

ANTITRUST LAW

Unit 6: DOJ/FTC Merger Review

Professor Dale Collins
Georgetown University Law Center
Spring 2026

Table of Contents

Statutes

Clayton Act § 7, ¶ 1, ch. 323, § 7, 38 Stat. 731 (1914).....	4
Clayton Act § 7, ¶ 1 (current version marked for changes against 1914 version) .	4
Clayton Act § 7 (complete current version).....	5

Premerger notification

Fed. Trade Comm’n, Premerger Notification and the Merger Review Process.....	8
Fed. Trade Comm’n, Premerger Notification Office, Introductory Guide I: What Is the Premerger Notification Program? An Overview (rev. Apr. 2024).....	11
Hart-Scott-Rodino Act, Clayton Act § 7A, 18 U.S.C. § 18a (Premerger notification and waiting period)	26
Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026) (effective Feb. 17, 2026)	33
Notification and Report Form for Certain Mergers and Acquisitions (Acquiring Persons) (rev. Oct. 2024)	35
Instructions (rev. Oct. 2024).....	47
Items 4(c) and 4(d)	69
2024 HSR form revision	74
Major changes to the HSR form adopted in 2024.....	76
“Business Documents” required by the 2024 Form	79

Voluntary request letters

U.S. Dept. of Justice, Antitrust Div., Model Voluntary Request Letter (March 2021).....	82
--	----

Second requests

Fed. Trade Comm’n, Request for Additional Information and Documentary Material Issued to [Company] (Model Second Request) (rev. Jan. 2024)	86
--	----

“Gun jumping”

U.S. Dept. of Justice, Press Release, Flakeboard Abandons Its Proposed Acquisition Of SierraPine: Decision to Abandon Deal Preserves Competition in the MDF Industry (Oct. 1, 2014).....	114
U.S. Dept. of Justice, Press Release, Justice Department Reaches \$5 Million Settlement with Flakeboard, Arauco, Inversiones Angelini and SierraPine for Illegal Premerger Coordination (Nov. 7, 2014).....	116
Complaint, United States v. Flakeboard Am. Ltd., No. 3:14-cv-4949 (N. D. Cal. filed Nov. 7, 2014).....	118
Stipulation, United States v. Flakeboard Am. Ltd., No. 3:14-cv-4949 (N. D. Cal. filed Nov. 7, 2014).....	130
Exhibit A: Proposed Final Judgment.....	137

Statutes

STATUTORY SUBSTANTIVE STANDARDS**Clayton Act § 7, ¶ 1
Ch. 323, § 7, 38 Stat. 731 (1914)**

That no corporation engaged in commerce shall acquire, acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

**Clayton Act § 7, ¶ 1
(current version—marked for changes against 1914 version)**

~~That no corporation~~No person engaged in commerce ~~shall acquire, or in any activity affecting commerce shall~~ acquire, directly or indirectly, the whole or any part of the stock or other share capital ~~of another corporation~~and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce, ~~where~~or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be ~~to~~ substantially to lessen competition ~~between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or, or to~~ tend to create a monopoly ~~of any line of commerce.~~

Clayton Act § 7
(complete current version)

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal

by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary. [18 U.S.C. § 18]

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 **N**OTIFICATION **O**FFICE

<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 persons⁴; 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.

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.

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).

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>.

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

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-notice>

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 available material 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.]

“Commission”) by Southern International Co., Ltd. (the “Complainant”) against Daynamez Group of Companies LLC (the “Respondent”).¹ Complainant states that the Commission has subject-matter jurisdiction over the complaint pursuant to 46 U.S.C. 41301 and 46 CFR 502.61(c), and personal jurisdiction over Respondent as an entity that “acted functionally” as a non-vessel-operating common carrier.

Complainant is a limited liability company and ocean transportation intermediary organized and operating under the laws of Vietnam with its principal place of business located in Ho Chi Minh City, Vietnam.

Complainant identifies Respondent as a limited liability company that engages in the business of providing ocean transportation and logistics services, organized and operating under the laws of the state of Virginia with its principal place of business located in Fairfax, Virginia.

Complainant alleges that Respondent violated 46 U.S.C. 40901, 40902, and 41102(a), (b), and (c). Complainant alleges these violations arose from Respondent’s operating as a non-vessel-operating common carrier without a license, failure to remit payment to relevant carriers for the shipping of 558 containers contracted by Complainant, repeated misappropriation of funds, and other acts or omission by Respondent.

Per the presiding judge’s December 1, 2025 order in this proceeding, an answer to the amended complaint was to be filed with the Commission within 25 days after the date of service of the amended complaint.

The full text of the complaint can be found in the Commission’s electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/25-24/>. This proceeding is assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by August 31, 2026, and the final decision of the Commission shall be issued by March 15, 2027.

(Authority: 46 U.S.C. 41301; 46 CFR 502.61(c))

¹ This amended complaint was originally submitted via email directly to the Commission’s Office of Administrative Law Judges on December 10, 2025, and served by Complainant on Respondent that same day. The Office of the Secretary was not included as an email recipient on the amended complaint. Pursuant to 46 CFR 502.2(c) and the September 5, 2025 Initial Order, filings in this proceeding that are submitted via email must be sent to the Secretary (secretary@fmc.gov) and the opposing party, with a courtesy copy (cc) to the presiding judge (judges@fmc.gov).

Served: January 13, 2026.
David Eng,
Secretary.
 [FR Doc. 2026–00790 Filed 1–15–26; 8:45 am]
BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 26–02]

Nancy Prior, Complainant v. AMOOV Group; FreightLead LLC; and Air 7 Seas Transport Logistics, Inc., Respondents; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (the “Commission”) by Nancy Prior (the “Complainant”) against AMOOV Group; FreightLead LLC; Air 7 Seas Transport Logistics, Inc. (the “Respondents”). Complainant states that the Commission has jurisdiction over the complaint pursuant to the Shipping Act of 1984, 46 U.S.C. 41301(a), and over Respondents FreightLead LLC and Air 7 Seas Transport Logistics, Inc. as licensed ocean transportation intermediaries.

Complainant is an individual residing in Fort Lauderdale, Florida and is the sole contracting party and owner of the household goods shipment at issue.

Complainant identifies Respondent AMOOV Group with a mailing address in Lille, France.

Complainant identifies Respondent FreightLead LLC as a licensed ocean transportation intermediary with a mailing address in Parsippany, New Jersey.

Complainant identifies Respondent Air 7 Seas Transport Logistics, Inc. as a licensed ocean transportation intermediary with a mailing address in Milpitas, California.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c). Complainant alleges that these violations arose from Respondents’ refusal to provide an unredacted master bill of lading, withholding of Complainant’s shipment due to a dispute between Respondents, and other acts or omissions by Respondents.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission’s electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/26-02>. This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by January 14, 2027, and the final decision of the

Commission shall be issued by July 28, 2027.

(Authority: 46 U.S.C. 41301; 46 CFR 502.61(c))

Served: January 14, 2026.

David Eng,
Secretary.
 [FR Doc. 2026–00874 Filed 1–15–26; 8:45 am]
BILLING CODE 6730–02–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 17, 2026.

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 (million)	2026 Adjusted jurisdictional threshold (million)
7A(a)(2)(A)	\$200	\$535.5
7A(a)(2)(B)(i)	50	133.9
7A(a)(2)(B)(i)	200	535.5
7A(a)(2)(B)(ii)(i)	10	26.8
7A(a)(2)(B)(ii)(i)	100	267.8
7A(a)(2)(B)(ii)(II)	10	26.8
7A(a)(2)(B)(ii)(II)	100	267.8
7A(a)(2)(B)(ii)(III)	100	267.8
7A(a)(2)(B)(ii)(III)	10	26.8

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	2026 Adjusted threshold
\$10 million	\$26.8 million.
\$50 million	\$133.9 million.
\$100 million	\$267.8 million.
\$110 million	\$294.5 million.
\$200 million	\$535.5 million.
\$500 million	\$1.339 billion.
\$1 billion	\$2.678 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 *	2026 Adjusted filing fee	2026 Adjusted applicable size of transaction *
\$30,000	less than \$161.5 million	\$35,000	less than \$189.6 million.
100,000	not less than \$161.5 million but less than \$500 million.	110,000	not less than \$189.6 million but less than \$586.9 million.
250,000	not less than \$500 million but less than \$1 billion.	275,000	not less than \$586.9 million but less than \$1.174 billion.
400,000	not less than \$1 billion but less than \$2 billion	440,000	not less than \$1.174 billion but less than \$2.347 billion.
800,000	not less than \$2 billion but less than \$5 billion	875,000	not less than \$2.347 billion but less than \$5.869 billion.
2,250,000	\$5 billion or more	2,460,000	\$5.869 billion or more.

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

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2026–00877 Filed 1–15–26; 8:45 am]

BILLING CODE 6750–01–P

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. 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 \$54,402,000 for Section 8(a)(1), and \$5,440,200 for Section 8(a)(2)(A).

DATES: January 16, 2026.

16 C.F.R. Part 803 - Appendix
 NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

TRANSACTION NUMBER ASSIGNED

FEE INFORMATION (For Payer Only)

AMOUNT PAID

- \$0.00 \$400,000.00
- \$30,000.00 \$800,000.00
- \$100,000.00 \$2,250,000.00
- \$250,000.00 Specific Amount _____

TAXPAYER IDENTIFICATION NUMBER _____
 OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS

NAME OF PAYER (if different from PERSON FILING) _____

WIRE TRANSFER or CERTIFIED CHECK / MONEY ORDER

WIRE TRANSFER CONFIRMATION NO. _____

FROM (NAME OF INSTITUTION) _____

IS THIS A CORRECTIVE 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 web site, www.ftc.gov)

(voluntary) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? YES NO
 IF YES, list jurisdictions: _____

ITEM 1
1(a) PERSON FILING
 NAME
 HEADQUARTERS ADDRESS
 ADDRESS LINE 2
 CITY, STATE, COUNTRY
 ZIP CODE
 WEB SITE

1(b) PERSON FILING NOTIFICATION IS an acquiring person an acquired person both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION
 Corporation Unincorporated Entity Natural Person Other (Specify) _____

1(d) DATA FURNISHED BY
 calendar year fiscal year (specify period): _____ (month/year) to _____ (month/year)

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY

- Not Applicable
- This report is being filed on behalf of a foreign person pursuant to § 803.4.
- 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).

NAME
 ADDRESS
 CITY, STATE, COUNTRY
 ZIP CODE

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

NAME
 ADDRESS
 CITY, STATE, COUNTRY
 ZIP CODE

Not Applicable

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f) _____ %

1(g) IDENTIFICATION OF PERSONS TO CONTACT REGARDING THIS REPORT

CONTACT PERSON 1
 FIRM NAME
 BUSINESS ADDRESS
 CITY, STATE, COUNTRY
 ZIP CODE
 TELEPHONE NUMBER
 FAX NUMBER
 E-MAIL ADDRESS

CONTACT PERSON 2
 FIRM NAME
 BUSINESS ADDRESS
 CITY, STATE, COUNTRY
 ZIP CODE
 TELEPHONE NUMBER
 FAX NUMBER
 E-MAIL ADDRESS

1(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS (See § 803.20(b)(2)(iii))

NAME
 FIRM NAME
 BUSINESS ADDRESS
 CITY, STATE, COUNTRY
 ZIP CODE
 TELEPHONE NUMBER
 FAX NUMBER
 E-MAIL ADDRESS

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS

LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

NAME	NON-REPORTABLE
	<input type="checkbox"/>

NAME	NON-REPORTABLE
	<input type="checkbox"/>

2(b) THIS ACQUISITION IS (put an "X" in all the boxes that apply)

- | | |
|--|--|
| <input type="checkbox"/> an acquisition of assets | <input type="checkbox"/> a consolidation (see § 801.2) |
| <input type="checkbox"/> a merger (see § 801.2) | <input type="checkbox"/> an acquisition of voting securities |
| <input type="checkbox"/> an acquisition subject to § 801.2 (e) | <input type="checkbox"/> a secondary acquisition |
| <input type="checkbox"/> a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50) | <input type="checkbox"/> an acquisition subject to § 801.31 |
| <input type="checkbox"/> an acquisition subject to § 801.30 (specify type) | <input type="checkbox"/> an acquisition of non-corporate interests |
| | <input type="checkbox"/> other (specify) |

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED (acquiring person only in an acquisition of voting securities)

- \$50 million (as adjusted)
 \$100 million (as adjusted)
 \$500 million (as adjusted)
 25% (see Instructions) (as adjusted)
 50%
 N/A

2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD (\$MM)	(v) VALUE OF NON-CORPORATE INTERESTS ALREADY HELD (\$MM)	
\$	\$	
(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD	(vi) PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD	
%	%	
(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)	(vii) TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)	(ix) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION (\$MM)
\$	\$	\$
(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(viii) TOTAL PERCENTAGE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION	(x) AGGREGATE TOTAL VALUE (\$MM)
%	%	\$

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)

 NAME
 ADDRESS
 ADDRESS LINE 2
 CITY, STATE
 ZIP CODE, COUNTRY

ACQUIRED UPE(S)

 NAME
 ADDRESS
 ADDRESS LINE 2
 CITY, STATE
 ZIP CODE, COUNTRY

ACQUIRING ENTITY(S)

 NAME
 ADDRESS
 ADDRESS LINE 2
 CITY, STATE
 ZIP CODE, COUNTRY

ACQUIRED ENTITY(S)

 NAME
 ADDRESS
 ADDRESS LINE 2
 CITY, STATE
 ZIP CODE, COUNTRY

TRANSACTION DESCRIPTION

3(b) SUBMIT A COPY OF THE MOST RECENT VERSION OF THE CONTRACT OR AGREEMENT *(or letter of intent to merge or acquire)*

(IF SUBMITTING PAPER, DO NOT ATTACH THE DOCUMENT TO THIS PAGE)

ATTACHMENT NUMBER

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 4

PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (See *Item by Item instructions*). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION None

CENTRAL INDEX KEY NUMBER

--	--

4(b) ANNUAL REPORTS AND ANNUAL AUDIT REPORTS None

ATTACHMENT OR REFERENCE NUMBER

--	--

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS None

ATTACHMENT OR REFERENCE NUMBER

--	--

4(d) ADDITIONAL DOCUMENTS None

ATTACHMENT OR REFERENCE NUMBER

--	--

ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

Check None at the bottom of the page and provide explanation if you are not reporting revenue

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR TOTAL DOLLAR REVENUES (\$MM)
--	-------------	---

Attachment:

			<input type="checkbox"/> Overlap
--	--	--	----------------------------------

NONE (PROVIDE EXPLANATION)

NAME OF PERSON FILING NOTIFICATION

DATE

5(b) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY

Not Applicable

5(b)(i) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

Attachment:

5(b)(ii) DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

Attachment:

5(b)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

Attachment:

5(b)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

Attachment:

CODE	DESCRIPTION

ITEM 6**6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION**

Attachment:

NAME	CITY	STATE	COUNTRY

6(b) HOLDERS OF PERSON FILING NOTIFICATION

Attachment:

ISSUER/ UNINCORPORATED ENTITY	SHAREHOLDER/ INTEREST HOLDER	HQ ADDRESS	% HELD

6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION

Attachment:

UPE OF FILING PERSON	ISSUER/ UNINCORPORATED ENTITY	% HELD

6(c)(ii) HOLDINGS OF ASSOCIATES (ACQUIRING PERSON ONLY)

Attachment:

TOP LEVEL ASSOCIATE	ISSUER/ UNINCORPORATED ENTITY	% HELD

ITEM 7

OVERLAP DOLLAR REVENUES

7(a) 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION None

CODE	DESCRIPTION	PERSON / ASSOCIATE / BOTH

7(b)(i) LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

UPE OF OTHER FILING PERSON	ENTITY THAT OVERLAPS (IF DIFFERENT)

7(b)(ii) LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES
(ACQUIRING PERSON ONLY)

TOP LEVEL ASSOCIATE	ENTITY THAT OVERLAPS (IF DIFFERENT)

7(c) GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

CODE	GEOGRAPHIC MARKET INFORMATION

7(d) GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON
(ACQUIRING PERSON ONLY)

CODE	GEOGRAPHIC MARKET INFORMATION

ITEM 8

PRIOR ACQUISITIONS (ACQUIRING PERSON ONLY)

NAICS Code			
Acquired Entity			
Former HQ Address			
Acquisition Type	<input type="checkbox"/> Securities	<input type="checkbox"/> Assets	<input type="checkbox"/> Non Corporate Interests Date of Acquisition:
Notes			

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 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 data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the

City of _____, State of _____

[SEAL]

this _____ day of _____, the year _____

Signature _____

My Commission expires _____

Attach the Affidavit required by § 803.5 to the Form.**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 which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also 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 to vary from 8 to 160 hours per response, with an average of 37 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, Room #5301, 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. Our authority to collect Social Security numbers is 31 U.S.C. 7701. 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.

NAME OF PERSON FILING NOTIFICATION

DATE

ENDNOTES

ENDNOTE NUMBER	PERTAINING TO	ENDNOTE TEXT

NAME OF PERSON FILING NOTIFICATION

DATE

ATTACHMENTS

AttachTotal:

ATTACHMENT NUMBER	ATTACHMENT DESCRIPTION		
		DESCRIPTION	
	ATTACHED TO ITEM		

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

OMB: 3084-0005

GENERAL

The Notification and Report Form (“the Form”) is required to be submitted pursuant to § 803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 (“the Rules”). These instructions specify the information that must be provided in response to the items on the Form.

Information

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

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024
Phone: (202) 326-3100
E-mail: HSRhelp@ftc.gov

Copies of the Form, Instructions and Rules as well as information to assist in completing the Form are available at the [PNO website](#).

Definitions

The definitions used in this Form are set forth in the Rules. See [Statute, Rules and Formal Interpretations](#) for copies of the Hart-Scott-Rodino Act (“the Act”), the Rules, and the Federal Register Notices issuing the Rules and Rule amendments (“Statements of Basis and Purpose”).

The term “documentary attachments” refers only to materials submitted in response to Item 3(b), Item 4 and to submissions pursuant to § 803.1(b) of the Rules.

The terms “person filing” or “filing person” mean the ultimate parent entity (“UPE”). (See § 801.1(a)(3)). The terms are used herein interchangeably.

Filing

Parties should file the completed Form, together with all documentary attachments, with the Premerger Notification Office (“PNO”) of the Federal Trade Commission (“FTC”) and the Premerger Unit of the Antitrust Division of the Department of Justice (“DOJ”) (together, “the Agencies”). Filers have the option of submitting a [DVD filing](#) or a [paper filing](#). Filings should be submitted to:

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024

and

Department of Justice
Antitrust Division
Premerger and Division Statistics Unit
450 Fifth Street, N.W., Suite 1100
Washington, D.C. 20530

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at the [PNO website](#).

If submitting a DVD filing

- 1) Provide the FTC with:

TWO (2) DVDs, each containing the Form, affidavit, certification and all documentary attachments, along with the original hard copies of the cover letter, certification and affidavit.

- 2) Provide DOJ with:

TWO (2) DVDs containing the same content as above, along with **THREE** (3) hard copies of the cover letter.

The Form must be a searchable PDF document. All other files must be in searchable PDF or MS Excel spreadsheet format and saved in color, if applicable. This includes the affidavit and certification.

Label each DVD with the name of the person filing, the name of a contact person and that person’s phone number. Leave space on the DVD for the Agencies to write the assigned transaction number and date of receipt.

If the DVD or files contain viruses, passwords, or are not readable, the filing will not be accepted and the waiting period will not start.

For further instructions on DVD filing and specific DVD requirements, go to [HSR Resources](#) on the [PNO website](#).

If submitting a paper filing

- 1) Provide the FTC with:

ONE (1) original and **ONE** (1) copy of the Form, certification page and affidavit, along with an original cover letter and **ONE** (1) set of documentary attachments.

- 2) Provide DOJ with:

TWO (2) copies of the Form, certification page and affidavit, along with **THREE** (3) copies of the cover letter, and **ONE** (1) set of documentary attachments.

Affidavits

Affidavit(s) are required by § 803.5 and must attest to the good faith of the persons filing to complete the transaction. Affidavits 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 or acquired person, the affidavit must still attest to the good faith of the UPE.

In non-§ 801.30 transactions, the affidavit(s) (submitted by both persons filing) must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and 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 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)).

Responses

Enter the name of the person filing notification in Item 1(a) on page 1 of the Form, and enter the same name and the date on which the Form is completed at the top of each page of the Form.

If there is insufficient room on the Form for a response to a particular item, attach "additional pages" behind that item on the Form. Filers must submit a complete set of additional pages within each copy of the Form.

Each additional page should identify, at the top of the page, the name of the person filing notification, the date on which the Form is completed and the item to which it is addressed.

Voluntary submissions pursuant to § 803.1(b) should be identified as V-1, V-2, etc.

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.

All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars.

Limited Response

The acquired person should limit its response in Items 5-7:

- 1) in the case of an acquisition of assets, to the assets being acquired;
- 2) in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities; and
- 3) in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired and all entities controlled by such acquired entities.

Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b)).

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)).

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 recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) and North American Product Classification System (NAPCS) Data

The Form requests "dollar revenues" for non-manufactured and manufactured products with respect to operations conducted within the United States, and for products manufactured outside of the United States and sold into the United States. (See § 803.2(d)). Filing persons must submit data by 6-digit NAICS code to reflect both non-manufacturing and manufacturing dollar revenues. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must also submit data by 10-digit NAPCS code. (See Item 5 below).

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.

Information regarding NAICS and NAPCS is available at www.census.gov. This site also provides assistance in choosing the proper code(s) for reporting in Item 5 of the Form.

Thresholds

Filing fee and notification thresholds are adjusted annually pursuant to 15 U.S.C. § 18A(a)(2)(A) based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). The current threshold values can be found at [Current Filing Thresholds](#).

END OF GENERAL SECTION

[Online Style Sheet for the Form](#)

[Online Tips for the Form](#)

THE FORM - ITEM BY ITEM

Fee Information

The fee for filing the Form 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. Beginning fiscal year 2024, the fee tiers will adjust by the change in the gross national product and the fees may increase as a result of changes to the consumer price index, as provided in 15 U.S.C. 18(a) statutory note.

For current thresholds and fee information, see the [PNO website](#).

Amount Paid

Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges.

Payer Identification

Provide the payer's name and 9-digit Taxpayer Identification Number (TIN). If the payer is a natural person with no TIN, provide the natural person's social security number.

Method of Payment

The preferred method of payment is by electronic wire transfer (EWT). For EWT payments, provide the EWT confirmation number and the name of the financial institution from which the EWT is being sent. If the EWT confirmation number is not available at the time of filing, provide this information to the PNO within two business days of filing.

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.

There are now specific, limited criteria for paying by certified check. Please see the [Filing Fee Information](#) page for details.

Corrective Filings

Put an X in the appropriate box to indicate whether the notification is a corrective filing (i.e., an acquisition that has already taken place without filing, in violation of the statute). See [Procedures for Submitting Post-Consummation Filings](#) for more information on how to proceed in the case of a corrective filing.

Cash Tender Offer

Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy

Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or by a debtor-in-possession for a transaction that is subject to Section 363(b) of the Bankruptcy Code (11 U.S.C. § 363).

Early Termination

Put an X in the "yes" box to request 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 party in any transaction requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification

If, 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 proposed transaction, list the name of each such authority. Response to this item is voluntary.

Index of Hyperlinks in these Instructions:

[PNO website](#): <https://www.ftc.gov/enforcement/premerger-notification-program>

[Statute, Rules and Formal Interpretations](#): <https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations>

[HSR Resources](#): <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources>

[Current Filing Thresholds](#): <https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds>

[Online Style Sheet for the Form](#): <https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions/style-sheet>

[Online Tips for the Form](#): https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_tip_sheet_1.0.5.pdf

[Filing Fee Information](#): <https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information>

[Procedures for Submitting Post-Consummation Filings](#): <https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations>

[Online Tips for Item 4\(c\)](#): <https://www.ftc.gov/sites/default/files/attachments/hsr-resources/4ctipsheet.pdf>

[Online Tips for Item 4\(d\)](#): <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-guidance-item-4d>

[Online Tips for Item 5](#): <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/reporting-revenues-item-5>

[Online Tips for Item 6](#): <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-6-hsr-form>

[Online Tips for Item 7](#): <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-7-hsr-form>

ITEM 1**Item 1(a)**

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. (See § 801.1(a)(3)).

Item 1(b)

Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2).

Item 1(c)

Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, or other (specify). (See § 801.1).

Item 1(d)

Put an X in the appropriate box to indicate whether data furnished in Item 5 is by calendar year or fiscal year. If fiscal year, specify the time period.

Item 1(e)

Put an X in the appropriate box to indicate if the Form is being filed on behalf of the UPE by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if the Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the filing person named in Item 1(a) of the Form.

Item 1(f)

For the acquiring person, if an entity other than the UPE listed in Item 1(a) is making the acquisition, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

For the acquired person, if the assets, voting securities or non-corporate interests of an entity other than the UPE listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

Item 1(g)

Provide the name and title, firm name, address, telephone number, and e-mail address of the primary and secondary individuals to contact regarding the Form. A second contact person is required. (See § 803.20(b)(2)(ii)).

Item 1(h)

Foreign filing persons must provide the name, firm 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)(iii)).

Note: The Form has fields for fax numbers in Item 1. Providing fax numbers is no longer necessary. The fields will be deleted during the next update of the HSR Form.

END OF ITEM 1

ITEM 2**Item 2(a)**

Provide the names of all UPEs of acquiring and acquired persons that are parties to the transaction, whether or not they are required to file notification. If a person is not required to file, check the non-reportable box.

Item 2(b)

Put an X in all the boxes that apply to the transaction.

Item 2(c)

This item should only be completed by the acquiring person where voting securities are being acquired. If more than voting securities are being acquired, respond to this item only regarding voting securities. Put an X in the box to indicate the highest applicable threshold for which notification is being filed: \$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), or 50%. (See § 801.1(h)).

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.

Item 2(d)

Provide the requested information on assets, voting securities and non-corporate interests. If a combination of assets, voting securities and/or non-corporate interests are being acquired and allocation is not possible, note such information in an endnote.

For determining percentage of voting securities, evaluate total voting power per § 801.12.

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

Item 2(d)(i)

State the value of voting securities already held. (See § 801.10).

Item 2(d)(ii)

State the percentage of voting securities already held. (See § 801.12).

Item 2(d)(iii)

State the total value of voting securities to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(iv)

State the total percentage of voting securities to be held as a result of the acquisition. (See § 801.12).

Item 2(d)(v)

State the value of non-corporate interests already held. (See § 801.10).

Item 2(d)(vi)

State the percentage of non-corporate interests already held. (See § 801.1(b)(1)(ii)).

Item 2(d)(vii)

State the total value of non-corporate interests to be held as a result of the acquisition. (See § 801.10).

ITEM 2 cont.

Item 2(d)(viii)

State the total percentage of non-corporate interests to be held as a result of the acquisition. (See §§ 801.10 and 801.1(b)(1)(ii)).

Item 2(d)(ix)

State the value of assets to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(x)

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

END OF ITEM 2

Most Common Mistakes When Completing the HSR Form

- Noncompliant affidavit
- Missing contact information in Item 1(g)
- Failure to describe target in Item 3(a)
- Incomplete privilege log
- Failure to properly identify authors and recipients of Item 4c/4d documents
- Failure to properly round revenues in Item 5 to nearest tenth of a million and failure to list in ascending order
- Failure to provide required geographic information (e.g., state, county, and city or town) in Item 7(c)(iv)(b)
- Failure to provide the total number of states and territories in response to Item 7(c)

ITEM 3

Item 3(a)

At the top of Item 3(a), list the name and mailing address of each acquiring and acquired person, and acquiring and acquired entity, whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned owned by an acquired entity.

In the Transaction Description section, briefly describe the transaction, indicating whether assets, voting securities or non-corporate interests (or some combination) are to be acquired. Describe the business operation(s) being acquired. If assets, describe the assets and whether they comprise a business operation. Also, indicate what consideration will be received by each party and the scheduled consummation date of the transaction.

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

If there are additional filings, such as shareholder backside filings, associated with the transaction, identify those. 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.

Item 3(b)

Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose assets, voting securities or non-corporate interests are to be acquired. Also furnish agreements not to compete and other agreements between the parties. Do not submit schedules and the like unless they contain agreements not to compete, other agreements between the parties, or other important terms of the transaction. For purposes of Item 3(b), responsive documents must be submitted; identifying an internet address or providing a link is not sufficient.

Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while agreements not to compete may be provided in draft form if that is the most recent version.

If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement, if one exists.

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

END OF ITEM 3

ITEM 4

Item 4(a)

Provide the names of all entities within the person filing notification, including the UPE, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key (CIK) number for each entity.

Item 4(b)

Provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification.

The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7.

The acquired person should also provide the most recent reports of the acquired entity(s).

Natural persons need only provide the most recent reports for the highest level entity(s) they control. Do not provide personal balance sheets or tax returns.

If the most recent reports do not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Note that the person filing notification may incorporate a document by reference to an internet address directly linking to the document. (See § 803.2(e)).

Items 4(c) and 4(d)

For each document responsive to Items 4(c) and 4(d), provide the:

- 1) document's title;
- 2) date of preparation; and
- 3) name and title of each individual who prepared the document.

If a specific date is not available, indicate the month and year the document was prepared.

If a large 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. If a third party prepared the document, the date of preparation and the name of the third party will suffice.

Numbering

Number each document provided in response to Items 4(c) and 4(d). Number 4(c) documents 4(c)-1, 4(c)-2, 4(c)-3, etc. Likewise, number 4(d) documents 4(d)-1, 4(d)-2, 4(d)-3, etc., regardless of the three sub-categories within Item 4(d). If providing only one document, identify it as 4(c)-1 or 4(d)-1.

When submitting a document responsive to both 4(c) and 4(d), list it only once, under 4(c) or 4(d). If a document is responsive to both 4(c) and 4(d), do not cross-reference.

Privilege

Note that if the filing person withholds or redacts portions of any document responsive to Items 4(c) and 4(d) based on a claim of privilege, the person must provide a statement of reasons for non-compliance (a "privilege log") detailing the claim of privilege for each withheld or redacted document. (See § 803.3(d)).

For each document, include the:

- 1) title of the document;
- 2) its author;
- 3) author's title/position;
- 4) addressee;
- 5) addressee's title/position;
- 6) date;
- 7) subject matter;
- 8) all recipients of the original and any copies;
- 9) recipients' titles/positions;
- 10) document's present location; and
- 11) who has control over it.

Additionally, the filing person must state the factual basis supporting the privilege claim in sufficient detail to enable staff to assess the validity of the claim for each document without disclosing the protected information.

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.

When creating a privilege log, use a separate numbering system for withheld documents, such as P-1, P-2, etc. Redacted documents should also be listed in a separate log that complies with § 803.3(d).

Item 4(c)

Provide all studies, surveys, analyses and reports which were 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 with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.

Item 4(d)

Item 4(d)(i)

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 acquired person or of the acquiring or acquired entity(s) that specifically relate to the sale of the acquired entity(s)

ITEM 4 cont.

or assets. If no such Confidential Information Memorandum exists, submit any document(s) given to any officer(s) or director(s) of the buyer 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 up to one year before the date of filing.

Item 4(d)(ii)

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 or acquired person or of the acquiring or acquired 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 acquired entity(s) or assets. 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 up to one year before the date of filing.

Item 4(d)(iii)

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 in response to this item.

END OF ITEM 4

Tip for Item 4

If there is insufficient room on the Form for a response, attach "additional pages" behind that item on the Form. (See Responses on page II).

[Online Tips for Item 4\(c\)](#)

[Online Tips for Item 4\(d\)](#)

ITEMS 5 THROUGH 7

Limited response for acquired person. For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of:

- 1) assets, to the assets to be acquired;
- 2) voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer; and/or
- 3) non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s).

A person filing as both acquiring and acquired persons may be required to provide a separate response to Items 5 through 7 in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

ITEM 5

This item requests information regarding dollar revenues. (See NAICS and NAPCS Data section on page II). All persons must submit all dollar revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filers must also submit revenue by 10-digit NAPCS code. Concordance tables between 2012 10-digit NAICS codes and 10-digit 2017 NAPCS codes are available at: <https://www.census.gov/programs-surveys/economic-census/guidance/understanding-napcs.html>.

List all NAICS and NAPCS codes in ascending order.

Acquiring persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time the Form is prepared. Acquired persons filing notification should include the total dollar revenues for all entities included within the acquired entity at the time the Form is prepared. If no dollar revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)

Provide 6-digit NAICS industry data concerning the aggregate U.S. operations of the person filing notification for the most recent year in all NAICS Sectors in which the person engaged. If the dollar revenues for a non-manufacturing NAICS code totaled less than one million dollars in the most recent year, that code may be omitted from Item 5(a).

Additionally, provide 10-digit NAPCS product code data for each product code within all manufacturing NAICS Sectors (31-33) in which the person engaged in the U.S., including dollar revenues for each product manufactured outside the U.S. but sold into the U.S. Sales of any manufactured product should be reported in a manufacturing code, even if sold through a separate warehouse or retail establishment.

If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS codes and 10-digit NAPCS codes may be provided.

Check the Overlap box for every 6-digit manufacturing and non-manufacturing NAICS code and every 10-digit NAPCS code in which both parties to the transaction generate dollar revenues.

Item 5(b)

Complete only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See §§ 801.40 and 801.50). If the acquisition is not the formation of a joint venture, check the "Not Applicable" box.

Item 5(b)(i)

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.

Item 5(b)(ii)

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

Item 5(b)(iii)

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.

Item 5(b)(iv)

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAPCS product code in which it will derive dollar revenues.

END OF ITEM 5

Tip for Item 5

Remember, all financial information should be expressed in millions of dollars, rounded to the nearest one-tenth of a million dollars.

[Online Tips for Item 5](#)

An acquired person does not complete Item 6 if the transaction involves only the acquisition of assets.

If the transaction involves a mix of assets along with voting securities and/or non-corporate interests, the acquired person must complete Item 6 as related to the voting securities and non-corporate interests.

Item 6(a)

Subsidiaries of filing person. List the name, city and state/country of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Entities with total assets of less than \$10 million may be omitted. Alternatively, the filing person may report all entities within it.

Item 6(b)

Minority shareholders. For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within that UPE, list the name and headquarters mailing address of each shareholder that holds 5% or more but less than 50% of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. (See § 801.1(c))

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)

Minority holdings. Item 6(c) requires the disclosure of holdings of 5% or more but less than 50%, of any entity(s) that derives dollar revenues in any 6-digit NAICS code reported by the other person filing notification. Holdings in those entities that have total assets of less than \$10 million may be omitted.

The acquiring person may rely on its regularly prepared financials that list its investments, and those of its associates that list their investments, to respond to Items 6(c)(i) and (ii), provided the financials are no more than three months old.

If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Items 6(c)(i) and 6(c)(ii), it is permissible for the acquiring person to list all entities in which it or its associate(s) holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than \$10 million may be omitted.

Item 6(c)(i)

Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, list the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year.

The acquired person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the

ITEM 6 cont.

same 6-digit NAICS industry code as the acquiring person.

Item 6(c)(ii)

Minority holdings of associates.

This item should only be completed by the acquiring person.

Based on the knowledge or belief of the acquiring person, for each associate (see § 801.1(d)(2)) of the acquiring person holding:

- 1) 5% or more but less than 50% of the voting securities or non-corporate interests of the acquired entity(s); 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 acquired entity(s) or assets also derived dollar revenues in the most recent year;

list the associate, the issuer or unincorporated entity and the percentage held.

END OF ITEM 6

Tip for Item 6(c)

Remember, if NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed.

[Online Tips for Item 6](#)

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate (see § 801.1(d)(2)) of the acquiring person, derived any amount of dollar revenues (even if omitted from Item 5) in the most recent year from operations:

- 1) in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition 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 acquired entity 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.

Also, if the acquiring person reports an associate overlap only, the acquired person does not need to respond to Item 7.

Item 7(a)

Industry Code Overlap Information

Provide the 6-digit NAICS industry code and description for the industry, and indicate whether the overlap is from the person, an associate or both.

Item 7(b)

Item 7(b)(i)

If the UPE of the other person(s) filing notification derived dollar revenues in the same 6-digit industry code(s) listed in Item 7(a), list the name of that UPE and the name of the entity(s) within that UPE that actually derived those dollar revenues, if different from the entity(s) listed in Item 3(a).

Item 7(b)(ii)

This item should only be completed by the acquiring person.

List the name of each associate of the acquiring person that also derived dollar revenues through a controlled operating company(s) in the 6-digit industry and, if different, the name of the entity(s) that actually derived those dollar revenues.

Item 7(c)

Geographic Market Information

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.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(c)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(c)(i)

NAICS Sectors 31-33

For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information 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 person filing notification are sold without a significant change in their form (whether they are sold by the person filing notification or by others to whom such products have been sold or resold). Except for industries covered

ITEM 7 cont.

by Item 7(c)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(c)(ii)

NAICS Sector 42

For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(c)(iii)

NAICS Industry Group 5241

For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a), list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(c)(iv)(a)

Other NAICS Sectors

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

- 11 agriculture, forestry, fishing and hunting
- 21 mining
- 22 utilities
- 23 construction
- 48-49 transportation and warehousing
- 511 publishing industries
- 515 broadcasting
- 517 telecommunications
- 71 arts, entertainment and recreation

Item 7(c)(iv)(b)

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

- 2123 nonmetallic mineral mining and quarrying
- 32512 industrial gases
- 32732 concrete
- 32733 concrete products
- 44-45 retail trade, except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores)
- 512 motion picture and sound recording industries
- 521 monetary authorities - central bank
- 522 credit intermediation and related activities
- 532 rental and leasing services
- 62 health care and social assistance
- 72 accommodations and food services, except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses)
- 811 repair and maintenance, except 8114 (personal and household goods repair and maintenance)
- 812 personal and laundry services

Item 7(c)(iv)(c)

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

- 442 furniture and home furnishings stores
- 443 electronics and appliance stores
- 516 internet publishing & broadcasting
- 518 internet service providers
- 519 other information services
- 523 securities, commodity contracts and other financial investments and related activities
- 5242 insurance agencies and brokerages, and other insurance related activities
- 525 funds, trusts and other financial vehicles
- 53 real estate and rental and leasing
- 54 professional, scientific and technical services
- 55 management of companies and enterprises
- 56 administrative and support and waste management and remediation services
- 61 educational services
- 7212 recreational vehicle parks and recreational camps
- 7213 rooming and boarding houses
- 813 religious, grantmaking, civic, professional, and similar organizations
- 8114 personal and household goods repair and maintenance

Item 7(d)

This item should only be completed by the acquiring person.

Use the geographic markets listed in Items 7(c)(i) through 7(c)(iv) to respond to this item, providing the information for associates of the acquiring person. Provide separate responses for each associate of the acquiring person and, if different, the controlled operating company(s) that actually derived the dollar revenues.

END OF ITEM 7

[Online Tips for Item 7](#)

ITEM 8

This item should only be completed by the acquiring person. Determine each 6-digit NAICS industry code listed in Item 7(a), in which the acquiring person derived dollar revenues of \$1 million or more in the most recent year and in which either:

- 1) the acquired entity derived dollar revenues of \$1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive dollar revenues of \$1 million or more); or
- 2) in the case of acquired assets, to which dollar revenues of \$1 million or more were attributable in the most recent year.

For each such 6-digit NAICS industry code, list all acquisitions of entities or assets deriving dollar revenues in that 6-digit NAICS industry code 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 or 50% or more of non-corporate interests of an unincorporated entity that had annual net sales or total assets greater than \$10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

This item pertains only to acquisitions of U.S. entities/assets and foreign entities/assets with sales in or into the U.S., i.e., with dollar revenues that would be reported in Item 5.

For each such acquisition, supply:

- 1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;
- 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.

END OF ITEM 8

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.

PRIVACY ACT STATEMENT

Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. § 7701. 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 vary from 8 to 160 hours per response, with an average of 37 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, Room #5301
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.

END OF FORM INSTRUCTIONS

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

OMB: 3084-0005

GENERAL

The Notification and Report Form (“the Form”) is required to be submitted pursuant to § 803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 (“the Rules”). These instructions specify the information that must be provided in response to the items on the Form.

Information

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

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024
Phone: (202) 326-3100
E-mail: HSRhelp@ftc.gov

Copies of the Form, Instructions and Rules as well as information to assist in completing the Form are available at the [PNO website](#).

Definitions

The definitions used in this Form are set forth in the Rules. See [Statute, Rules and Formal Interpretations](#) for copies of the Hart-Scott-Rodino Act (“the Act”), the Rules, and the Federal Register Notices issuing the Rules and Rule amendments (“Statements of Basis and Purpose”).

The term “documentary attachments” refers only to materials submitted in response to Item 3(b), Item 4 and to submissions pursuant to § 803.1(b) of the Rules.

The terms “person filing” or “filing person” mean the ultimate parent entity (“UPE”). (See § 801.1(a)(3)). The terms are used herein interchangeably.

Filing

Parties should file the completed Form, together with all documentary attachments, with the Premerger Notification Office (“PNO”) of the Federal Trade Commission (“FTC”) and the Premerger Unit of the Antitrust Division of the Department of Justice (“DOJ”) (together, “the Agencies”). Filers have the option of submitting a [DVD filing](#) or a [paper filing](#). Filings should be submitted to:

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024

and

Department of Justice
Antitrust Division
Premerger and Division Statistics Unit
450 Fifth Street, N.W., Suite 1100
Washington, D.C. 20530

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at the [PNO website](#).

If submitting a DVD filing

- 1) Provide the FTC with:

TWO (2) DVDs, each containing the Form, affidavit, certification and all documentary attachments, along with the original hard copies of the cover letter, certification and affidavit.

- 2) Provide DOJ with:

TWO (2) DVDs containing the same content as above, along with **THREE** (3) hard copies of the cover letter.

The Form must be a searchable PDF document. All other files must be in searchable PDF or MS Excel spreadsheet format and saved in color, if applicable. This includes the affidavit and certification.

Label each DVD with the name of the person filing, the name of a contact person and that person’s phone number. Leave space on the DVD for the Agencies to write the assigned transaction number and date of receipt.

If the DVD or files contain viruses, passwords, or are not readable, the filing will not be accepted and the waiting period will not start.

For further instructions on DVD filing and specific DVD requirements, go to [HSR Resources](#) on the [PNO website](#).

If submitting a paper filing

- 1) Provide the FTC with:

ONE (1) original and **ONE** (1) copy of the Form, certification page and affidavit, along with an original cover letter and **ONE** (1) set of documentary attachments.

- 2) Provide DOJ with:

TWO (2) copies of the Form, certification page and affidavit, along with **THREE** (3) copies of the cover letter, and **ONE** (1) set of documentary attachments.

Affidavits

Affidavit(s) are required by § 803.5 and must attest to the good faith of the persons filing to complete the transaction. Affidavits 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 or acquired person, the affidavit must still attest to the good faith of the UPE.

In non-§ 801.30 transactions, the affidavit(s) (submitted by both persons filing) must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and 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 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)).

Responses

Enter the name of the person filing notification in Item 1(a) on page 1 of the Form, and enter the same name and the date on which the Form is completed at the top of each page of the Form.

If there is insufficient room on the Form for a response to a particular item, attach "additional pages" behind that item on the Form. Filers must submit a complete set of additional pages within each copy of the Form.

Each additional page should identify, at the top of the page, the name of the person filing notification, the date on which the Form is completed and the item to which it is addressed.

Voluntary submissions pursuant to § 803.1(b) should be identified as V-1, V-2, etc.

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.

All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars.

Limited Response

The acquired person should limit its response in Items 5-7:

- 1) in the case of an acquisition of assets, to the assets being acquired;
- 2) in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities; and
- 3) in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired and all entities controlled by such acquired entities.

Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b)).

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)).

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 recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) and North American Product Classification System (NAPCS) Data

The Form requests "dollar revenues" for non-manufactured and manufactured products with respect to operations conducted within the United States, and for products manufactured outside of the United States and sold into the United States. (See § 803.2(d)). Filing persons must submit data by 6-digit NAICS code to reflect both non-manufacturing and manufacturing dollar revenues. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must also submit data by 10-digit NAPCS code. (See Item 5 below).

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.

Information regarding NAICS and NAPCS is available at www.census.gov. This site also provides assistance in choosing the proper code(s) for reporting in Item 5 of the Form.

Thresholds

Filing fee and notification thresholds are adjusted annually pursuant to 15 U.S.C. § 18A(a)(2)(A) based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). The current threshold values can be found at [Current Filing Thresholds](#).

END OF GENERAL SECTION

[Online Style Sheet for the Form](#)

[Online Tips for the Form](#)

THE FORM - ITEM BY ITEM

Fee Information

The fee for filing the Form 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:

Value of assets, voting securities and controlling non-corporate interests to be held	Fee Amount
greater than \$50 million (as adjusted) but less than \$100 million (as adjusted)	\$45,000
\$100 million (as adjusted) or greater but less than \$500 million (as adjusted)	\$125,000
\$500 million or greater (as adjusted)	\$280,000

For current thresholds and fee information, see the [PNO website](#).

Amount Paid

Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges.

Payer Identification

Provide the payer's name and 9-digit Taxpayer Identification Number (TIN). If the payer is a natural person with no TIN, provide the natural person's social security number.

Method of Payment

The preferred method of payment is by electronic wire transfer (EWT). For EWT payments, provide the EWT confirmation number and the name of the financial institution from which the EWT is being sent. If the EWT confirmation number is not available at the time of filing, provide this information to the PNO within two business days of filing.

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.

There are now specific, limited criteria for paying by certified check. Please see the [Filing Fee Information](#) page for details.

Corrective Filings

Put an X in the appropriate box to indicate whether the notification is a corrective filing (i.e., an acquisition that has already taken place without filing, in violation of the statute). See [Procedures for Submitting Post-Consummation Filings](#) for more information on how to proceed in the case of a corrective filing.

Cash Tender Offer

Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy

Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or by a debtor-in-possession for a transaction that is subject to Section 363(b) of the Bankruptcy Code (11 U.S.C. § 363).

Early Termination

Put an X in the "yes" box to request 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 party in any transaction requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification

If, 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 proposed transaction, list the name of each such authority. Response to this item is voluntary.

Index of Hyperlinks in these Instructions:

[PNO website](#): <https://www.ftc.gov/enforcement/premerger-notification-program>

[Statute, Rules and Formal Interpretations](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations>

[HSR Resources](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources>

[Current Filing Thresholds](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds>

[Online Style Sheet for the Form](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions/style-sheet>

[Online Tips for the Form](#):
https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_tip_sheet_1.0.5.pdf

[Filing Fee Information](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information>

[Procedures for Submitting Post-Consummation Filings](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations>

[Online Tips for Item 4\(c\)](#):
<https://www.ftc.gov/sites/default/files/attachments/hsr-resources/4ctipsheet.pdf>

[Online Tips for Item 4\(d\)](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-guidance-item-4d>

[Online Tips for Item 5](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/reporting-revenues-item-5>

[Online Tips for Item 6](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-6-hsr-form>

[Online Tips for Item 7](#):
<https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-7-hsr-form>

ITEM 1**Item 1(a)**

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. (See § 801.1(a)(3)).

Item 1(b)

Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2).

Item 1(c)

Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, or other (specify). (See § 801.1).

Item 1(d)

Put an X in the appropriate box to indicate whether data furnished in Item 5 is by calendar year or fiscal year. If fiscal year, specify the time period.

Item 1(e)

Put an X in the appropriate box to indicate if the Form is being filed on behalf of the UPE by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if the Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the filing person named in Item 1(a) of the Form.

Item 1(f)

For the acquiring person, if an entity other than the UPE listed in Item 1(a) is making the acquisition, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

For the acquired person, if the assets, voting securities or non-corporate interests of an entity other than the UPE listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

Item 1(g)

Provide the name and title, firm name, address, telephone number, and e-mail address of the primary and secondary individuals to contact regarding the Form. A second contact person is required. (See § 803.20(b)(2)(ii)).

Item 1(h)

Foreign filing persons must provide the name, firm 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)(iii)).

Note: The Form has fields for fax numbers in Item 1. Providing fax numbers is no longer necessary. The fields will be deleted during the next update of the HSR Form.

END OF ITEM 1

ITEM 2**Item 2(a)**

Provide the names of all UPEs of acquiring and acquired persons that are parties to the transaction, whether or not they are required to file notification. If a person is not required to file, check the non-reportable box.

Item 2(b)

Put an X in all the boxes that apply to the transaction.

Item 2(c)

This item should only be completed by the acquiring person where voting securities are being acquired. If more than voting securities are being acquired, respond to this item only regarding voting securities. Put an X in the box to indicate the highest applicable threshold for which notification is being filed: \$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), or 50%. (See § 801.1(h)).

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.

Item 2(d)

Provide the requested information on assets, voting securities and non-corporate interests. If a combination of assets, voting securities and/or non-corporate interests are being acquired and allocation is not possible, note such information in an endnote.

For determining percentage of voting securities, evaluate total voting power per § 801.12.

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

Item 2(d)(i)

State the value of voting securities already held. (See § 801.10).

Item 2(d)(ii)

State the percentage of voting securities already held. (See § 801.12).

Item 2(d)(iii)

State the total value of voting securities to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(iv)

State the total percentage of voting securities to be held as a result of the acquisition. (See § 801.12).

Item 2(d)(v)

State the value of non-corporate interests already held. (See § 801.10).

Item 2(d)(vi)

State the percentage of non-corporate interests already held. (See § 801.1(b)(1)(ii)).

Item 2(d)(vii)

State the total value of non-corporate interests to be held as a result of the acquisition. (See § 801.10).

ITEM 2 cont.

Item 2(d)(viii)

State the total percentage of non-corporate interests to be held as a result of the acquisition. (See §§ 801.10 and 801.1(b)(1)(ii)).

Item 2(d)(ix)

State the value of assets to be held as a result of the acquisition. (See § 801.10).

Item 2(d)(x)

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

END OF ITEM 2

Most Common Mistakes When Completing the HSR Form

- Noncompliant affidavit
- Missing contact information in Item 1(g)
- Failure to describe target in Item 3(a)
- Incomplete privilege log
- Failure to properly identify authors and recipients of Item 4c/4d documents
- Failure to properly round revenues in Item 5 to nearest tenth of a million and failure to list in ascending order
- Failure to provide required geographic information (e.g., state, county, and city or town) in Item 7(c)(iv)(b)
- Failure to provide the total number of states and territories in response to Item 7(c)

ITEM 3

Item 3(a)

At the top of Item 3(a), list the name and mailing address of each acquiring and acquired person, and acquiring and acquired entity, whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned owned by an acquired entity.

In the Transaction Description section, briefly describe the transaction, indicating whether assets, voting securities or non-corporate interests (or some combination) are to be acquired. Describe the business operation(s) being acquired. If assets, describe the assets and whether they comprise a business operation. Also, indicate what consideration will be received by each party and the scheduled consummation date of the transaction.

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

If there are additional filings, such as shareholder backside filings, associated with the transaction, identify those. 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.

Item 3(b)

Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose assets, voting securities or non-corporate interests are to be acquired. Also furnish agreements not to compete and other agreements between the parties. Do not submit schedules and the like unless they contain agreements not to compete, other agreements between the parties, or other important terms of the transaction. For purposes of Item 3(b), responsive documents must be submitted; identifying an internet address or providing a link is not sufficient.

Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while agreements not to compete may be provided in draft form if that is the most recent version.

If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement, if one exists.

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

END OF ITEM 3

ITEM 4

Item 4(a)

Provide the names of all entities within the person filing notification, including the UPE, that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission, and provide the Central Index Key (CIK) number for each entity.

Item 4(b)

Provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification.

The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7.

The acquired person should also provide the most recent reports of the acquired entity(s).

Natural persons need only provide the most recent reports for the highest level entity(s) they control. Do not provide personal balance sheets or tax returns.

If the most recent reports do not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Note that the person filing notification may incorporate a document by reference to an internet address directly linking to the document. (See § 803.2(e)).

Items 4(c) and 4(d)

For each document responsive to Items 4(c) and 4(d), provide the:

- 1) document's title;
- 2) date of preparation; and
- 3) name and title of each individual who prepared the document.

If a specific date is not available, indicate the month and year the document was prepared.

If a large 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. If a third party prepared the document, the date of preparation and the name of the third party will suffice.

Numbering

Number each document provided in response to Items 4(c) and 4(d). Number 4(c) documents 4(c)-1, 4(c)-2, 4(c)-3, etc. Likewise, number 4(d) documents 4(d)-1, 4(d)-2, 4(d)-3, etc., regardless of the three sub-categories within Item 4(d). If providing only one document, identify it as 4(c)-1 or 4(d)-1.

When submitting a document responsive to both 4(c) and 4(d), list it only once, under 4(c) or 4(d). If a document is responsive to both 4(c) and 4(d), do not cross-reference.

Privilege

Note that if the filing person withholds or redacts portions of any document responsive to Items 4(c) and 4(d) based on a claim of privilege, the person must provide a statement of reasons for non-compliance (a "privilege log") detailing the claim of privilege for each withheld or redacted document. (See § 803.3(d)).

For each document, include the:

- 1) title of the document;
- 2) its author;
- 3) author's title/position;
- 4) addressee;
- 5) addressee's title/position;
- 6) date;
- 7) subject matter;
- 8) all recipients of the original and any copies;
- 9) recipients' titles/positions;
- 10) document's present location; and
- 11) who has control over it.

Additionally, the filing person must state the factual basis supporting the privilege claim in sufficient detail to enable staff to assess the validity of the claim for each document without disclosing the protected information.

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.

When creating a privilege log, use a separate numbering system for withheld documents, such as P-1, P-2, etc. Redacted documents should also be listed in a separate log that complies with § 803.3(d).

Item 4(c)

Provide all studies, surveys, analyses and reports which were 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 with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.

Item 4(d)

Item 4(d)(i)

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 acquired person or of the acquiring or acquired entity(s) that specifically relate to the sale of the acquired entity(s)

ITEM 4 cont.

or assets. If no such Confidential Information Memorandum exists, submit any document(s) given to any officer(s) or director(s) of the buyer 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 up to one year before the date of filing.

Item 4(d)(ii)

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 or acquired person or of the acquiring or acquired 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 acquired entity(s) or assets. 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 up to one year before the date of filing.

Item 4(d)(iii)

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 in response to this item.

END OF ITEM 4

Tip for Item 4

If there is insufficient room on the Form for a response, attach “additional pages” behind that item on the Form. (See Responses on page II).

[Online Tips for Item 4\(c\)](#)

[Online Tips for Item 4\(d\)](#)

ITEMS 5 THROUGH 7

Limited response for acquired person. For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of:

- 1) assets, to the assets to be acquired;
- 2) voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer; and/or
- 3) non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s).

A person filing as both acquiring and acquired persons may be required to provide a separate response to Items 5 through 7 in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

ITEM 5

This item requests information regarding dollar revenues. (See NAICS and NAPCS Data section on page II). All persons must submit all dollar revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filers must also submit revenue by 10-digit NAPCS code. Concordance tables between 2012 10-digit NAICS codes and 10-digit 2017 NAPCS codes are available at: <https://www.census.gov/programs-surveys/economic-census/guidance/understanding-napcs.html>.

List all NAICS and NAPCS codes in ascending order.

Acquiring persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time the Form is prepared. Acquired persons filing notification should include the total dollar revenues for all entities included within the acquired entity at the time the Form is prepared. If no dollar revenues are reported, check the “None” box and provide a brief explanation.

Item 5(a)

Provide 6-digit NAICS industry data concerning the aggregate U.S. operations of the person filing notification for the most recent year in all NAICS Sectors in which the person engaged. If the dollar revenues for a non-manufacturing NAICS code totaled less than one million dollars in the most recent year, that code may be omitted from Item 5(a).

Additionally, provide 10-digit NAPCS product code data for each product code within all manufacturing NAICS Sectors (31-33) in which the person engaged in the U.S., including dollar revenues for each product manufactured outside the U.S. but sold into the U.S. Sales of any manufactured product should be reported in a manufacturing code, even if sold through a separate warehouse or retail establishment.

If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS codes and 10-digit NAPCS codes may be provided.

Check the Overlap box for every 6-digit manufacturing and non-manufacturing NAICS code and every 10-digit NAPCS code in which both parties to the transaction generate dollar revenues.

Item 5(b)

Complete only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See §§ 801.40 and 801.50). If the acquisition is not the formation of a joint venture, check the "Not Applicable" box.

Item 5(b)(i)

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.

Item 5(b)(ii)

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

Item 5(b)(iii)

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.

Item 5(b)(iv)

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAPCS product code in which it will derive dollar revenues.

END OF ITEM 5

Tip for Item 5

Remember, all financial information should be expressed in millions of dollars, rounded to the nearest one-tenth of a million dollars.

[Online Tips for Item 5](#)

An acquired person does not complete Item 6 if the

transaction involves only the acquisition of assets. If the transaction involves a mix of assets along with voting securities and/or non-corporate interests, the acquired person must complete Item 6 as related to the voting securities and non-corporate interests.

Item 6(a)

Subsidiaries of filing person. List the name, city and state/country of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Entities with total assets of less than \$10 million may be omitted. Alternatively, the filing person may report all entities within it.

Item 6(b)

Minority shareholders. For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within that UPE, list the name and headquarters mailing address of each shareholder that holds 5% or more but less than 50% of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person. (See § 801.1(c))

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)

Minority holdings. Item 6(c) requires the disclosure of holdings of 5% or more but less than 50%, of any entity(s) that derives dollar revenues in any 6-digit NAICS code reported by the other person filing notification. Holdings in those entities that have total assets of less than \$10 million may be omitted.

The acquiring person may rely on its regularly prepared financials that list its investments, and those of its associates that list their investments, to respond to Items 6(c)(i) and (ii), provided the financials are no more than three months old.

If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Items 6(c)(i) and 6(c)(ii), it is permissible for the acquiring person to list all entities in which it or its associate(s) holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than \$10 million may be omitted.

Item 6(c)(i)

Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, list the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year.

The acquired person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the

ITEM 6 cont.

same 6-digit NAICS industry code as the acquiring person.

Item 6(c)(ii)

Minority holdings of associates.

This item should only be completed by the acquiring person.

Based on the knowledge or belief of the acquiring person, for each associate (see § 801.1(d)(2)) of the acquiring person holding:

- 1) 5% or more but less than 50% of the voting securities or non-corporate interests of the acquired entity(s); 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 acquired entity(s) or assets also derived dollar revenues in the most recent year;

list the associate, the issuer or unincorporated entity and the percentage held.

END OF ITEM 6

Tip for Item 6(c)

Remember, if NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed.

[Online Tips for Item 6](#)

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate (see § 801.1(d)(2)) of the acquiring person, derived any amount of dollar revenues (even if omitted from Item 5) in the most recent year from operations:

- 1) in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition 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 acquired entity 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.

Also, if the acquiring person reports an associate overlap only, the acquired person does not need to respond to Item 7.

Item 7(a)

Industry Code Overlap Information

Provide the 6-digit NAICS industry code and description for the industry, and indicate whether the overlap is from the person, an associate or both.

Item 7(b)

Item 7(b)(i)

If the UPE of the other person(s) filing notification derived dollar revenues in the same 6-digit industry code(s) listed in Item 7(a), list the name of that UPE and the name of the entity(s) within that UPE that actually derived those dollar revenues, if different from the entity(s) listed in Item 3(a).

Item 7(b)(ii)

This item should only be completed by the acquiring person.

List the name of each associate of the acquiring person that also derived dollar revenues through a controlled operating company(s) in the 6-digit industry and, if different, the name of the entity(s) that actually derived those dollar revenues.

Item 7(c)

Geographic Market Information

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.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(c)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(c)(i)

NAICS Sectors 31-33

For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information 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 person filing notification are sold without a significant change in their form (whether they are sold by the person filing notification or by others to whom such products have been sold or resold). Except for industries covered

ITEM 7 cont.

by Item 7(c)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(c)(ii)

NAICS Sector 42

For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

Item 7(c)(iii)

NAICS Industry Group 5241

For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a), list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(c)(iv)(a)

Other NAICS Sectors

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

- 11 agriculture, forestry, fishing and hunting
- 21 mining
- 22 utilities
- 23 construction
- 48-49 transportation and warehousing
- 511 publishing industries
- 515 broadcasting
- 517 telecommunications
- 71 arts, entertainment and recreation

Item 7(c)(iv)(b)

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

- 2123 nonmetallic mineral mining and quarrying
- 32512 industrial gases
- 32732 concrete
- 32733 concrete products
- 44-45 retail trade, except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores)
- 512 motion picture and sound recording industries
- 521 monetary authorities - central bank
- 522 credit intermediation and related activities
- 532 rental and leasing services
- 62 health care and social assistance
- 72 accommodations and food services, except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses)
- 811 repair and maintenance, except 8114 (personal and household goods repair and maintenance)
- 812 personal and laundry services

Item 7(c)(iv)(c)

For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

- 442 furniture and home furnishings stores
- 443 electronics and appliance stores
- 516 internet publishing & broadcasting
- 518 internet service providers
- 519 other information services
- 523 securities, commodity contracts and other financial investments and related activities
- 5242 insurance agencies and brokerages, and other insurance related activities
- 525 funds, trusts and other financial vehicles
- 53 real estate and rental and leasing
- 54 professional, scientific and technical services
- 55 management of companies and enterprises
- 56 administrative and support and waste management and remediation services
- 61 educational services
- 7212 recreational vehicle parks and recreational camps
- 7213 rooming and boarding houses
- 813 religious, grantmaking, civic, professional, and similar organizations
- 8114 personal and household goods repair and maintenance

Item 7(d)

This item should only be completed by the acquiring person.

Use the geographic markets listed in Items 7(c)(i) through 7(c)(iv) to respond to this item, providing the information for associates of the acquiring person. Provide separate responses for each associate of the acquiring person and, if different, the controlled operating company(s) that actually derived the dollar revenues.

END OF ITEM 7

[Online Tips for Item 7](#)

ITEM 8

This item should only be completed by the acquiring person. Determine each 6-digit NAICS industry code listed in Item 7(a), in which the acquiring person derived dollar revenues of \$1 million or more in the most recent year and in which either:

- 1) the acquired entity derived dollar revenues of \$1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive dollar revenues of \$1 million or more); or
- 2) in the case of acquired assets, to which dollar revenues of \$1 million or more were attributable in the most recent year.

For each such 6-digit NAICS industry code, list all acquisitions of entities or assets deriving dollar revenues in that 6-digit NAICS industry code 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 or 50% or more of non-corporate interests of an unincorporated entity that had annual net sales or total assets greater than \$10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

This item pertains only to acquisitions of U.S. entities/assets and foreign entities/assets with sales in or into the U.S., i.e., with dollar revenues that would be reported in Item 5.

For each such acquisition, supply:

- 1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;
- 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.

END OF ITEM 8

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.

PRIVACY ACT STATEMENT

Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. § 7701. 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 vary from 8 to 160 hours per response, with an average of 37 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, Room #5301
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.

END OF FORM INSTRUCTIONS

PREMERGER NOTIFICATION REPORTING UNDER THE HSR ACT

Prior to the 2024 revisions to the HSR Form, filing parties were required to submit certain business documents under Items 4(c) and 4(d). Although the revised 2024 form mandates a broader set of document submissions, the framework and agency practices developed under the previous version remain central to understanding how the agencies assess internal documents relating to competition and deal rationale—and how they respond when responsive documents are omitted and later discovered during the review process.

ITEMS 4(c) AND 4(d) OF THE 2023 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 and 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”)**: 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 must 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 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.

- **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.

Although many parties were already submitting these types of documents under Item 4(c), the FTC introduced Item 4(d) to ensure consistency and eliminate uncertainty in the types of documents required to be submitted with the original HSR filing.

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.

Relevance of Item 4(c) and 4(d) documents to the agency review

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. From the reviewing agency's perspective, it is especially important to obtain documents that 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 to subject a transaction to closer regulatory scrutiny:

- *Price effects:* Documents suggesting that the price of some product will increase as a result of the transaction.
- *Market characterization:* Characterizing the market in which the firms compete (since such comments may be misread to endorse a particular view of the market that overstates the competitive impact of a transaction).
- *Competitive impact:* Exaggerated claims about the extent to which the transaction will enhance the competitive position of the parties or disadvantage competitors.
- *Strength of rivals:* Comments minimizing the strength of competitors, including smaller competitors or potential new competitors.
- *Closeness of competition:* Referring to the acquisition target as the closest competitor or suggesting that there are market segments or niches in which the purchaser and the target are uniquely strong and do not face significant competition from others.
- *Barriers to entry:* Suggestions that there are high barriers to entry or expansion in the market.

- *Facilitation of coordination*: 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.
- *Customer impact*: Suggestions that customers will be harmed or concerned about lack of competition as a result of the transaction.
- *Efficiencies*: Suggestions that few synergies, efficiencies, or other cost-savings will be achieved as a result of the transaction.
- *Innovation disincentives*: Suggestions that the transaction will lessen the pressure on either of the parties 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) documents to be incomplete and ineffective. When the agencies discover a 4(c) 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 worst possible time in the investigation. The agencies almost certainly will take the same stringent view on failing to comply with Item 4(d).

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 the HSR Act's reporting and waiting requirements were not observed. In 2025, the maximum civil penalty for violating the HSR Act is \$ 53,088 per day.¹

ADP/AutoInfo: In *ADP/AutoInfo*,² ADP submitted an HSR filing on December 7, 1994, for the acquisition of AutoInfo. ADP's HSR filing contained no 4(c) documents. No second request was issued, and the transaction closed on April 1, 1995. Following the closing, however, a number of customers complained about price increases, leading the FTC to open a non-HSR post-closing 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

¹ Adjustments to Civil Penalty Amounts, 90 Fed. Reg. 5580 (Jan. 17, 2025) (effective Jan. 17, 2025). The Federal Civil Penalties Inflation Adjustment Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015), requires federal agencies to adjust the level of civil monetary penalties for inflation annually, based on the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U).

² *United States v. Automatic Data Processing, Inc.*, No. 96 0606, 1996 WL 224758 (D.D.C. Apr. 10, 1996).

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 or have searched 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. 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 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 settlement.³

Blackstone/Lipson:⁴ 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 party involved in the LBO included a memorandum authored by Lipson describing competitive issues in the 1996 transaction. This was the first time 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.

Hearst Trust/Medi-Span:⁵ Hearst Corporation settled charges of making an incomplete HSR filing for its 1998 acquisition of Medi-Span. As in the *ADP* case, in

³ 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).

⁴ *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).

⁵ *United States v. Hearst Trust*, No. 1:01CV02119, 2001 WL 1478814 (D.D.C. Oct. 15, 2001).

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 to date by a single company for violations of the premerger notification rules.⁶

Iconix/Rocawear:⁷ Iconix Brand Group agreed to a \$550,000 fine to settle charges of making an incomplete filing in 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 made. 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 really 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 Iconix's proposed acquisition with respect to market shares, competition, competitors, markets, and potential for sales growth or expansion into product or geographic markets. The case underscores that even when the agencies have no substantive competition concerns, they continue to seek penalties when a filing party fails to identify and submit required internal documents.

⁶ 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).

⁷ *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).

2024 HSR FORM REVISION

On November 12, 2024, the FTC promulgated a final rule substantially revising the HSR Notification and Report Form with an effective date of February 10, 2025.¹ The new form replaced the original form, introduced in 1978 and, with only minor adjustments, in effect for almost 50 years. The Biden antitrust agencies, however, believed the original form was inadequate for detecting anticompetitive mergers and proposed expanding it to include 34 new categories of information.² The public comments expressed substantial opposition to the proposed changes, arguing that they would impose substantial costs and burdens on the merging parties for very little gain in detection. Although the FTC modified the form in response to these comments, the final form still contained approximately 20 new categories of information.³

In January 2025, the U.S. Chamber of Commerce and other business groups filed a lawsuit challenging the FTC's new HSR rule, alleging that the agencies promulgated it in excess of their statutory authority and that it was arbitrary and capricious in violation of the Administrative Procedure Act.⁴ Notably, the plaintiffs did not seek a temporary restraining order (TRO) or a preliminary injunction to halt the implementation of the new rules. On February 12, 2026, the District Court for the Eastern District of Texas vacated the rule, holding that the HSR Act's "necessary and appropriate" limitation required the FTC to show that the rule's claimed benefits would reasonably outweigh its significant and widespread costs, and that the agency had failed to substantiate its assertions that the revised form would detect illegal mergers more effectively or save sufficient agency resources to justify those costs.⁵ The court further held that the rule was arbitrary and capricious for substantially the same reasons because the FTC had failed to consider whether the rule's benefits bore a rational relationship to its costs and had not adequately explained its rejection of less costly and burdensome alternatives.⁶ The Fifth Circuit later denied the FTC's motion for a stay pending appeal,⁷ and the antitrust agencies resumed accepting the Form and Instructions that were in place before February 10, 2025.⁸

¹ Fed. Trade Comm'n, Premerger Notification; Reporting and Waiting Period Requirements: Final Rule, 89 Fed. Reg. 89216 (Nov. 12, 2024); *see* Press Release, Fed. Trade Comm'n, [FTC Finalizes Changes to Premerger Notification Form](#) (Oct. 10, 2024).

² Fed. Trade Comm'n, Premerger Notification; Reporting and Waiting Period Requirements, 88 Fed. Reg. 42,178, 42,185-42,186 (June 29, 2023) (notice of proposed rulemaking); *see* Press Release, Fed. Trade Comm'n, [FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review](#) (June 27, 2023).

³ *See* Major Changes to the HSR Form Adopted in 2024, *infra*.

⁴ Complaint for Declaratory and Injunctive Relief, Chamber of Commerce v. FTC, No. 6:25-cv-00009 (E.D. Tex. filed Jan. 10, 2025).

⁵ Chamber of Commerce v. FTC, No. 6:25-CV-9-JDK, 2026 WL 402498, at *8-11 (E.D. Tex. Feb. 12, 2026).

⁶ *Id.* at *12-13.

⁷ [Unpublished Order, Chamber of Commerce v. FTC](#), No. 26-40094 (5th Cir. Mar. 19, 2026) (denying stay pending appeal).

⁸ *See* Fed. Trade Comm'n, [Premerger Notification Program](#) (Important Notice of March 19, 2026).

On March 25, 2026, the FTC and DOJ renewed their effort to revise the HSR form by launching a joint public inquiry and request for public comment.⁹ The agencies explained that, in their view, the nearly fifty-year-old pre-February 2025 form remained insufficient for reviewing modern mergers and acquisitions; that more than a year of experience with the updated form, including agency review of more than 3,000 filings, had yielded practical insights into which aspects of the updated form worked well and which might be improved; and that they were seeking comment both on whether the updated form helped the agencies identify potentially anticompetitive mergers more efficiently and determine more quickly whether a Second Request was warranted, and on how to reduce burdens on nonproblematic transactions while making necessary updates. The agencies also indicated that they were evaluating whether further modifications were warranted in light of developments over the prior year, including issues involving foreign-government and sovereign-wealth-fund participation, defense-sector transactions, the scope of the solely-for-the-purpose-of-investment exemption, and nontraditional transaction structures. Responses to the request for comments are due May 26, 2026, by 11:59 p.m. Eastern Time.

⁹ See Fed. Trade Comm'n & U.S. Dep't of Justice, [Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form](#) (Mar. 25, 2026); Press Release, Fed. Trade Comm'n, [Federal Trade Commission and Department of Justice Seek Public Comment on the Premerger Notification and Report Form](#) (Mar. 25, 2026).

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:

- Strategic rationale for the transaction, including supporting documents

¹ After more than a year in effect, the rule promulgating the 2024 HSR form revisions was vacated as invalid. *See* Chamber of Commerce v. FTC, No. 6:25-CV-9-JDK, 2026 WL 402498 (E.D. Tex. Feb. 12, 2026), *stay pending appeal denied*, No. 26-40094 (5th Cir. Mar. 19, 2026). Although the antitrust agencies resumed accepting the Form and Instructions that were in place before February 10, 2025, they have renewed their effort to revise the HSR form by launching a joint public inquiry and request for public comment. *See* Fed. Trade Comm'n & U.S. Dep't of Justice, Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form (Mar. 25, 2026); Press Release, Fed. Trade Comm'n, Federal Trade Commission and Department of Justice Seek Public Comment on the Premerger Notification and Report Form (Mar. 25, 2026). Presumably, the agencies will be seeking to reinstate many of the new additions in the 2024 HSR form.

- 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.

**PREMERGER NOTIFICATION REPORTING
UNDER THE HSR ACT**

**INSTRUCTIONS FOR AN ACQUIRING PERSON:
BUSINESS DOCUMENTS REQUIRED BY THE 2024 HSR FORM¹**

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.

Voluntary Request Letters



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
 Section

Second Requests

**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 \$[xxxxxxx]) 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/YYYY]
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/YYYY]
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) 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.
- (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)

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 Compañía 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.

###

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.

###

14-1246

Amy R. Fitzpatrick (D.C. Bar # 458680)
David Altschuler (D.C. Bar # 983023)
Bindi Bhagat (PA Bar # 308788)
Barry Creech (D.C. Bar # 421070)
Claudia H. Dulmage (OH Bar # 0026543)
Scott I. Fitzgerald (WA Bar # 39716)
Kara Kuritz (D.C. Bar # 991349)
John Lohrer (D.C. Bar # 438989)
Jeffrey Vernon (D.C. Bar # 1009690)
U.S. Department of Justice, Antitrust Division
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

[Additional counsel listed on signature page]

Attorneys for Plaintiff United States of America

**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
WILLIAM J. BAER
Assistant Attorney General for Antitrust

LESLIE C. OVERTON
Deputy Assistant Attorney General

DAVID I. GELFAND
Deputy Assistant Attorney General

PATRICIA A. BRINK
Director of Civil Enforcement

MARK W. RYAN
Director of Litigation

PETER J. MUCCHETTI
Chief, Litigation I

RYAN M. KANTOR
Assistant Chief, Litigation I

/s/ Amy R. Fitzpatrick
AMY R. FITZPATRICK*
DAVID ALTSCHULER
BINDI BHAGAT
BARRY CREECH
CLAUDIA H. DULMAGE
SCOTT I. FITZGERALD
KARA KURITZ
JOHN LOHRER
JEFFREY VERNON

Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

Attorneys for the United States

* Attorney of Record

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:

Counsel for Flakeboard America Limited,
Celulosa Arauco y Constitución, S.A., and
Inversiones Angelini y Compañía Limitada:

Andrew M. Lacy
Simpson, Thacher & Bartlett LLP
1155 F Street, N.W.
Washington, D.C. 20004
Phone: (202) 636-5505
E-mail: alacy@stblaw.com

Counsel for SierraPine:

Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street N.W., Suite 1000
Washington, D.C. 20004
Phone: (202) 637-2183
E-mail: amanda.reeves@lw.com

/s/ Amy R. Fitzpatrick
AMY R. FITZPATRICK
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

Amy R. Fitzpatrick (D.C. Bar # 458680)
U.S. Department of Justice, Antitrust Division
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

Attorney for Plaintiff United States of America

**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

STIPULATION

The undersigned parties hereby stipulate and agree, subject to approval and entry by the Court, that:

1. For the purposes of this action, the Court has jurisdiction over each of the parties and venue of this action is proper in the United States District Court for the Northern District of California. The Defendants also waive service of summons on the Complaint.

2. The parties stipulate that a proposed Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendant and by filing that notice with the Court.

3. The Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notices required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three business days after the Defendants' receipt from the United States of the text of the notice and the identity of the newspapers within which the publication shall be made. The Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notices has been arranged, and (2) the certification of the publication prepared by the newspapers within which the notice was published.

4. The Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

5. This Stipulation will apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (1) the United States has withdrawn its consent, as provided in Paragraph 2 above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. The Defendants represent that the actions they are required to perform and the payments they are required to make pursuant to the proposed Final Judgment can and will be accomplished, and that the Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

Dated: November 7, 2014

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/ Amy R. Fitzpatrick
Amy R. Fitzpatrick
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

FOR DEFENDANTS FLAKEBOARD
AMERICA LIMITED, CELULOSA
ARAUCO Y CONSTITUCIÓN, S.A.,
AND INVERSIONES ANGELINI Y
COMPAÑÍA LIMITADA

/s/ Andrew M. Lacy
Andrew M. Lacy
Simpson, Thacher & Bartlett LLP
1155 F Street, N.W.
Washington, D.C. 20004
Phone: (202) 636-5505
Facsimile: (202) 636-5502
E-mail: alacy@stblaw.com

FOR DEFENDANT SIERRAPINE

/s/ Amanda P. Reeves
Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street N.W., Suite 1000
Washington, D.C. 20004
Phone: (202) 637-2183
Facsimile: (202) 637-2201
E-mail: amanda.reeves@lw.com

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____.

United States District Judge

ATTESTATION

This Stipulation is being filed through the Electronic Case Filing (ECF) system by attorney Amy R. Fitzpatrick of the U.S. Department of Justice, Antitrust Division. By her signature, she attests that the United States has obtained concurrence in the filing of this document from Andrew M. Lacy and Amanda P. Reeves, as required by Civil L.R. 5-1(i)(3).

Dated: November 7, 2014

By: /s/ Amy R. Fitzpatrick
AMY R. FITZPATRICK
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

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:

Counsel for Flakeboard America Limited,
Celulosa Arauco y Constitución, S.A., and
Inversiones Angelini y Compañía Limitada:

Andrew M. Lacy
Simpson, Thacher & Bartlett LLP
1155 F Street, N.W.
Washington, D.C. 20004
Phone: (202) 636-5505
E-mail: alacy@stblaw.com

Counsel for SierraPine:

Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street N.W., Suite 1000
Washington, D.C. 20004
Phone: (202) 637-2183
E-mail: amanda.reeves@lw.com

/s/ Amy R. Fitzpatrick
AMY R. FITZPATRICK
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530
Phone: (202) 532-4558
Facsimile: (202) 307-5802
E-mail: amy.fitzpatrick@usdoj.gov

EXHIBIT A

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

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November 7, 2014, alleging that Defendants violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, and that Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., and SierraPine violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants, without admitting any wrongdoing, agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions required below can and will be made and that Defendants will later raise no

claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Flakeboard, Arauco, and SierraPine under Section 1 of the Sherman Act, 15 U.S.C. § 1, and against all Defendants under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

II. DEFINITIONS

A. “Arauco” means Defendant Celulosa Arauco y Constitución, S.A., a Chilean company; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Agreement” means any contract, agreement, or understanding, formal or informal, written or unwritten.

C. “Competing Product” means any product that any Defendant offers for sale in the United States that is primarily used for the same purpose as any product that any other party to a proposed Transaction with any Defendant offers for sale in the United States.

D. “Defendants” mean Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., the Ultimate Parent Entity, and SierraPine.

E. “Flakeboard” means Defendant Flakeboard America Limited, a Delaware corporation with its headquarters in Fort Mill, South Carolina; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “SierraPine” means Defendant SierraPine, a California limited partnership with its headquarters in Roseville, California; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Negotiation and Interim Period” means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned.

H. “Person” means any individual, partnership, firm, corporation, association, or other legal or business entity.

I. “Production Facility” means any mill, plant, or other asset that manufactures products.

J. “Transaction” means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any person offering a Competing Product.

K. “Ultimate Parent Entity” means Defendant Inversiones Angelini y Compañía Limitada, a holding company with its headquarters in Santiago, Chile, and its successors and assigns.

III. APPLICABILITY

This Final Judgment applies to Flakeboard, Arauco, the Ultimate Parent Entity, and SierraPine as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. This Court orders the relief in Section IV of this Final Judgment under Section 7A of the Clayton Act, 15 U.S.C. § 18a. All other relief in this Final Judgment is to remedy the violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

IV. CIVIL PENALTY UNDER SECTION 7A OF THE CLAYTON ACT

Within 30 days of the entry of this Final Judgment, Flakeboard, Arauco, and the Ultimate Parent Entity must pay \$1.9 million to the United States, and within 60 days of the entry of this Final Judgment, SierraPine must pay \$1.9 million to the United States, for a total of \$3.8 million.

V. DISGORGEMENT TO REMEDY THE VIOLATION OF SECTION 1 OF THE SHERMAN ACT

Within 30 days of the entry of this Final Judgment, Flakeboard must pay \$1.15 million in disgorgement to the United States.

VI. PAYMENT OF CIVIL PENALTY AND DISGORGEMENT

A. The payments specified in this Final Judgment must be made by wire transfer. Before making any transfers a Defendant must contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group, at (202) 514-2481, for wire-transfer instructions.

B. In the event of a default in payment, interest at the rate of 18 percent per annum will accrue thereon from the date of default to the date of payment.

VII. PROHIBITED CONDUCT

A. Flakeboard, Arauco, and SierraPine may not enter into, maintain, or enforce any Agreement with an acquiring or to-be-acquired Person that, during the Negotiation and Interim Period of a Transaction:

1. fixes, raises, sets, stabilizes, or otherwise establishes price or output for any Competing Product;
2. moves, migrates, or otherwise allocates customers for any Competing Product;
3. discloses or seeks the disclosure of information about customers, prices, or output for any Competing Product, except as such disclosures may be permitted in subsection VIII.C or to the extent that such information is publicly available at the time disclosure occurs; or

4. closes a Production Facility that produces a Competing Product without prior written notice to and written approval from the United States.

VIII. PERMITTED CONDUCT

Nothing in this Final Judgment prohibits Defendants from:

- A. entering into an Agreement that a party to a Transaction must continue operating in the ordinary course of business;
- B. entering into an Agreement that a party to a Transaction forego conduct that would cause a material adverse change in the value of to-be-acquired assets;
- C. before closing or abandoning a Transaction, conducting or participating in reasonable and customary due diligence, though no disclosure covered by this section is permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs under a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of the information to any employee of the Person receiving the information who is directly responsible for the marketing, pricing, or sales of the Competing Products;
- D. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions; or
- E. entering into an Agreement where either one of the Defendants and the other party to the Transaction are or would be in a buyer/seller relationship and the Agreement would be lawful in the absence of the planned acquisition.

IX. ANTITRUST COMPLIANCE PROGRAM

- A. Flakeboard and SierraPine must each maintain an antitrust compliance program that designates, within 30 days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer must, on a continuing basis, supervise the review of current and proposed activities to

ensure compliance with this Final Judgment. The Antitrust Compliance Officer must also do the following:

1. Distribute within 45 days of entry of this Final Judgment, a copy of this Final Judgment to each current officer and director, all sales managers and supervisors, and each employee, agent, or other person who, in each case, has responsibility for or authority over mergers and acquisitions; and for Flakeboard's Antitrust Compliance Officer, a copy of this Final Judgment to each current officer and director of Arauco;
2. distribute in a timely manner a copy of this Final Judgment to any officer, director, employee, or agent who succeeds to a position described in Section IX.A.1;
3. obtain within 60 days from the entry of this Final Judgment, and annually thereafter, and retain for the duration of this Final Judgment, a written certification from each person designated in Sections IX.A.1 & 2 that he or she (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and
4. provide a copy of this Final Judgment to each potential partner to a merger or acquisition before the initial exchange of a letter of intent, definitive agreement, or other agreement of merger.

B. Within 60 days of entry Flakeboard and SierraPine must each certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (2) distributed the Final Judgment in accordance with Section IX.A.1.

C. For the term of this Final Judgment, on or before its anniversary date, Flakeboard and SierraPine must each file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VII and IX.

D. Within 45 days of entry of this Final Judgment, Arauco must distribute a copy of this Final Judgment to each current officer and director, sales manager and supervisor, and employee, agent, or other person who, in each case, has responsibility for any business in the United States.

E. If any director, officer, or Antitrust Compliance Officer of any of the Defendants learns of a violation of this Final Judgment, that Defendant must within three business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and must notify the Plaintiff of the violation within 10 business days.

X. RIGHT TO INSPECTION

A. For the purpose of determining or securing compliance with this Final Judgment, any related orders, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy or at Plaintiff's option, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews are subject to the reasonable

convenience of the interviewee and without restraint or interference by Defendants.

B. Upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section may be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time a Defendant furnishes information or documents to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give 10 calendar days' notice before divulging that material in any legal proceeding (other than a grand jury proceeding) to which the Defendant is not a party.

XI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XII. EXPIRATION OF FINAL JUDGMENT

Unless extended by this Court, this Final Judgment expires ten years from the date of its entry.

XIII. COSTS

Each party must bear its own costs of this action.

XIV. PUBLIC-INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any public comments thereon and Plaintiff's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

UNITED STATES DISTRICT JUDGE