



HART-SCOTT-RODINO
PREMERGER NOTIFICATION PROGRAM

INTRODUCTORY GUIDE III

MODEL REQUEST FOR
ADDITIONAL INFORMATION AND
DOCUMENTARY MATERIAL
(SECOND REQUEST)

REVISED MAY 2019

AN OVERVIEW

Guide III is one in a series of guides prepared by the Federal Trade Commission's Premerger Notification Office ("PNO"). *Guide III* provides background information on the process for a Request for Additional Information and Documentary Materials ("Second Request") and contains a sample model of a Second Request. Also, the Antitrust Division of the Department of Justice Second Request Internal Appeal Procedure has been provided as reference.

The Guides are intended to provide a general overview and do not address specific proposed transactions. Because the premerger notification program applies to many different types of reporting persons and to many different types of transactions, the rules implementing the program are necessarily technical and complex. In order to assist those unfamiliar with the program, the PNO has published a variety of helpful information, including guides, procedures, announcements, speeches, rules and regulations, and interpretations of the rules. This information is available at the Federal Trade Commission web site (www.ftc.gov) and from the PNO, 400 Seventh Street N.W., Room 5301, Washington, D.C. 20024.

If you have a specific question on a proposed transaction and your question is not addressed by these reference resources, call the PNO between the hours of 8:30AM and 5:00PM, Eastern Standard Time, Monday through Friday, except holidays, at (202) 326-3100.

Introduction

Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 § 7A of the Clayton Act or (the Act), established the Federal Premerger

Notification Program (the Program). The Act requires that parties to certain mergers or acquisitions notify the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ") (the enforcement agencies) before consummating the proposed acquisition. The parties must wait a specific period of time, usually 30 days (15 days in the case of a cash tender offer or a bankruptcy sale)¹, while the enforcement agencies complete their review. Much of the information needed for a preliminary antitrust evaluation is included in the notification filed with the agencies by the parties to proposed transactions and thus is immediately available for review during the waiting period. The Program became effective September 5, 1978, after final promulgation of the Premerger Notification Rules (the Rules)².

Second Request Process

If either the FTC or the DOJ determines during the waiting period that further inquiry is necessary, the determining agency is authorized by Section 7A(e) of the Clayton Act to request additional information and documentary materials from any person required to file notification. A second request extends the waiting period for a specified period, usually 30 days (10 days in the case of a cash tender offer or a bankruptcy sale)³, after all parties have complied with the request (or, in the case of a tender offer or bankruptcy, after the acquiring person has complied)⁴. This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action, if necessary, 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.

¹ 16 CFR Section 803.10(a).

² 43 FR 33537, effective July 31, 1978.

³ 16 CFR Section 803.20(c).

⁴ 16 CFR Section 803.20(c).

FTC Review Process

The FTC has set forth guidance to make merger investigations more effective and more efficient.⁵

Second Requests are prepared by the Bureau of Competition (“BC”) staff attorneys in consultation with economists from the Bureau of Economics. BC management reviews all second requests before issuance to ensure that specifications are as precisely and narrowly framed as possible and consistent with the needs of the investigation.

After the issuance of a second request, the parties may request a second request conference. At the conference, the BC staff will discuss with the parties the competitive issues raised by the proposed transaction, if known, and consider which information and documents may be obtained relating to the competitive issues raised.

FTC Second Request Appeals Process

All Requests for Additional Information issued by the FTC invite recipients to discuss possible modifications with staff. If the recipient of a Request from the FTC believes that compliance with portions of the Request should not be required and the recipient has exhausted reasonable efforts to obtain modification of the Request from the lead staff attorney and the BC Assistant Director supervising the investigation, the recipient may petition the General Counsel of the FTC to hear an appeal on unresolved issues.

The petition for an appeal shall be made by letter to the General Counsel, with a copy to the lead staff attorney. The petition shall be no longer than 2 pages and shall address petitioner’s efforts to obtain modification from BC staff.

1. Within 2 business days of receipt of such a petition, the General Counsel shall set a date for a conference with the petitioner and investigating staff.
2. Such conference shall take place within 7 business days of receipt of the petition, unless petitioner agrees to a longer time period before the conference or waives his right to a conference.
3. No later than 3 business days before the date of the conference, the petitioner and investigating staff may each submit to the General Counsel written briefs regarding the issues presented in the appeal petition. The briefs shall be no longer than 5 pages double spaced, shall be exchanged with opposing counsel on the same day they are submitted to the General Counsel, and shall include:
 - (a) a concise explanation of the reasons why the petitioner believes compliance should not be required or of the reasons why investigating staff believe compliance is necessary; and
 - (b) modifications that the petitioner proposes.
4. The General Counsel shall render a decision on the appeal within 3 business days following the conference.

A petition for an appeal made pursuant to this procedure must be made before the petitioner asserts substantial compliance with the Request for Additional Information, and the petitioner must agree to defer asserting substantial compliance until after this appeal process is completed or the petitioner withdraws its appeal.

⁵ Bureau of Competition Best Practices for Merger Investigations (August 2015), available at <https://www.ftc.gov/enforcement/merger-review>.

⁶ 66 FR 8721, effective February 1, 2001.

DOJ Second Request Appeals Process⁷

A. Appeals Regarding Modifications

If the recipient of a second request from the Department of Justice believes that the request is unreasonably cumulative, unduly burdensome, or duplicative and, after exhausting reasonable efforts, has been unable to reach agreement with the section chief regarding a modification, the recipient may appeal the matter to a Deputy Assistant Attorney General, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue (the "Reviewer"). The appeal shall be in writing, no longer than ten (10) pages double spaced, and shall include:

1. A concise explanation of the reasons why the recipient believes that compliance would be unduly burdensome, including a summary of compliance discussions at the staff and section chief level; and
2. the modifications that the recipient proposes.

All appeals should be sent to the Office of Operations (Attn: Second Request Appeals), which will immediately forward the request to the appropriate Deputy Assistant Attorney General. Upon receipt of a written appeal, the Reviewer may request additional information from or a telephone conference with the recipient within two (2) business days. The Reviewer will render a decision on the appeal within seven (7) days after the recipient has provided all necessary information.

An appeal must be made prior to assertion of compliance by the recipient, and the recipient must agree to defer asserting compliance until after the appeal process has been completed or the recipient has withdrawn its appeal.

B. Appeals Regarding Substantial Compliance

If the recipient of a second request has certified that it is in substantial compliance with the request and, after exhausting reasonable efforts, has been unable to reach agreement with the section chief regarding compliance, the recipient, after receiving the deficiencies believed to exist from the section chief, may appeal the matter to a Deputy Assistant Attorney General, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue (the "Reviewer"). The appeal shall be in writing, no longer than ten (10) pages double spaced, and shall include a concise explanation of the reasons why the recipient believes that it is in compliance, including a summary of compliance discussions at the staff and section chief level.

All appeals should be sent to the Office of Operations (Attn: Second Request Appeals), which will immediately forward the request to the appropriate Deputy Assistant Attorney General. Upon receipt of a written appeal, the Reviewer may request additional information from or a telephone conference with the recipient within two (2) business days. The Reviewer will render a decision on the appeal within three (3) business days after the recipient has provided all necessary information.

If the Reviewer determines that the recipient is in substantial compliance, the date of certification of substantial compliance will be the date on which the waiting period is determined to have begun. If the Reviewer determines that the recipient is not in substantial compliance, the Reviewer will recommend that a formal deficiency letter be issued.

⁷ <http://www.usdoj.gov/atr/public/8430.htm>

**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 requires a complete search of “the Company” as defined in Paragraph “A” 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 on the last page of this Request. All modifications to this Request must be agreed to in writing by those representatives. You may find it useful to provide the response to Specifications 1 and 10(a) of this Request promptly and discuss limiting the required search with the Commission’s representatives before you begin your search.

SPECIFICATIONS

1. Submit:
 - (a) one copy of each organization chart 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 agent and representative listed in response to Specification 1(b), the agent’s or representative’s title, business address, and telephone number; and
 - (d) a Data Map 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

Model Second Request
Rev. May 2019

- (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.

Model Second Request
Rev. May 2019

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; threatened, pending, or completed lawsuits; and federal and state investigations; 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) identify 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;

Model Second Request
Rev. May 2019

- (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.

Model Second Request
Rev. May 2019

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.]

Model Second Request
Rev. May 2019

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];

Model Second Request
Rev. May 2019

- (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;

Model Second Request
Rev. May 2019

- (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. Submit documents sufficient to show and, to the extent not reflected in such documents, describe in detail the Company's policies and procedures relating to the retention and destruction of documents.
27. 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.

28. 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.
29. 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 requires advance approval from Commission staff per Instruction I(4)(e)), and:

Model Second Request
Rev. May 2019

- (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]; its domestic and foreign parents, predecessors, 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.]; its domestic and foreign parents, predecessors, 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 “Data Map” 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), locations where information is stored, including servers and backup systems (e.g., physical Company facility, third-party vendor location, cloud), and the physical and logical network topology of the Company’s computer systems.
- 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 any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term “documents” includes, without limitation: computer files; email messages; audio files; instant messages; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents

created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

- (a) Unless otherwise specified, the term "documents" excludes:
 - (i) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
 - (ii) architectural plans and engineering blueprints;
 - (iii) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues; and
 - (iv) relational and enterprise databases, except as required to comply with an individual Specification.

- (b) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representatives identified on the last page of this Request. The Commission representative will consider modifying this Definition to:
 - (i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Commission representatives; or
 - (iii) include other proposals consistent with Commission policy and the facts

of the case.

- D 7. The term “Person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- D 8. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- D 9. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- D 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 and Specification 20, 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 text and metadata.
- (ii) Submit emails in TIFF (Group IV) format with 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 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]

Metadata/Document Information	Description
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
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)
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
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
Alternative Custodian	List of custodians where the document has been removed as a duplicate.

Metadata/Document Information	Description
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 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.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
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.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

Metadata/Document Information	Description
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]
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.

Metadata/Document Information	Description
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
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
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(6).

- (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 TIFF submissions as follows:
 - (i) For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.
 - (ii) For productions under 10 gigabytes, CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
 - (iii) 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.
 - (iv) 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. 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 6. If any 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 (hereinafter, "Complete Log") that includes each document's authors, addressees, and date; a description of each document; and all recipients of the original and any copies. 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 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 Complete Log in Microsoft Excel readable format.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log (“Partial Log”) for each Person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those Persons, as specified below:

- (a) The Partial Log will contain the following information: (1) the name of each Person from whom responsive documents are withheld on the basis of a claim of privilege; and (2) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such Person’s files. 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. Provide the Partial Log in Microsoft Excel readable format.
- (b) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of Persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this Request.
- (c) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:
 - (i) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

Model Second Request
Rev. May 2019

- (ii) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and
 - (iii) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.
 - (d) The Company must retain all privileged documents that are responsive to this Request until the expiration of the Hart-Scott-Rodino waiting period or the completion of any litigation challenging the Proposed Transaction.
 - (e) The Commission will retain the right to require the Company to produce a Complete Log for all Persons searched in appropriate circumstances.
- I 7. 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 8. 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 26 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 9. 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 10. 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 addressed to the

Model Second Request
Rev. May 2019

attention of [**Staff Contact Name**] and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, 400 7th Street, SW, Washington, DC 20024. If you wish to submit your response by United States mail, please call the staff listed above for mailing instructions.

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)