost reductions, potential for sales growth or expansion, synergies and efficiencies, and indicate (if not contained in the document itself) the date prepared, and the name and title of each individual who prepared each document.

Please provide a rolling production of the requested information, prioritizing your responses to Specifications [##]. Please also send all information to us in electronic form either by e-mail to [email address] or by overnight delivery to [address, using 20001 zip code, not 20530].

Documents and information submitted in response to this request are subject to 28 C.F.R. §16. As appropriate, please designate any "confidential commercial information" under 28 C.F.R. §16.7.

Please do not hesitate to call me at [number] with any questions or to discuss this matter further. Thank you for your cooperation with this request.

Sincerely,

[NAME]
Attorney
[X] Section

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Guidance for Voluntary Submission of Documents During the Initial Waiting Period

Providing information early in the initial 30-day waiting period increases the likelihood that staff will be able to focus its investigation and resolve outstanding questions about the transaction during its preliminary investigation. In order that parties may effectively use the initial waiting period, counsel should be prepared to discuss staff's most likely concerns and voluntarily provide documents and information that may assist staff in quickly and efficiently evaluating whether the proposed transaction raises competitive concerns.

The list below is provided to help parties understand the type of documents and information that are useful to Bureau of Competition staff analyzing proposed transactions filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). Staff generally has requested these documents and information in a "voluntary request letter" or "access letter" during the initial waiting period and prior to any issuance by the Commission of a Request for Additional Information ("Second Request"). Our experience has been that it takes time to obtain these documents and information, which delays staff's investigation. Parties may expedite the review process by compiling these documents and information in anticipation of staff's request. Although it is not required, the parties to the transaction are encouraged to submit some or all of these documents and information with their HSR Act filing or soon thereafter. The parties are also encouraged to submit any other information not contained on the list below that they believe could assist staff in assessing the proposed merger and the markets involved.

This list is not exhaustive and, prior to the end of the initial waiting period, staff may request that the parties voluntarily submit additional documents and information. The following list does not supercede or replace the requirements of the HSR Act and rules or the HSR Act form. It is possible that some of the documents requested in this list are the same documents required under the HSR Act form, e.g., documents responsive to Item 4(c) of the form.

1. Organization Chart
2. Strategic Plans for the past three years
3. Marketing Plans for the past three years
4. List of products manufactured and sold
5. List of products in development
6. List of top 10 customers with contact information (for overlap products)
7. List of competitors with contact information (for overlap products)
8. Market share information (for overlap products)

ftc.gov

**REQUEST FOR ADDITIONAL INFORMATION
AND DOCUMENTARY MATERIAL
ISSUED TO [COMPANY]**

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Request for Additional Information and Documentary Material (the "Request") requires a complete search of "the Company" as defined in Definition D 1 of the Definitions, which appear after the following Specifications. If the Company believes that the required search or any other part of the Request can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss any questions and possible modifications with the Commission representatives identified in Instruction I 11 of this Request. All modifications to this Request must be agreed to in writing by a Commission representative. Submit the information requested in Specifications 1 and 10(a) of this Request promptly to facilitate discussions about any potential modifications to this Request including the scope of the Company's search or interrogatory response obligations.

SPECIFICATIONS

1. Submit:

   (a) one copy of each organization chart and personnel directory in effect since January 1, **[Yr-2]** for the Company as a whole and for each of the Company's facilities or divisions involved in any activity relating to any Relevant Product [Service];

   (b) a list of all agents and representatives of the Company, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other Persons retained by the Company in any capacity relating to the Proposed Transaction or any Relevant Product [Service] (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues);

   (c) for each Person identified in response to Specification 1(b), the agent's or representative's title, business address, and telephone number, as well as a description of that Person's responsibilities in any capacity relating to the Proposed Transaction or any Relevant Product [Service] provided in any Relevant Area; and

   (d) an Information Systems Diagram for the Company.

2. List each Relevant Product manufactured or sold [Service provided] by the Company in the Relevant Area, and for each:

   (a) provide a detailed description of the product [service] [including its end uses]; and

(b) state [the brand name and] the division, subsidiary, or affiliate of the Company that manufactures or sells [provides] or has manufactured or sold [provided] the product [service].

3. For each Relevant Product [Service] listed in response to Specification 2 above, state or provide:

(a) the Company's Sales to all customers in each Relevant Area, stated separately in units and dollars;

(b) [that portion of the Company's Sales to customers in each Relevant Area, stated separately in units and dollars, that were of products manufactured in the U.S.;]

(c) [that portion of the Company's Sales to customers in each Relevant Area, stated separately in units and dollars, that were of products manufactured outside the U.S.;]

(d) that portion of the Company's Sales to customers in each Relevant Area, stated separately in units and dollars, that were of products purchased from sources outside the Company and resold by the Company rather than of products manufactured by the Company;

(e) the names and addresses of the [XX] Persons who purchased the greatest unit and dollar amounts of the Relevant Product [Service] from the Company in each Relevant Area;

(f) [a sample contract for each customer type]; and

(g) the name, address, estimated Sales, and estimated market share of the Company and each of the Company's competitors in each Relevant Area in the manufacture or sale of the Relevant Product [provision of the Relevant Service].

4. State the location of each facility that manufactures or sells [including distribution centers, etc.], or has manufactured or sold, any Relevant Product [provides or has provided any Relevant Service] in the Relevant Area for the Company, and for each such facility state: the current nameplate and practical capacity and the [annual, monthly] capacity utilization rate for production of each Relevant Product manufactured at the facility, specifying all other factors used to calculate capacity; the number of shifts normally used at the facility; and the feasibility of increasing capacity [by X% or more], including the costs and time required.

5. For each Relevant Product manufactured or sold [Service provided] in the Relevant Area, submit (a) one copy of all current selling aids and promotional materials and (b) all documents relating to advertising [and marketing] Plans and strategies.

6. Submit all documents relating to the Company's or any other Person's Plans relating to any Relevant Product [Service] [in the Relevant Area], including, but not limited to, business plans; short-term and long-range strategies and objectives; expansion or retrenchment plans; research and development efforts; presentations to management committees, executive committees, and boards of directors; and budgets and financial projections. For regularly prepared budgets and financial projections, the Company need only submit one copy of final year-end documents for prior years, and cumulative year-to-date documents for the current year.

7. Submit all documents relating to competition in the manufacture or sale of any Relevant Product [provision of any Relevant Service] in the Relevant Area, including, but not limited to, market studies, forecasts and surveys, and all other documents relating to:

   (a) the Sales, market share, or competitive position of the Company or any of its competitors;

   (b) the relative strength or weakness of Persons producing or selling each Relevant Product [providing each Relevant Service];

   (c) supply and demand conditions;

   (d) attempts to win customers from other Persons and losses of customers to other Persons, [including, but not limited to, all sales personnel call reports and win/loss reports];

   (e) allegations by any Person that any Person that manufactures or sells any Relevant Product [provides any Relevant Service] is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints; and threatened, pending, or completed lawsuits; and

   (f) any actual or potential effect on the supply, demand, cost, or price of any Relevant Product [Service] as a result of competition from any other possible substitute product [service].

8. Submit:

   (a) all documents relating to the Company's or any other Person's price lists, pricing Plans, pricing policies, pricing forecasts, pricing strategies, price structures, pricing analyses, price zones, and pricing decisions relating to any Relevant Product [Service] in the Relevant Area; and

   (b) all studies, analyses, or assessments of the pricing or profitability of any Relevant Product [Service] sold or provided by the Company, [by third-party distributors/lessee dealers/etc.], or through other channels of trade in any Relevant Area.

9. Identify the Person(s) at the Company responsible for creating or monitoring price strategy, [price zones,] pricing practices, and pricing policies for the Relevant Product [Service] in the Relevant Area. Describe in detail the Company's pricing strategy, pricing practices, and pricing policies, including, but not limited to:

   (a) a description regarding how, and how often, the prices for each Relevant Product [Service] in each Relevant Area are determined;

   (b) whether, and how, pricing based on customer characteristics, presence of other competitors, or other factors are used by the Company in determining the prices for each Relevant Product [Service] in each Relevant Area; and

   (c) **[**whether, and how, price zones and/or pricing based on geographic areas, the presence of local competitors, or other factors are used by the Company for each Relevant Product [Service] in each Relevant Area.]

10. Identify each electronic database used or maintained by the Company in connection with any Relevant Product [Service] at any time after January 1, **[Yr-3]**, that contains information concerning the Company's (i) products [services] and product codes; (ii) facilities; (iii) production; (iv) shipments; (v) bids or sales proposals; (vi) sales; (vii) prices; (viii) margins; (ix) costs, including but not limited to production costs, distribution costs, standard costs, expected costs, and opportunity costs; (x) patents or other intellectual property; (xi) research or development projects; or (xii) customers. For each such database:

   (a) describe the (i) database type, *i.e.*, flat, relational, or enterprise; (ii) fields, query forms, and reports available or maintained; (iii) software product(s) or platform(s) required to access the database;

   (b) for each Relevant Product [Service] in each Relevant Area, compile and submit one or more Data Sets from the database comprising data used or maintained by the Company at any time after January 1, **[Yr-3]** that constitutes, records, or discusses:

      (i) discount requests or approvals (including rebates and other promotions);

      (ii) sales personnel call reports;

      (iii) meeting competition requests or approvals;

      (iv) win/loss reports;

      (v) prices, quotes, estimates, or bids submitted to any customer;

      (vi) the results of any bid or quote submitted to any customer or prospective customer;

(vii) customer relationships; and

(viii) transaction-level Sales data for all [top 20, 50, 100**]** customers by revenue and unit volume [and a X percent random sample of the remaining customers**]**, including, but not limited to, customer name, customer address, product code, product description, and transaction date; and

(c) for each Data Set provided in response to Specification 10(b), provide a data dictionary that includes:

(i) a list of field names and a definition for each field contained in the Data Set;

(ii) the meaning of each code that appears as a field value in the Data Set; and

(iii) the primary key in the Data Set or table that defines a unique observation.

The Company should consult Instruction I 3 regarding the inclusion of Sensitive Personally Identifiable Information or Sensitive Health Information in a Data Set(s) responsive to Specification 10.

11. Provide each financial statement, budget, profit and loss statement, cost center report, profitability report, and any other financial report regularly prepared by or for the Company on any periodic basis, since January 1, **[Yr-3]**, including, but not limited to, such statements and reports for the Company as a whole; for each of the Company's manufacturing facilities, sales offices, and distribution facilities relating to the research, development, manufacture, license, sale, or provision of any Relevant Product [Service] in each Relevant Area; and for any product line or customer for any Relevant Product [Service] in each Relevant Area. For each such statement, budget, or report, state how often it is prepared, and identify the Person responsible for its preparation; provide all such statements and reports on both a quarterly basis and a yearly basis. For each Relevant Product [Service], provide all regularly prepared customer profitability reports and product line profitability reports.

12. State the name and address of each Person that has entered or attempted to enter into, or exited from, the manufacture or sale of each Relevant Product [the provision of each Relevant Service] in any Relevant Area from **[Yr-10]** to the present. For each such Person, state:

(a) the product(s) or service(s) it sells or provides, sold or provided, or attempted to sell or provide in each Relevant Area;

(b) the date of its entry into, attempted entry into, or exit from the market; and

(c) whether such Person constructed a new facility, converted assets previously used for another purpose, or began using facilities that were already being used for the same purpose.

13. For each Relevant Product [Service], identify or describe (including the bases for your response) and submit all documents relating to:

(a) requirements for entry into the production or sale of the Relevant Product [provision of the Relevant Service] in each Relevant Area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

(b) the total costs required for entry into the production or sale of the Relevant Product [provision of the Relevant Service] in each Relevant Area; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the manufacture or sale of the Relevant Product [provision of the Relevant Service]; the methods and amount of time necessary to recover such costs; and the total Sunk Costs entailed in satisfying the requirements for entry;

(c) [barriers to entry into the production or sale of the Relevant Product [provision of the Relevant Service] in each Relevant Area, including but not limited to network and customer lock-in effects;]

(d) possible new entrants into the manufacture or sale of the Relevant Product [provision of the Relevant Service] in each Relevant Area; and

(e) the Minimum Viable Scale; the minimum and optimum plant size, production line size, capacity utilization rate, and production volume; requirements for multi-area, multi-plant, multi-product, or vertically integrated operations; and other factors required to attain any available cost savings, economies of scale or scope, or other efficiencies necessary to compete profitably in the manufacture or sale of the Relevant Product [provision of the Relevant Service] in each Relevant Area.

14. State whether the Company has entered into the manufacture or sale of any Relevant Product [provision of any Relevant Service] in any Relevant Area from **[Yr-5]** to the present and provide date(s) of entry. For each Relevant Product [Service] in each Relevant Area, describe in detail the steps taken by the Company to enter, including but not limited to steps related to research and development, planning and design, production, distribution, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time required to complete each step. For each entry event provide the costs associated with each step taken by the Company to enter.

15. Submit all documents relating to any Plans of the Company or any other Person for the construction of new facilities, the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than $[xxxxxxxx]) of current facilities for the manufacture or sale of any Relevant Product [provision of any Relevant Service] [in the Relevant Area].

16. [Submit all documents relating to actual and potential imports into, or exports from, each Relevant Area of any Relevant Product, including, but not limited to, documents showing: the names of importers or exporters; the market share or position of such importers or exporters; the quality or quantity of products imported or exported in total or by any Person; and any costs or barriers to imports or exports. Describe all quotas, tariffs, and transportation costs relating to imports into, or exports from, each Relevant Area of any Relevant Product.]

17. [Identify, and state whether the Company is a member of or subscribes to, all trade associations, information services, and other organizations relating to the production or sale of any Relevant Product [provision of any Relevant Service]. Submit one copy of all documents submitted to or received from each identified organization (or its agents) by any Person that discuss or describe production, Sales, prices, competition, or entry conditions relating to the Relevant Product [Service].]

18. [Identify each non-U.S. competition or antitrust authority that the Company has notified (or intends to notify) of the Proposed Transaction, and for each authority:

    (a) state the date (or expected date) the authority was (or is expected to be) notified;

    (b) provide copies of all documents (including draft filings) submitted to the authority, including but not limited to, notifications and appendices, remedies submitted to a reviewing authority or authorities for market testing, white papers, responses to requests for information, and competitive impact submissions;

    (c) state the date (or expected date) the authority completed (or will complete) its review; and

    (d) submit a copy of any draft or final order, decision to enter a new stage of investigation (*e.g.*, a 6(1)(c) decision by the European Commission), Statement of Objections, or request for additional information, issued by the authority in connection with its review.]

19. Submit all documents relating to the Company's or any other Person's Plans for, interest in, or efforts undertaken to bring about any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the manufacture or sale of any Relevant Product [provision of any Relevant Service] other than the Proposed Transaction. Provide a copy of all submissions provided to any regulatory agency relating to or in connection with any prior transaction involving the manufacture or sale of any Relevant Product [provision of any Relevant Service] in the Relevant Area other than the Proposed Transaction.

20. Submit all documents (except documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues) relating to the Proposed Transaction and provide:

    (a) a timetable for the Proposed Transaction, a description of all actions that must be taken prior to consummation of the Proposed Transaction, and any harm that will result if the Proposed Transaction is not consummated [or is delayed];

    (b) a detailed description of (including the rationale for) all Plans for changes in the Company's and **[A/B-Side's]** operations, structure, policies, strategies, corporate goals, financing, business, officers, employees, or any other area of corporate activity as a result of the Proposed Transaction. Identify all documents directly or indirectly used to prepare the Company's response to this subpart;

    (c) a detailed description of the reasons for the Proposed Transaction and the benefits, costs, and risks anticipated as a result of the Proposed Transaction; and

    (d) a detailed description of all statements or actions by any Person (identifying the Person by name, title, and business address) in support of, in opposition to, or otherwise expressing opinions about the Proposed Transaction or its effects.

21. Describe in detail, quantify (if possible), and submit all documents relating to the benefits, costs, and risks anticipated as a result of the Proposed Transaction, including, but not limited to, all cost savings, economies, or other efficiencies of any kind anticipated as a result of the Proposed Transaction, including:

    (a) a description of the steps the Company will take to achieve each benefit, cost saving, economy, or other efficiency;

    (b) the estimated time and cost required to achieve each benefit, cost saving, economy, or other efficiency and an explanation for how the cost was derived;

    (c) the estimated dollar value of each benefit, cost saving, economy, or other efficiency, stating separately the one-time fixed cost savings, recurring fixed cost savings, and variable cost savings in dollars per unit and dollars per year, and an explanation of how that value was derived;

    (d) an explanation of why the Company could not achieve each benefit, cost saving, economy, or other efficiency without the Proposed Transaction; and

    (e) the identity of each Person (including the Person's title and business address) employed or retained by the Company with any responsibility for achieving, analyzing, or quantifying each benefit, cost saving, economy, or other efficiency described.

22. Describe and submit all documents related to any Relevant Product [Service] that discuss the Company's Plans or attempts to:

    (a) reduce its costs;

    (b) improve its products or services;

    (c) expand its sales or distribution efforts;

    (d) introduce new products or services;

    (e) integrate the Relevant Products [Services] sold by the Company with any products [services] sold by **[A/B-Side]**;

    (f) improve its operating performance, financial condition, or competitive viability;

    (g) close, consolidate or rationalize any facility;

    (h) discontinue the research, development, manufacture, license, or sale of any Relevant Product or product line [Service]; and

    (i) achieve any benefits as a result of any multi-plant, multi-product, or vertically integrated operation of the Company.

23. Describe in detail (including the time and cost required to achieve), quantify (if possible), and submit all documents related to projected and actual cost savings, economies, or other efficiencies resulting or predicted to result from each previous merger, acquisition, or joint venture by the Company that is being relied upon by the Company to support any claim of predicted cost savings, economies, or other efficiencies expected to result from the Proposed Transaction. Provide a copy of all submissions provided to any regulatory agency relating to expected efficiencies with respect to any prior transaction.

24. [Identify, and provide all documents relating to, each occasion that the Company (i) submitted a bid or negotiated to provide or sell any Relevant Product [Service] in or from any Relevant Area; or (ii) declined to submit a bid or negotiate to provide or sell any Relevant Product [Service] in or from any Relevant Area. For each such occasion, state or provide:

    (a) the date the request for proposal, inquiry, or other solicitation for bids or offers was received;

    (b) the identity of the Person that requested or received the bid;

    (c) the identity of the incumbent provider(s), if any, of the Relevant Product [Service] to the Person that requested or received the bid at the time of the request for proposal, inquiry, or other solicitation for bids or offers;

(d) the request for proposal, inquiry, or other solicitation for the bid, including any proposed specifications, request for information, or request for quotation;

(e) if applicable, the terms of the Company's final bid, including, but not limited to, any aspects relating to price or quantity (*e.g.*, incentives not to switch; rebates, pre-bates, cash awards, etc.; the product/services covered; the geography covered); the terms of any other Company bid; and the date each Company bid was submitted;

(f) if applicable, the pricing methodology or calculations the Company used for its bid(s), and all factors considered in determining the bid price and other terms;

(g) an itemized breakdown of the Company's estimated total, fixed, and variable costs, and the Company's gross margin, relating to each bid;

(h) the reason the Company declined to bid, if applicable;

(i) the identity of each Person that submitted a competing bid and the terms of each competing bid, including any proposal by the prospective customer to provide any part of the Relevant Product [Service] in-house;

(j) the date that the contract was awarded or that the Company expects it to be awarded;

(k) if applicable, the identity of the Person(s) to whom the contract or order was awarded, the price and terms of the winning bid(s), and the products or services included in the winning bid(s);

(l) whether the Company won the contract or order, and if so, state the Company's actual Sales by Relevant Product [Service]; the total, fixed, and variable costs incurred by the Company; and the margin earned by the Company, pursuant to the contract;

(m) the costs associated with preparing the bid; and

(n) all documents relating to each bid or negotiation identified in this Specification.]

25. Submit, without regard to custodian:

(a) all documents provided to the Company's Board of Directors relating to any Relevant Product [Service] in any Relevant Area; and

(b) all minutes or other recordings of meetings of the Company's Board of Directors relating to any Relevant Product [Service] in any Relevant Area.

26. Identify each prior or ongoing investigation from **[Yr-5]** to the present by any state, federal, or international authority related to whether the Company has violated the antitrust or competition laws of any jurisdiction. The Company need not disclose (i) an investigation that has been reported to the federal agencies under the Hart-Scott-Rodino Act, (ii) that an investigation is currently being conducted by a grand jury, or (iii) that an investigation involves a pending leniency application made by the Company to the United States Department of Justice. For each applicable investigation, identify the authority that conducted or is conducting the investigation and describe the conduct being investigated and the status of the investigation (or outcome of the investigation if closed). For each identified investigation, submit:

    (a) all communications between the Company and the authority relating to the investigation (excluding those to/from a grand jury);

    (b) all trial transcripts, deposition transcripts, declarations, and other sworn testimony related to the investigation (excluding grand jury testimony); and

    (c) all documents and information related to the investigation produced by the Company, employees of the Company, and former employees of the Company to the authority.

27. Identify, and submit documents sufficient to show and, to the extent not reflected in such documents, describe in detail (including when the policy or procedure was last updated or changed, when any updates or changes were made during the period of this Request, and what prompted each update or change):

    (a) Company's policies and procedures relating to the retention and destruction of documents, including:

        (i) any specific policies on the retention and destruction of email, chats, instant messages, text messages, and other methods of group and individual communication (*e.g.*, Microsoft Teams, Slack);

        (ii) storage, deletion, and archiving of electronically stored information; or

        (iii) specific policies for documents in or sent via any Collaborative Work Environments or Messaging Applications;

    (b) Company policies and procedures relating to the use of both Employee-Owned Devices and Company-owned devices to conduct Company business, including technological feasibility of accessing Company emails, chats, instant messages, text messages, and other methods of group and individual communication (*e.g.*, Microsoft Teams, Slack), documents, and databases; and

    (c) Company policies and procedures relating to installation or use of Messaging Applications on Company and Employee-Owned Devices used to conduct

Company business, including message retention obligations, suspension of automatic time-based or capacity-based deletion protocols, and use of services to capture or archive messages (*e.g.*, use of Smarsh to archive SMS messages) that could be used to store or transmit documents (as defined in Definition D 6) responsive to this Request.

28. List (a) each federal judicial district (*e.g.*, District of Columbia, Southern District of New York) within the United States in which the Company has an agent to receive service of process, and provide each such agent's name, current business and home addresses, and telephone numbers; (b) each federal judicial district within the United States in which the Company is incorporated or licensed to do business or currently is doing business; and (c) each federal judicial district within the United States in which the Company has an office or a facility, and, for each such office or facility, list the address and the individual in charge (with his or her title).

Alternatively, the Company may respond to this Specification by providing a written stipulation that it agrees to accept service of process, and to subject itself to personal jurisdiction, in all federal judicial districts within the United States.

29. Identify the Person(s) responsible for preparing the response to this Request and submit a copy of all instructions prepared by the Company relating to the steps taken to respond to this Request. Where oral instructions were given, identify the Person who gave the instructions, describe the content of the instructions, and identify the Person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the Persons (identified by name and corporate title or job description) whose files were searched by each.

30. Identify the dates on which any document hold notices regarding the Transaction were provided to employees of the Company. Describe any steps taken or that will be taken to collect, preserve, retain, and/or produce documents in connection with any document hold notice regarding this Request.

31. Identify any electronic production tools or software packages utilized by the Company in responding to this Request for: keyword searching, Technology Assisted Review, email threading, de-duplication, and global de-duplication or near-de-duplication (please note that the use of all forms of de-duplication or other processes used to eliminate data in some form require advance approval from Commission staff per Instruction I 4(e), and:

    (a) if the Company utilized keyword search terms to identify documents and information responsive to this Request, provide a list of the search terms used for each custodian;

    (b) if the Company utilized Technology Assisted Review software:

        (i) describe the collection methodology, including: (a) how the software was utilized to identify responsive documents; (b) the process the Company

utilized to identify and validate the seed set documents subject to manual review; (c) the total number of documents reviewed manually; (d) the total number of documents determined nonresponsive without manual review; (e) the process the Company used to determine and validate the accuracy of the automatic determinations of responsiveness and nonresponsiveness; (f) how the Company handled exceptions ("uncategorized documents"); and (g) if the Company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and

(ii) provide all statistical analyses utilized or generated by the Company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this Request; and

(c) identify the Person(s) able to testify on behalf of the Company about information known or reasonably available to the organization, relating to its response to this Specification.

DEFINITIONS

For the purposes of this Request, the following Definitions apply:

D 1. The term "the Company" or "**[A-Side]**" means **[A-Side]** [Ltd., plc] and includes any related entities; its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.

D 2. The term "**[B-Side]**" means **[B-Side]** [Corporation, Inc.] and includes any related entities; its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between **[B-Side]** and any other Person.

D 3. The term "Proposed Transaction" means the proposed acquisition of **[B-Side]** by **[A-Side]** pursuant to the [Merger/Stock Purchase/Transaction/etc.] Agreement dated [date], or any other proposed, contemplated, discussed, or related transaction between **[A-Side]** and **[B-Side]**.

D 4. The term "Collaborative Work Environment" means a platform used to create, edit, review, approve, store, organize, share, and access documents and information by and among authorized users, potentially in diverse locations and with different devices. Even when based on a common technology platform, Collaborative Work Environments are often configured as separate and closed environments, each of which is open to a select group of users with layered access control rules (reader vs. author vs. editor). Collaborative Work Environments include Microsoft SharePoint sites, eRooms, document management systems (*e.g.*, iManage), intranets, web content management systems ("CMS") (*e.g.*, Drupal), wikis (*e.g.,* Confluence), work tracking software (*e.g.,* Jira), and blogs.

D 5. The term "Data Set" means all or a subset of data held by, or accessible to, the Company in the normal course of business provided by the Company to respond to any Specification in this Request.

D 6. The term "documents" means all written, printed, recorded, or electronically stored information ("ESI") of any kind in the possession, custody, or control of the Company, including information stored on and communications sent through social media accounts like Twitter, Facebook, or Snapchat; including chats, instant messages, text messages, direct messages, other Messaging Applications, audio/visual recordings, wherever stored, including documents contained in Collaborative Work Environments and other document databases as well as copies of documents that are not identical duplicates of the originals in a person's files; and copies of documents the originals of which are not in the

possession, custody, or control of the Company. Employee-Owned Devices used to store or transmit documents responsive to this Request are considered in the possession, custody, or control of the Company. "Documents" includes metadata, formulas, and other embedded, hidden, and bibliographic or historical data describing or relating to any document. Unless otherwise specified, "documents" excludes bills of lading, invoices in non-electronic form, purchase orders, customs declarations, and other similar documents of a purely transactional nature; architectural plans and engineering blueprints; and documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.

D 7. The term "Employee-Owned Device" means any computer, phone, tablet, or other electronic device owned by a Company employee that has been used to conduct business for Company.

D 8. The term "Information Systems Diagram" means an organized list, schematic, diagram, or other representation sufficient to show where and how the Company stores all physical and electronic information in its possession, custody, or control, including, but not limited to, information systems (*e.g.*, email messages, voice-mail messages, communications logs, enterprise content management, instant messaging, database applications), Collaborative Work Environments, locations where information is stored, including servers and backup systems (*e.g.*, physical Company facility, third-party vendor location, cloud). The Diagram shall include, for each Custodian of the Company, an "Application List" identifying any communication, collaboration, Messaging Application, or Collaborative Work Environment accessible, either currently or at any time during the period for which information is requested per Instruction I.1, on any Employee-Owned Device or electronic device in the possession, custody, or control of the Company if the application has ever been used on any occasion, in any manner whatsoever, to discuss the Company or its business, and the associated telephone number(s), account name(s), user name(s), affiliated with each Messaging Application.

D 9. The term "Messaging Application" refers to any electronic method that has ever been used by the Company and its employees to communicate with each other or entities outside the Company for any business purposes. "Messaging Application" includes platforms, whether for ephemeral or non-ephemeral messaging, for email, chats, instant messages, text messages, and other methods of group and individual communication (*e.g.*, Microsoft Teams, Slack). "Messaging Application" may overlap with "Collaborative Work Environment."

D 10. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

D 11. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

D 12. The terms "and" and "or" have both conjunctive and disjunctive meanings.

D 13. The term "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

D 14. The term "Sales" means net sales (*i.e.*, total sales after deducting discounts, returns, allowances and excise taxes). "Sales" includes Sales of the Relevant Product [Service] whether manufactured [provided] by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased.

D 15. The term "Relevant Product [Service]" as used herein means, and information shall be provided separately for, each [name or list of product(s) or service(s) at issue].

D 16. The term "Relevant Area" means, and information shall be provided separately for, (a) the United States and (b) worldwide [or regional or local market(s)].

D 17. The term "Minimum Viable Scale" means the smallest amount of production [smallest service volume] at which average costs equal the price currently charged for the Relevant Product [Service]. It should be noted that Minimum Viable Scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

D 18. The term "Sunk Costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the Relevant Product [provide the Relevant Service] that cannot be recovered through the redeployment of these assets for other uses.

D 19. The term "Technology Assisted Review" means any process that utilizes a computer algorithm to limit the number of potentially responsive documents subject to a manual review. A keyword search of documents with no further automated processing is not a Technology Assisted Review.

INSTRUCTIONS

For the purposes of this Request, the following Instructions apply:

I 1. All references to year refer to calendar year. Unless otherwise specified, each of the Specifications calls for: (1) documents for each of the years from **[January 1, Yr-2]** to the present; and (2) information for each of the years from January 1, **[Yr-3]** to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the 12-month period covered, and provide the Company's best estimate of calendar year data.

I 2. This Request shall be deemed continuing in nature so as to require production of all documents responsive to any Specification included in this Request produced or obtained by the Company up to 45 calendar days prior to the date of the Company's full compliance with this Request. [except for documents responsive to Specification 7, Specification 20, and Specification 26, for which the date is 21 calendar days prior to the date of the Company's full compliance with this Request.]

I 3. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular Specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

The term "Sensitive Personally Identifiable Information" means an individual's Social Security Number alone; or an individual's name, address, or phone number in combination with one or more of the following:

- date of birth
- driver's license number or other state identification number, or a foreign country equivalent
- passport number
- financial account number
- credit or debit card number

The term "Sensitive Health Information" includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I 4. Form of Production: The Company shall submit documents as instructed below absent written consent.

(a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

(i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted, metadata and TIFF image placeholder.

(ii) Submit Emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.

Metadata/Document Information	Description
Email Subject	Subject line of the Email or Calendar Invite
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (*e.g.*, docx, xlsx).
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message etc.
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Redaction	Indicates Yes or No status regarding document redactions.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

(iii) Submit Email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.

Metadata/Document Information	Description
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (*e.g.*, docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message etc.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Author	Author field value extracted from the metadata of a native file
Last Author	Last Saved By field value extracted from metadata of a native file
Redaction	Indicates Yes or No status regarding document redactions.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.

Metadata/Document Information	Description
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

(iv) Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message etc.
Author	Author field value extracted from the metadata of a native file
Last Author	Last Saved By field value extracted from metadata of a native file
Redaction	Indicates Yes or No status regarding document redactions.

Metadata/Document Information	Description
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (*e.g.*, docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

(v) Submit documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message etc.

Page count	Number of pages in record.
Redaction	Indicates Yes or No status regarding document redactions.
Custodian	Name of person from whom the file was obtained.

(vi) Submit redacted documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction I 7.

(b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.

(c) Produce electronic file and ESI processed submissions as follows:

(i) For productions over 20 gigabytes, use an External Hard Disc Drive (stand-alone portable or hard drive enclosure) or USB Flash Drive in Microsoft Windows-compatible, uncompressed data format.

(ii) For productions under 20 gigabytes, submissions may be transmitted electronically via FTP. The FTC uses Kiteworks Secure File Transfer.

To request a Kiteworks upload invitation, contact the FTC representative identified in the request you received.

Use of other File Transfer methods is permitted. Please discuss this option with the FTC representative identified in the request to determine the viability.

(iii) CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible computers, are acceptable storage formats.

(iv) <u>All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request</u>.

(v) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover,

is strongly encouraged.

(d) Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

(e) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this Request.

I 5. Before using software or technology (including search terms, email threading, Technology Assisted Review, deduplication, or similar technologies) to identify or eliminate documents, data, or information potentially responsive to this Request, the Company must submit a written description of the method(s) used to conduct any part of its search. In addition, for any process that relies on search terms to identify or eliminate documents, the Company must submit: (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the frequency of each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company terminology. For any process that relies on a form of Technology Assisted Review to identify or eliminate documents, the Company must include (a) confirmation that subject-matter experts will be reviewing the seed set and training rounds; (b) recall, precision, and confidence-level statistics (or an equivalent); and (c) a validation process that allows Commission representatives to review statistically-significant samples of documents categorized as non-responsive documents by the algorithm.

I 6. All documents responsive to this Request:

(a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files;

(b) shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (*e.g.*, ABC-00000001);

(c) if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(d) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a

chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format TIFF);

(e) shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that Person's documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that, Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and

(f) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.

I 7. If any documents or parts of documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes, in separate fields, a privilege identification number; beginning and ending document control numbers; parent document control numbers; attachments document control numbers; family range; number of pages; all authors; all addressees; all blind copy recipients; all other recipients; all custodians; date of the document; the title or subject line; an indication of whether it is redacted; the basis for the privilege claim (*e.g.*, attorney-client privilege), including the underlying privilege claim if subject to a joint-defense or common-interest agreement; and a description of the document's subject matter. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the Person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document or part of a document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this Instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third party, such as internal law firm memoranda, may be omitted from the log. Provide the log in Microsoft Excel readable format.

I 8. If the Company is unable to answer any question fully, supply such information and data as are available. Explain why the answer is incomplete, the efforts made by the Company to obtain the information and data, and the source from which the complete

answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

I 9. If documents responsive to a particular Specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy as disclosed or described in response to Specification 27 of this Request, but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify the Persons having knowledge of the content of such documents.

I 10. In order for the Company's response to this Request to be complete, the attached certification form must be executed by the Company official supervising compliance with this Request, notarized, and submitted along with the responsive materials.

I 11. Any questions you have relating to the scope or meaning of anything in this Request or suggestions for possible modifications thereto should be directed to **[Staff Contact Name]** at **[Telephone Number]**. The response to the Request shall be delivered per the instruction of **[Staff Contact Name]** during the course of normal business (8:30 a.m. to 5:30 p.m., Monday through Friday). **[Staff Contact Name]** will provide specific mail delivery instructions should that method of transmittal be required.

CERTIFICATION

As required by §803.6 of the implementing rules for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, this response to the Request for Additional Information and Documentary Material, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the Company will not object based on the Commission not offering the original document.

_____ (Signature)

_____
(Type or Print Name and Title)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____day of _____, 20___.

_____
(Notary Public)

_____
(Date Commission Expires)