



# FEDERAL TRADE COMMISSION



## **INTRODUCTORY GUIDE III** to the **PREMERGER NOTIFICATION PROGRAM**

### **Model Request for Additional Information and Documentary Material (Second Request)**

**Premerger Notification Office, Bureau of Competition**  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room 303  
Washington, D.C. 20580  
Phone 202-326-3100 Fax 202-326-2624  
[www.ftc.gov](http://www.ftc.gov)

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## AN OVERVIEW

*Guide III* is one in a series of guides prepared by the Federal Trade Commission's Premerger Notification Office ("PNO"). *Guide III* provides background information on the process for a Request for Additional Information and Documentary Materials ("Second Request") and contains a sample model of a Second Request. Also, the Antitrust Division of the Department of Justice Second Request Internal Appeal Procedure has been provided as reference.

The Guides are intended to provide a general overview and do not address specific proposed transactions. Because the premerger notification program applies to many different types of reporting persons and to many different types of transactions, the rules implementing the program are necessarily technical and complex. In order to assist those unfamiliar with the program, the PNO has published a variety of helpful information, including guides, procedures, announcements, speeches, rules and regulations, and interpretations of the rules. This information is available at the Federal Trade Commission web site ([www.ftc.gov](http://www.ftc.gov)) and from the PNO, 600 Pennsylvania Avenue N.W., Room 301, Washington, D.C. 20580

If you have a specific question on a proposed transaction and your question is not addressed by these reference resources, call the PNO between the hours of 8:30AM and 5:00PM, Eastern Standard Time, Monday through Friday, except holidays, at (202) 326-3100.

### Introduction

Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 § 7A of the Clayton Act or (the Act), established the Federal Premerger

Notification Program (the Program). The Act requires that parties to certain mergers or acquisitions notify the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ") (the enforcement agencies) before consummating the proposed acquisition. The parties must wait a specific period of time, usually 30 days (15 days in the case of a cash tender offer or a bankruptcy sale)<sup>1</sup>, while the enforcement agencies complete their review. Much of the information needed for a preliminary antitrust evaluation is included in the notification filed with the agencies by the parties to proposed transactions and thus is immediately available for review during the waiting period. The Program became effective September 5, 1978, after final promulgation of the Premerger Notification Rules (the Rules)<sup>2</sup>.

### Second Request Process

If either the FTC or the DOJ determines during the waiting period that further inquiry is necessary, the determining agency is authorized by Section 7A(e) of the Clayton Act to request additional information and documentary materials from any person required to file notification. A second request extends the waiting period for a specified period, usually 30 days (10 days in the case of a cash tender offer or a bankruptcy sale)<sup>3</sup>, after all parties have complied with the request (or, in the case of a tender offer or bankruptcy, after the acquiring person has complied)<sup>4</sup>. This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action, if necessary, before the transaction is consummated. If the reviewing agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.

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<sup>1</sup> 16 CFR Section 803.10(a).

<sup>2</sup> 43 FR 33537, effective July 31, 1978.

<sup>3</sup> 16 CFR Section 803.20(c).

<sup>4</sup> 16 CFR Section 803.20(c).

### **FTC Review Process**

The FTC has implemented procedures to make merger investigations more effective and more efficient.<sup>5</sup> Procedures include a review process, conferences, modification procedures and an appeals process.

Second Requests are prepared by the Bureau of Competition (“BC”) litigation staff. BC senior management reviews all second requests before issuance to ensure that specifications are as precisely and narrowly framed as possible and consistent with the needs of the investigation.

Soon after the issuance of a second request, the BC staff will convene a second request conference with the parties to the transaction. At the conference, the BC staff will discuss with the parties the competitive issues raised by the proposed transaction, if known, and consider which information and documents may be obtained relating to the competitive issues raised. The conference should take place within five business days of issuance of the second request, unless the parties have requested a later date.

### **FTC Second Request Appeals Process<sup>6</sup>**

All Requests for Additional Information issued by the FTC invite recipients to discuss possible modifications with staff. If the recipient of a Request from the FTC believes that compliance with portions of the Request should not be required and the recipient has exhausted reasonable efforts to obtain modification of the Request from the lead staff attorney and the BC Assistant Director supervising the investigation, the recipient may petition the General Counsel of the FTC to hear an appeal on unresolved issues.

The petition for an appeal shall be made by letter to the General Counsel, with a copy to the lead staff attorney. The petition shall be no longer than 2 pages in length and shall address petitioner's efforts to obtain modification from BC staff.

1. Within 2 business days of receipt of such a petition, the General Counsel shall set a date for a conference with the petitioner and investigating staff.
2. Such conference shall take place within 7 business days of receipt of the petition, unless petitioner agrees to a longer time period before the conference or waives his right to a conference.
3. No later than 3 business days before the date of the conference, the petitioner and investigating staff may each submit to the General Counsel written briefs regarding the issues presented in the appeal petition. The briefs shall be no longer than 5 pages double spaced, shall be exchanged with opposing counsel on the same day they are submitted to the General Counsel, and shall include:
  - (a) a concise explanation of the reasons why the petitioner believes compliance should not be required or of the reasons why investigating staff believe compliance is necessary; and
  - (b) modifications that the petitioner proposes.
4. The General Counsel shall render a decision on the appeal within 3 business days following the conference.

A petition for an appeal made pursuant to this procedure must be made before the petitioner asserts substantial compliance with the Request for Additional Information, and the petitioner must agree to defer asserting substantial compliance until after this appeal process is completed or the petitioner withdraws its appeal.

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<sup>5</sup> Federal Trade Commission, Bureau of Competition - Memo to staff dated May 16, 2000,  
<http://www.ftc.gov/bc/hsr/MergerReform.htm>.

<sup>6</sup> 66 FR 8721, effective February 1, 2001,  
<http://www.ftc.gov/bc/hsr/appeal~1.htm>

## **DOJ Second Request Appeals Process<sup>7</sup>**

### **A. Appeals Regarding Modifications**

If the recipient of a second request from the Department of Justice believes that the request is unreasonably cumulative, unduly burdensome, or duplicative and, after exhausting reasonable efforts, has been unable to reach agreement with the section chief regarding a modification, the recipient may appeal the matter to a Deputy Assistant Attorney General, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue (the "Reviewer"). The appeal shall be in writing, no longer than ten (10) pages double spaced, and shall include:

1. A concise explanation of the reasons why the recipient believes that compliance would be unduly burdensome, including a summary of compliance discussions at the staff and section chief level; and
2. the modifications that the recipient proposes.

All appeals should be sent to the Office of Operations (Attn: Second Request Appeals), which will immediately forward the request to the appropriate Deputy Assistant Attorney General. Upon receipt of a written appeal, the Reviewer may request additional information from or a telephone conference with the recipient within two (2) business days. The Reviewer will render a decision on the appeal within seven (7) days after the recipient has provided all necessary information.

An appeal must be made prior to assertion of compliance by the recipient, and the recipient must agree to defer asserting compliance until after the appeal process has been completed or the recipient has withdrawn its appeal.

### **B. Appeals Regarding Substantial Compliance**

If the recipient of a second request has certified that it is in substantial compliance with the request and, after exhausting reasonable efforts, has been unable to reach agreement with the section chief regarding compliance, the recipient, after receiving the deficiencies believed to exist from the section chief, may appeal the matter to a Deputy Assistant Attorney General, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue (the "Reviewer"). The appeal shall be in writing, no longer than ten (10) pages double spaced, and shall include a concise explanation of the reasons why the recipient believes that it is in compliance, including a summary of compliance discussions at the staff and section chief level.

All appeals should be sent to the Office of Operations (Attn: Second Request Appeals), which will immediately forward the request to the appropriate Deputy Assistant Attorney General. Upon receipt of a written appeal, the Reviewer may request additional information from or a telephone conference with the recipient within two (2) business days. The Reviewer will render a decision on the appeal within three (3) business days after the recipient has provided all necessary information.

If the Reviewer determines that the recipient is in substantial compliance, the date of certification of substantial compliance will be the date on which the waiting period is determined to have begun. If the Reviewer determines that the recipient is not in substantial compliance, the Reviewer will recommend that a formal deficiency letter be issued.

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<sup>7</sup> <http://www.usdoj.gov/atr/public/8430.htm>

**SAMPLE - MODEL REQUEST for  
ADDITIONAL INFORMATION and DOCUMENTARY INFORMATION  
(SECOUND REQUEST) with Comments**

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The model request for additional information and documentary material is based on the fictitious transaction between Weebyewe Ltd. and Beeside Corporation. Following the model request is a sample certification page and a sample document index.

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**WEEBYEWE CORPORATION**

**July 25, 2001**

**FEDERAL TRADE COMMISSION / DEPARTMENT OF JUSTICE  
MODEL REQUEST FOR ADDITIONAL INFORMATION AND  
DOCUMENTARY MATERIAL**

This model request addresses issues typically encountered in a merger investigation. This model request contains only suggestions for language and the particular circumstances of the merger being investigated will determine the information that will be requested. The suggested language may change as the Commission and Antitrust Division staff gains additional experience using it. The purpose of the model request for additional information is to provide the basic framework of a request for additional information. Comments follow each specification explaining how the information that is sought relates to the issues involved in a merger investigation.

**REQUEST FOR ADDITIONAL INFORMATION AND DOCUMENTARY  
MATERIAL ISSUED TO WEEBYEWE CORPORATION**

Unless modified by agreement with the staff of the [Federal Trade Commission or the Department of Justice], each specification of this Request requires a complete search of "the company" as defined in Paragraph "A" of the Definitions and Instructions which appear after the following Specifications. If the company believes that the required search or any other part of the Request can be narrowed in any way that is consistent with the [Commission's or Department's] need for documents and information, you are encouraged to discuss such questions and possible modifications with the [Commission or Department] representatives identified on the last page of this Request. All modifications to this Request must be agreed to in writing by those representatives. You may find it useful to provide the response to Specification 1 of this Request promptly and discuss limiting the required search with the [Commission's or Department's] representatives before you begin your search.

## SPECIFICATIONS

- i. Submit (a) one copy of each organization chart and personnel directory in effect since January 1, [Yr-3] for the company as a whole and for each of the company's facilities or divisions involved in any activity relating to any relevant product [service] and (b) a list of all agents and representatives of the company, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the company in any capacity relating to any subject and any relevant product covered by this Request (excluding those retained solely in connection with [environmental, tax,] human resources, pensions, benefits, ERISA, OSHA issues).

**Comment:** Documents and information provided in response to this Specification help the Agencies understand the organizational structure of the company and determine the persons within the company who are likely to have relevant documents and information necessary to analyze the transaction being investigated. It typically is useful to respond to this Specification promptly because after reviewing the organization charts it may be apparent that not all divisions, subsidiaries, etc. will be relevant to the Agency's investigation. In such instances, the Agency will entertain suggestions of ways to modify Definition A ("the company") in order to limit the scope of the company's document search.

- ii. List each relevant product manufactured or sold [service provided] by the company, and (a) provide a detailed description of the product [including its end uses] [service]; and (b) state [the brand name] and the division, subsidiary, or affiliate of the company that manufactures or sells [provides] or has manufactured or sold [provided] the product [service].

**Comment:** A description of the relevant product(s) the company manufactures and the corresponding brand names are important to help the Agencies analyze product market definition issues. (See 1992 Department of Justice/Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") § 1.1)

- iii. For each relevant product listed in response to Specification 2 above, state:
  - (a) the company's sales to all customers in each relevant area, stated separately in units and dollars;
  - (b) that portion of the company's sales to customers in each relevant area, stated separately, in units and dollars, that were of products manufactured in the U.S.;
  - (c) that portion of the company's sales to customers in each relevant area, stated separately in units and dollars, that were of products manufactured outside the U.S.;

(d) that portion of the company's sales to customers in each relevant area, stated separately, in units and dollars, that were of products purchased from sources outside the company and resold by the company rather than of products manufactured by the company;

(e) the names and addresses of the [company's 20 largest customers] 20 persons who purchased the greatest unit and dollar amounts of the relevant product from the company in each relevant area; and

(f) the name, address, estimated sales, and estimated market share of the company and each of the company's competitors in each relevant area in the [relevant service] manufacture or sale of the product.

**Comment:** The Agencies use the company's sales data to calculate market shares and concentration in the relevant market. (See Merger Guidelines §§ 1.4, 1.5) The Agencies use the list of competitors to identify the firms that participate in the relevant market. (See Merger Guidelines § 1.3) The Agencies use the list of the largest customers to identify consumers that may be affected by the proposed transaction. (See Merger Guidelines § 2)

iv. State the location of each facility that manufactures or sells [including distribution centers, etc.], or has manufactured or sold, any relevant product [provides any relevant service] for the company, and for each such facility state:

(a) whether the facility was leased, acquired, or built by or for the company, and, if not built by the company, the name of the person who built the facility for the company or from whom the facility was leased or acquired;

(b) the date of the facility's opening or acquisition, the length of time and cost in dollars required to open the facility from initial plan to full production, and its current estimated replacement cost and time necessary to replace it; and

(c) the current nameplate and practical capacity and the annual capacity utilization rate for production of each relevant product manufactured at the facility, specifying all other factors used to calculate capacity, the number of shifts normally used at the facility, and the feasibility of increasing capacity [by X% or more], including the costs and time required.

**Comment:** Information about the company's facilities helps the Agencies identify the geographic location of the company's facilities, and analyze geographic market issues and the entry conditions existing in the relevant market. (See Merger Guidelines §§ 1.2, 3)

- v. For each relevant product [service], submit (a) [a sample of the product], (b) one copy of all current selling aids and promotional materials and (c) all documents relating to advertising plans and strategies.

**Comment:** The company's selling aids and advertising plans help the Agencies analyze product and geographic market definition issues, identify the firms that the company believes participate in the relevant market and evaluate those firms' competitive significance. (See Merger Guidelines §§ 1, 2)

- vi. Submit all documents relating to the company's or any other person's plans relating to any relevant product [service], including, but not limited to, business plans, short term and long range strategies and objectives; budgets and financial projections; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For regularly prepared budgets and financial projections, the company need only submit one copy of final year-end documents and cumulative year to date documents for the current year.

**Comment:** Documents provided in response to this Specification are important to all aspects of the Agencies' investigation and helps the Agencies analyze the potential adverse competitive effects that may result from the transaction. (See Merger Guidelines § 2) For example, the company's business and/or strategic plans are often an excellent source of information necessary to evaluate and analyze product and geographic market definition issues, identify the firms that participate in the relevant market, calculate market shares and concentration in the relevant market. (See Merger Guidelines § 1) In addition, the company's expansion or retrenchment plans often provide important information regarding the entry conditions in the relevant market. (See Merger Guidelines § 3) Further, the company's financial projections usually are one of the best sources of information relating to the potential efficiencies that may result from the transaction and the financial condition of the company. (See Merger Guidelines §§ 4, 5)

- vii. Submit all documents relating to competition in the manufacture or sale of any relevant product [each relevant service], including, but not limited to, market studies, forecasts and surveys, and all other documents relating to (a) the market share or competitive position of the company or any of its competitors; (b) the relative strength or weakness of companies producing or selling each relevant product [providing each relevant service]; (c) supply and demand conditions; (d) attempts to win customers from other companies and losses of customers to other companies, [including, but not limited to, all sales personnel call reports]; (e) allegations by any person that any company that manufactures or sells any relevant product [provides any relevant service] is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost or price of any relevant product [service] as a result of competition from any other possible substitute product [service].

**Comment:** Documents provided in response to this Specification are important to all aspects of the Agencies' investigation. For example, documents relating to supply and demand conditions, attempts to win customers, and allegations regarding competitive conditions in the relevant market are important to evaluate and analyze the potential adverse competitive effects that may result from the transaction. (See Merger Guidelines § 2) In addition, documents relating to substitute products and to the strengths, weaknesses and competitive positions of firms in the relevant markets are important to analyze product and geographic market definition issues, to identify the firms that participate in the relevant market, and to calculate market shares and concentration in the relevant market. (See Merger Guidelines § 1)

- viii. Submit all documents relating to the company's or any other person's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any relevant product [service].

**Comment:** Documents relating to pricing policies and decisions regarding the relevant product help the Agencies analyze product and geographic market definition issues, identify the firms that participate in the relevant market, and evaluate and analyze the potential adverse competitive effects that may result from the transaction. (See Merger Guidelines §§ 1, 2)

- ix. State the name and address of each person that has entered or attempted to enter into, or exited from, the manufacture or sale of each relevant product [any relevant service] in any relevant area from [Yr-10] to the present. For each such person, identify the relevant product(s) it manufactures or sells or manufactured or sold [service(s) it provides or provided], the relevant area in which it sells or sold the product(s) [provided the services], and the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

**Comment:** Information relating to firms that have entered or exited the relevant market helps the Agencies identify the firms that currently participate in the relevant market, and analyze the entry conditions in the relevant market. (See Merger Guidelines §§ 1.3, 3)

- x. For each relevant product [service], identify or describe (including the bases for your response) and submit all documents relating to:
- (a) requirements for entry into the production or sale of the product [providing the relevant service] in each relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
  - (b) the total costs required for entry into the production or sale of the product [providing the relevant service]; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the manufacture or sale of the product [providing the relevant service]; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;
  - (c) possible new entrants into the manufacture or sale of the product [providers of the service] in each relevant area; and
  - (d) the minimum viable scale, the minimum and optimum plant size, production line size, capacity utilization rate, production volume, requirements for multi-plant, multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the manufacture or sale of the product [providing the relevant service] {deleting references as appropriate for service industries}.

**Comment:** Documents and information relating to the entry conditions in the relevant market help the Agencies analyze the timeliness, likelihood and sufficiency of entry into the relevant market. (See Merger Guidelines § 3)

- xi. Submit all documents (except engineering and architectural plans and blueprints) relating to any plans of the company or any other person for the construction of new facilities, the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than \$xxxxxxx) of current facilities for [providing any relevant service] the manufacture or sale of any relevant product.

**Comment:** Documents relating to the company's efforts to expand, convert or modify its facilities helps the Agencies analyze the timeliness, likelihood and sufficiency of entry into the relevant market. (Merger Guidelines § 3)

- xii. Submit all documents relating to actual and potential imports into, or exports from, each relevant area of any relevant product, including, but not limited to, documents showing: the names of importers or exporters; the market share or position of such importers or exporters; the quality or quantity of products imported or exported in total or by any person; and any costs or barriers to imports or exports. Describe all quotas, tariffs, and transportation costs relating to imports into, or exports from, each relevant area of any relevant product.

**Comment:** Documents and information relating to importing the relevant product into and exporting the relevant product from a relevant area help the Agencies analyze geographic market definition issues, identify the firms that participate in the relevant market, and evaluate the market shares and concentration in the relevant market. (See Merger Guidelines § 1) In addition, this information helps the Agencies analyze the potential adverse competitive effects that may result from the transaction, and the entry conditions in the relevant market. (See Merger Guidelines § 2, 3)

- xiii. Identify, and state whether the company is a member of or subscribes to, all trade associations, information services, and other organizations relating to the production or sale of any relevant product [relating to any relevant service]. Submit one copy of all documents that discuss or describe production, sale, prices, competition or entry conditions relating to the relevant product submitted by the company or any other person to each such association, service and organization or its agents. Submit one copy of all documents that discuss or describe production, sale, prices, competition or entry conditions relating to the relevant product received by the company or any other person from each such association, service and organization or its agents.

**Comment:** Documents and information provided to and received from trade associations and other organizations relating to the relevant product are important to several aspects of the Agencies' investigation. For example, such documents often assist the Agencies in analyzing product and geographic market definition issues, identifying the firms that participate in the relevant market, calculating market shares and concentration in the relevant market, analyzing the potential adverse competitive effects that may result from the transaction, and analyzing the entry conditions in the relevant market. (See Merger Guidelines §§ 1, 2, 3)

- xiv. Submit all documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance or merger of any kind involving the manufacture or sale of any relevant product [any relevant service] other than the proposed acquisition of Beeside by Weebyewe.

**Comment:** Documents relating to other acquisitions, divestitures or joint ventures in the relevant market often help the Agencies analyze the potential adverse competitive effects that may result from the transaction. (See Merger Guidelines § 2)

- xv. Submit all documents (except documents solely relating to [environmental, tax,] human resources, OSHA, or ERISA issues) relating to the proposed acquisition of Beeside by Weebyewe and provide:
- (a) a timetable for the proposed acquisition, a description of all actions that must be taken prior to consummation of the proposed acquisition, and any harm that will result if the acquisition is not consummated;
  - (b) a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the company's response to this sub-part) all plans for changes in Weebyewe's and Beeside's operations, structure, policies, strategies, corporate goals, financing, business, officers, employees or any other area of corporate activity as a result of the proposed acquisition;
  - (c) a detailed description of (including the identification of all documents directly or indirectly used to prepare the company's response to this sub-part and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed acquisition and the benefits, costs, and risks anticipated as a result of the proposed acquisition, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind; and
  - (d) a detailed description of all statements or actions by any person (identifying the person by name, title, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed acquisition or its effects.

**Comment:** Documents and information relating to the proposed transaction are essential to the Agencies' analysis of the potential adverse competitive effects that may result from the transaction, the potential efficiencies that may result from the transaction, and the financial condition of the company. (See Merger Guidelines §§ 2, 4, 5)

- xvi. Submit documents sufficient to show and, to the extent not reflected in such documents, describe in detail the company's policies and procedures relating to the retention and destruction of documents.

**Comment:** Documents and information related to the company's document retention policies help the Agencies evaluate the company's compliance with the Request.

- xvii. List (a) each federal judicial district (e.g., District of Columbia, Southern District of New York) within the United States in which the company has an agent to receive service of process as well as each such agent's name, current business and home addresses, and telephone numbers; (b) each federal judicial district within the United States in which the company is incorporated or licensed to do business or currently is doing business; and (c) each federal judicial district within the United States in which the company has an office or a facility, and, for each such office or facility, list the address and the individual in charge (with his or her title).

**Comment:** Information about the judicial districts where the company is doing business and has registered agents helps the Agencies determine which judicial districts would be proper forums for seeking to challenge the transaction.

- xviii. Identify the person(s) responsible for preparing the response to this Request and submit a copy of all instructions prepared by the company relating to the steps taken to respond to this Request. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

**Comment:** Documents and information identifying the manner in which the company prepared its response to this Request help the Agencies evaluate the company's compliance with the Request.

## **DEFINITIONS AND INSTRUCTIONS**

For the purposes of this Request, the following definitions and instructions apply:

A. The term "the company" or "Weebyewe" means Weebyewe Ltd., plc, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

B. The term "Beeside" means Beeside Corporation, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between Beeside and any other person.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages should also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that [Commission or Department] representatives determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.

D. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

H. The term "sales" means net sales, *i.e.*, total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the relevant product whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

I. The term "relevant product [service]" as used herein means, and information shall be provided separately for, each [name or list of product(s) or service(s) at issue].

J. The term "relevant area" means, and information shall be provided separately for, (a) the United States and (b) worldwide [or regional or local market(s)].

K. The term "minimum viable scale" means the smallest amount of production [smallest service volume] at which average costs equal the price currently charged for the relevant product [service]. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

L. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product [provide the relevant service] that cannot be recovered through the redeployment of these assets for other uses.

M. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information for each of the years from January 1, [Yr-3] to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the company's fiscal year data indicating the twelve month period covered, and provide the company's best estimate of calendar year data.

N. This request shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this Request produced or obtained by the company up to thirty calendar days prior to the date of the company's full compliance with this Request, except: (1) for documents responsive to Specification 7 or Specification 15, for which the date is fourteen calendar days prior to the date of the company's full compliance with this Request; and (2) for documents that must be translated into English, for which the date is forty-five calendar days prior to the date of the company's full compliance with this Request.

O. The response to this Request shall be submitted in the following manner (in FTC investigations):

(1) Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form). Those documents written in a language other than English are to be translated into English; submit the foreign language document, with the English translation attached thereto. The company may submit photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of the company stating that the copies are true, correct and complete copies of the original documents.

(2) Mark each page with corporate identification and consecutive document control numbers. Number each box and mark each box with the name(s) of the person(s) whose files are contained in that box. Documents shall be submitted in sturdy cartons not larger than 1.5 cubic feet.

(3) Responsive documents from each person's files shall be produced together, in file folders or with other enclosures that segregate the person's files by specification number. If a document is responsive to more than one specification, produce the document in response to the specification to which it is primarily responsive.

(4) Provide a master list showing: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that persons' documents. If the master list exists as a computer file(s), provide the master list both as a printed hard copy and in machine-readable form (provided that [Commission or Department] representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer

files). The [Commission or Department] staff representatives will provide a sample master list upon request.

The response to this Request shall be submitted in the following manner (in DOJ investigations):

(1) Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together or maintained in separate file folders shall be produced in such form). Those documents written in a language other than English are to be translated into English; submit the foreign language document, with the English translation attached thereto. The company may submit photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of the company stating that the copies are true, correct and complete copies of the original documents.

(2) Number each box and mark each box with corporate identification and the name(s) of the person(s) whose files are contained in that box. Documents shall be submitted in sturdy cartons not larger than 1.5 cubic feet.

(3) Documents submitted shall be produced in the order in which they appear in the company's files and shall not be shuffled or otherwise rearranged. Mark each page with corporate identification and consecutive document control numbers. Place all documents produced in file folders. Mark each file folder with corporate identification, the name of the person whose documents are in the folder and how the original file was labeled.

(4) Provide each master list of documents prepared by any person in connection with any of the company's responses to any specification, updated with revisions, modifications or amendments to ensure current completeness and accuracy. If the master list exists as a computer file(s), provide the master list both as a printed hardcopy and in machine-readable form (provided that Department representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files).

***Comment:*** This instruction reflects the experience and methodologies developed by each agency. The FTC and DOJ are studying each other's investigative methods in this area to determine whether any changes are appropriate.

P. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's authors, addressees, date, a description of each document, all recipients of the original and any copies, and the specification(s) of this Request to which the document is responsive. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full

name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of pages of each document and shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the [Commission or Department] to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the company that were not directly or indirectly furnished to the company or any third-party, such as internal law firm memoranda, may be omitted from the log.

Q. If the company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the company to make an estimate, provide an explanation.

R. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the company's document retention policy as disclosed or described in response to Specification 16 of this Request, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

S. In order for the company's response to this Request to be complete, the attached certification form must be executed by the official supervising compliance with this Request, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Request or suggestions for possible modifications thereto should be directed to (appropriate staff) at (telephone number). The response to the Request shall be addressed to the attention of Ms. (\*\*staff person\*\*) and delivered between 8:30 a.m. and 5:00 p.m. on any business day to (Federal Trade Commission or Department of Justice). If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

**CERTIFICATION**

As required by § 803.6 of the implementing rules for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, this response to the Request for Additional Information and Documentary Material, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the [Federal Trade Commission or Department of Justice]. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the [Commission or Department] uses such copies in any court or administrative proceeding, the company will not object based on the [Commission or Department] not offering the original document.

\_\_\_\_\_  
TYPE OR PRINT NAME AND TITLE

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me  
at the City of \_\_\_\_\_, State of \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

*My Commission Expires:* \_\_\_\_\_