Model Waiver of Confidentiality

[For use in civil matters involving non-U.S. competition authorities]

This letter confirms that [entity] and its subsidiaries and affiliates (hereinafter “[entity]”) agree to waive the confidentiality provisions contained in the Hart-Scott-Rodino Act, 15 U.S.C. 18a(h), the Federal Trade Commission Act, 15 U.S.C. §§ 41 et seq., the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 4.9 et seq., the Antitrust Civil Process Act, and other applicable laws, regulations, and rules (collectively, “Confidentiality Rules”) as described below in connection with [the investigation of the proposed [acquisition of __ by __ (or describe transaction)/the investigation of____] (“Investigation”). In this letter, “Confidential Information” means written, electronic, and oral information including, but not limited to, [entity’s] documents, data, statements, interrogatory responses, transcripts, oral communications, testimony, and remedial proposals, either in original form, as copies, or as incorporated or reflected in Federal Trade Commission (“FTC”)/Department of Justice (“DOJ”) internal analyses, that the Confidentiality Rules would prohibit from disclosure.

This letter does not constitute a waiver of [entity’s] rights under the Confidentiality Rules with respect to the protection afforded to [entity] against the direct or indirect disclosure of Confidential Information by FTC/DOJ to any third party other than the [non-U.S. competition authority].

DOI/FTC Disclosure of Confidential Information to [Non-U.S. Competition Authority]
With respect to this Investigation, [entity] agrees to waive the confidentiality protections under the Confidentiality Rules to permit the DOJ/FTC to disclose to the [non-U.S. competition authority] Confidential Information obtained from [entity] in connection with the Investigation. [Entity] understands that [non-U.S. competition authority] will maintain the confidentiality of such information consistent with its laws.

This waiver is limited to the Confidential Information obtained from [entity] by the DOJ/FTC in connection with the Investigation.

FTC/DOJ Receipt of [Entity’s] Confidential Information from [Non-U.S. Competition Authority]
[Entity] understands that the FTC/DOJ will protect, pursuant to the Confidentiality Rules, Confidential Information that is obtained by [non-U.S. competition authority] from

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[entity] and provided to the FTC/DOJ. FTC/DOJ will treat such information as if FTC/DOJ requested it directly from [entity] and obtained it under the Confidentiality Rules for all purposes, including confidentiality protections and use of such information.

[Entity] also understands that DOJ/FTC will treat Confidential Information received from [non-U.S. competition authority] in accordance with DOJ/FTC rules and practices governing the destruction or return of documents, including, as appropriate, destroying documents or returning documents to the [non-U.S. competition authority] or entity.

If FTC/DOJ receives a request under the Freedom of Information Act (FOIA) for disclosure of Confidential Information received from [non-U.S. competition authority], FTC/DOJ, acting in accordance with its FOIA policy, will assert all exemptions from disclosure to the extent applicable, and, if a requester commences litigation to obtain Confidential Information under FOIA, will notify [entity] in writing.

Treatment of Privileged Information

If DOJ/FTC is notified of inadvertently produced privileged information, the DOJ/FTC will not provide [non-U.S. competition authority] with copies of such information or will request the return of such information, as appropriate.

It is further understood that FTC/DOJ will not seek from [non-U.S. competition authority] information that is protected by U.S. legal privilege. To the extent possible, [entity] will clearly identify to [non-U.S. competition authority] information that would be subject to U.S. legal privilege. If the FTC/DOJ receives information from [non-U.S. competition authority] that [entity] claims as privileged in the U.S., it is understood that the FTC/DOJ will treat such information as inadvertently produced privileged information.

A copy of this letter is being sent to the [non-U.S. competition authority].

Respectfully submitted,

Authorized representative for [entity]

cc: [contact at non-U.S. competition authority]

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