

## 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.

**Comment [ 1 ]:** Select appropriate statutes.

**Comment [ 2 ]:** Select appropriate agency here and throughout the document.

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].

**Comment [ 3 ]:** Include all non-U.S. competition authorities to which waiver will apply and amend other references accordingly.

### DOJ/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 the course of 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 for disclosure of Confidential Information received from [non-U.S. competition authority] under the Freedom of Information Act (FOIA), 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,

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Authorized representative for [entity]

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

**Comment [ 4]:** This section may be omitted if the applicable privilege laws, rules and regulations of the non-U.S. competition authority are substantially similar to those of the United States.