



# Department of Justice

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JUSTICE DEPARTMENT ANNOUNCES NEW PROCEDURE TO  
COORDINATE MERGER ANTITRUST INVESTIGATIONS WITH STATES

WASHINGTON, D.C. -- The Department of Justice today announced a new procedure under which the Antitrust Division and state antitrust enforcement agencies can coordinate the collection of information in investigating mergers when the parties voluntarily agree to waive confidentiality requirements.

In many instances, the Antitrust Division and one or more state governments simultaneously investigate a single merger transaction, which can result in duplicative, overlapping and sometimes inconsistent requests for information that can increase considerably the costs of compliance and impede coordination. At the same time, the inability of federal and state enforcers to discuss the merits of the proposed transactions based upon commonly collected information can lead to divergent enforcement conclusions.

The procedure announced today will permit the merging parties, at their initiative, to facilitate coordinated state and federal investigations.

To implement the procedure, the merging parties must give the Department a letter agreeing to provide to state enforcement agencies all information provided to the Department and waiving

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applicable confidentiality provisions to the extent necessary to allow discussions between the Department and state enforcement agencies of otherwise protected information.

After receiving the necessary letters, the Department will provide the designated lead state copies of all information requests issued in the matter, and the expiration dates for all applicable waiting periods. To the extent practicable and desirable, the Department will cooperate with the lead state in analyzing the merger. Any such cooperation will be limited to avoid waiver of deliberative process, work product, or other privileges of either the Department or the state enforcement agencies.

James F. Rill, Assistant Attorney General in charge of the Antitrust Division, said, "The new coordination procedure, which is based on favorable practical experiences in a number of past parallel federal and state investigations, can, in appropriate cases, provide substantial benefits to merging parties, as well as to federal and state antitrust enforcement authorities."

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PROTOCOL FOR COORDINATION IN MERGER INVESTIGATIONS  
BETWEEN THE ANTITRUST DIVISION AND STATE ATTORNEYS GENERAL

Some mergers and acquisition may become subject to parallel investigations by the Antitrust Division of the U.S. Department of Justice and one or more State Attorneys General. In such cases, parties to the merger may find it desirable to facilitate coordination between state and federal antitrust enforcers reviewing the transaction. This protocol describes the procedures under which the Antitrust Division will, upon the request of the merging parties, provide certain otherwise confidential information to State Attorneys General in order to facilitate investigative coordination.

PROCEDURES

This protocol shall apply, upon the request of the merging parties, where all acquiring and acquired persons in the transaction submit a letter to the Division that:

1. agrees to provide to the lead state, as designated under the National Association of Attorneys General Voluntary Premerger Disclosure Compact, all information submitted to the Antitrust Division pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the HSR Act") or pursuant to Civil Investigative Demands; and
2. waives the confidentiality provisions of the HSR Act, 15 U.S.C. § 18a(h), and the the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), to the extent necessary to allow discussions of protected materials between the Antitrust Division and State Attorneys General.

Where the foregoing requirements have been satisfied, the Antitrust Division will provide to the lead state:

1. copies of all requests for additional information issued pursuant to the HSR Act;
2. copies of all civil investigative demands issued pursuant to the Antitrust Civil Process Act;

3. the expiration dates of all applicable waiting periods under the HSR Act.

To the extent practicable and desirable in the circumstances of a particular case, the Antitrust Division will cooperate with the lead state in analyzing the merger.