

**Item 4(c) Tip Sheet**  
**(04/26/12)**

*Item 4(c) Studies, Surveys, Analyses and Reports*

Item 4(c) requires parties to include “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.” These documents help the FTC and the Antitrust Division of the DOJ understand the competitive impact of a transaction.

Responding to Item 4(c) can be confusing for filers because the item’s broad language is subject to a range of interpretations. Documents that are not in fact responsive to Item 4(c) are commonly included by filing parties, and occasionally responsive documents are overlooked. This guidance should help parties determine with documents should be submitted. \_\_\_\_\_

**The documents discussed below should not be considered an exhaustive list of materials potentially responsive to Item 4(c).**

*Documents capturing internal and shared analyses*

When evaluating a potential acquisition, a buyer frequently will create internal documents that discuss the pros and cons of making the acquisition. Ty

consulted by an officer at the company in determining whether to move forward on a potential acquisition opportunity. If, on the other hand, a company creates a list of competitors because it is looking to evaluate potential acquisition targets, that document, assuming the other criteria are met, would be responsive to Item 4(c).

Thus, a company's ordinary course documents, including strategic plans or corporate overviews, are not responsive to Item 4(c) even if they contain an evaluation or analysis of "market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets," that is "4(c) content." The determination depends on the context in which the document was originally drafted and does not change thereafter.

**There are three exceptions to this general rule:**

The first is when an ordinary course document becomes part of a 4(c) document. For instance, if the company's quarterly review of competitors is circulated to officers of the company along with a cover memo discussing those competitors and market share in the context of a pending transaction, that quarterly review is then part of a responsive 4(c) document. Or, if that quarterly review

## *Email*

The following guidance applies to the submission of email:

- If an email contains 4(c) content, assuming the other c

The following documents are not responsive to Item 4(c):

*Docum*