

APPENDIX D

EUROPEAN COMMISSION CONFIDENTIALITY WAIVER

WAIVER

1. On behalf of Company X and Company Y we confirm that each of X and Y agree to waive the confidentiality restrictions which govern the European Commission under EC Council Regulation 139/04 and other applicable laws (hereinafter referred to as “the confidentiality rules”) to the extent necessary to permit the European Commission to disclose, for the purpose of its enquiries and analysis into the proposed merger/acquisition between X and Y (hereinafter referred to as the “proposed transaction”), to [*competition authority B*] any information obtained from Company X and/or Y during the course of its enquiry into the proposed transaction.
2. A corresponding waiver has or will be submitted to [*competition authority B*], enabling that authority to share information, obtained from Company X or Y during the course of its enquiry into the proposed transaction and which would otherwise be subject to the confidentiality rules of that jurisdiction, with the European Commission.
3. Specifically Company X and Y agree that the staff of the European Commission may share with [*competition authority B*] any documents, statements, data and information, supplied by Company X and /or Y, as well as the Commission’s own internal analysis that contain or refer to X and Y’s materials that would otherwise be prevented by the confidentiality rules.

CAVEAT

4. This letter does not constitute a waiver by X or Y of their rights under the confidentiality rules with respect to the protection afforded to X or Y against the direct or indirect disclosure of information to any third party other than [*competition authority B*]. This waiver is limited to information obtained by the Commission in relation to its review of the proposed transaction and does not apply to information obtained in the course of any other review of any case either now or in the future.

CONDITIONS

- *Use of Information by Receiving Jurisdiction (“Competition Authority B”)*

5. For the avoidance of doubt information transmitted pursuant to this waiver may be used by [*competition authority B*] only for the purposes of conducting its enquiry into the proposed transaction and for no other purpose. Disclosure is made openly on the basis and subject to the express condition that such information remains confidential to [*competition authority B*] and may not be

disclosed to any third party. It is understood and agreed that failure by [*competition authority B*] to comply with the foregoing does not engender any liability on the part of the European Commission

- *Use of Information by Sending Jurisdiction (“Competition Authority A”)*

6. The waiver referred to in the first paragraph of this letter is subject to the following conditions:
 - (1) that the European Commission shall itself maintain the confidentiality of the information and/or documentation provided to [*competition authority B*] by X and/or Y and which is subsequently obtained from [*competition authority B*] and shall treat such information as if it had been obtained directly from X and /or Y;
 - (2) that the European Commission shall consider all information and/or documentation obtained from [*competition authority B*] pursuant to this waiver as confidential information or business secrets unless it is clearly identified as having been obtained from a publicly accessible source;
 - (3) that the European Commission shall not make any information and/or documentation obtained from [*competition authority B*] available to any third party including competitors, customers and suppliers of X and Y;
 - (4) that the information and/or documentation obtained from [*competition authority B*] shall be used only for the purposes of the European Commission’s review of the proposed transaction under Council Regulation 139/04 and for no other purpose; and
 - (5) that the European Commission shall not disclose to [*competition authority B*] any information or documentation obtained from X and /or Y in relation to which either X or Y has asserted a claim of legal privilege in [*the jurisdiction in competition authority B*] and that is clearly identified as being subject to such client/attorney privilege. It is understood and agreed that Company X or Y is responsible for informing the Commission of the existence of such privileged information.

Each of Company X or Y has obtained the consent of its affiliates to the sharing of their documents and information produced by each of Company X or Y respectively on the same conditions as outlined above.

If you wish to discuss any matter arising from this waiver, please contact [name of responsible representative(s)]. A copy of this letter has been sent to the [*competition authority B*].

(Signed by the duly authorised representative of)

(Signatures)

Company X

Company Y