

DATE

BY E-MAIL

[COUNSEL for acquiring company A]

[COUNSEL for acquired company B]

Re: [Transaction]

Dear [COUNSEL]:

This letter ("the Agreement") sets forth the understanding between the staff of the Bureau of Competition of the Federal Trade Commission ("FTC Staff") and [Company A] and [Company B] (collectively the "Parties") in connection with the proposed acquisition of [B] (the "Proposed Transaction"), which is the subject of Requests for Additional Information and Documentary Materials issued by the Federal Trade Commission on [DATE] (Second Request) [or commensurate request for non-reportable mergers]

This Agreement does not alter the Parties' obligations to certify substantial compliance with the Second Requests, as modified in writing by FTC Staff

This Agreement does not bind the Federal Trade Commission (FTC)

with the Second Requests as modified in writing by FTC Staff, unless the FTC earlier (i) terminates the Hart-Scott-Rodino Act waiting period without issuance of a complaint or following issuance of a complaint and consent order, or (ii) provides written notice that the FTC has closed its investigation.

Commented [A1]: Note for Public Version: The proposed date range shall not be interpreted as either a cap or a limit on the number of days the Parties must wait until closing. Some investigations may require in excess of 90 days for the review contemplated by this agreement.

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phone, as reasonably requested by either FTC Staff or the Party, to promote a continuing dialogue regarding the facts and the relevant legal and economic issues and to discuss progress in meeting the agreed upon schedule discussed in this Agreement. FTC Staff and the Parties intend that the ongoing dialogue include good faith exchange of information regarding any substantive issues, theories, or questions that FTC Staff have regarding the Proposed Acquisition.

The Parties are encouraged to provide FTC Staff the results of their own economic and econometric analyses, and any underlying data. FTC Staff will make good faith and reasonable efforts to provide feedback on the Parties' submissions. Also, as soon as practicable upon discovery of any deficiencies relating to a Party's certification, FTC Staff will notify the Party in writing of the deficiencies.

D. Investigational Hearings and Document Productions

To the extent investigational hearings ("IHs") are conducted in this matter, FTC Staff will use reasonable best efforts to identify witnesses no later than the fifteenth (15th) business day after both Parties certify substantial compliance with the Second Requests ("Compliance Date"). The Parties agree to make such witnesses available such that they will be completed within ten (10) business days after FTC Staff identifies each witness or ten (10) business days after receipt of documents belonging to each witness, whichever is later, as agreed to by staff. The Parties also agree to produce an updated resume for each IH witness at least five (5) business days prior to the date of that witness's IH.

For each IH witness identified prior to a Party certifying substantial compliance, the Party will produce a substantially complete document production, including relevant custodial Specifications identified by FTC Staff, to the FTC at least fifteen (15) business days prior to the agreed upon date of the witness's IH (the "IH Document Production Date"). Contemporaneous with the substantial completion of the document production for each custodian or at the earliest practicable date, the Parties shall identify in writing the cut-off date for the collection of documents for each custodian. If additional responsive, duplicative, and non-privileged documents or information from a witness's files or in response to relevant non-custodial productions are produced after this deadline, FTC Staff reserve the right to hold open, reopen, continue, or reschedule that witness's IH. If FTC Staff decides to hold open or reopen an IH for this reason, FTC Staff will use the additional hearing time to question witnesses on only the documents and information produced after the IH Document Production Date and any additional topics related to those documents and that information.

II. Second Request Production and Post-Compliance Period

A. Rolling Production and Priority Custodian Specifications

The Parties shall use good faith efforts to produce responsive materials on a rolling basis (i.e., the responsive documents from each individual's files will be produced as soon as practicable after such documents are reviewed, processed, and copied, and the Parties' documents will be produced in multiple sequential batches). Each production shall be accompanied by a data overlay updating metadata for the entire production (e.g., updating the

alternative custodian field for all documents in the current production and all documents previously produced)

Within five (5) business days of execution of this Agreement, the Bureau shall identify no more than ~~X~~ Priority Custodians from each Party. The Priority Custodians shall be listed

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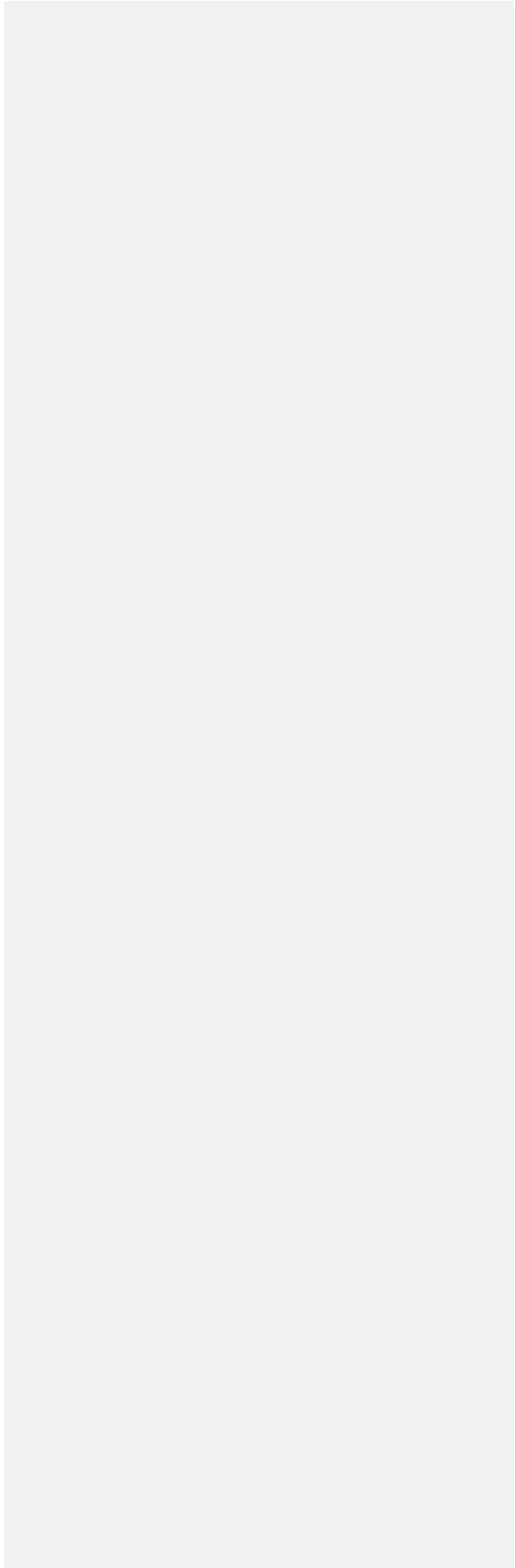
If you agree to the terms set forth in this Agreement, please indicate your agreement by countersigning below and returning to us.

Counsel for [Company A]

Date

Counsel for [Company B]

Date



Attachment A: Pre-Certification Notice Template

[FTC Staff and Address]

Re: Notice of Intent to Certify Substantial Compliance; FTC File No. [XX]

Dear [FTC Staff],

We write on behalf of [Company A] and [Company B] collectively, "the Parties" in connection with the Request for Additional Information and Documentary Material ("Second Request") issued by the FTC to [Company A] and [Company B] on [Date].

We hereby provide notice to FTC Staff that the Parties intend to certify substantial compliance with the Second Request and Order after [Date].

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Attachment B: Pre-Consummation Notice Template

[FTC Staff and Address]

Re: Notice of Intent to Consummate the Proposed Transaction; FTC File No. [XX]

Dear [FTC Staff],

We write on behalf of [Company A] and [Company B] (collectively, "the Parties") in connection with the proposed merger of [Company A] and [Company B] (the "Proposed Transaction")

We hereby provide notice to FTC Staff that the Parties intend to consummate the Proposed Transaction on ~~date~~ [today's date + 30 calendar days] limited by Section A.2 of this Agreement, which shall be deemed the Closing Date for purposes of the timing agreement executed by the Parties and Commission staff ~~Date~~.

We also hereby confirm that on or after [today's date + 30 calendar days], the Parties' good faith belief is that they will be able to close the Proposed Transaction because all conditions precedent to the closing of the Proposed Transaction (including any described in the Parties' Letter

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