APPENDIX A

*ICN Model Waiver Form*

[DATE]

[CONTACT NAME AT AGENCY A] [ADDRESS]

Re: [CASE REFERENCE]

Dear :

On behalf of COMPANY A, I confirm that COMPANY A, subject to the conditions and limitations set forth herein, agrees to waive the confidentiality restrictions under [RELEVANT STATUTORY OR REGULATORY AUTHORITY] and other applicable laws and rules (collectively the “Confidentiality Obligations”) that prevent AGENCY X from disclosing to FOREIGN AGENCY Y confidential information obtained from COMPANY A in connection with its proposed transaction with COMPANY B. Specifically, COMPANY A agrees that AGENCY X staff may share with FOREIGN AGENCY Y [any of COMPANY A’s documents, statements, data and information, as well as AGENCY A’s own internal analyses that contain or refer to COMPANY A’s materials that would otherwise be foreclosed by the confidentiality Obligations][[1]](#footnote-1).

This waiver is granted only with respect to disclosures to FOREIGN AGENCY Y and only on the condition that FOREIGN AGENCY Y will treat as confidential information it obtains from AGENCY X in accordance with the terms of the attached letter from [CONTACT NAME] of FOREIGN AGENCY Y[[2]](#footnote-2). This agreement does not constitute a waiver by COMPANY A of its rights under the Confidentiality Obligations with respect to the protection afforded to COMPANY A against the direct or indirect disclosures of information to any third-party other than FOREIGN AGENCY Y.

COMPANY A submits this waiver under the condition and understanding that, with respect to information that AGENCY X obtains from COMPANY A and provides to the FOREIGN AGENCY Y pursuant to this waiver, AGENCY X should continue to protect the confidentiality of such information with respect to other outside parties in accordance with the Confidentiality Obligations.

A copy of this letter is being sent to [CONTACT PERSON AT FOREIGN AGENCY Y].

Sincerely,

[ATTORNEY FOR COMPANY A]

cc: [CONTACT FOR FOREIGN AGENCY Y]

1. NOTE: This model language is intended for those situations where a waiver with respect to any and all documents and information provided to Agency X is contemplated. There may be instances where such a broad waiver is not desired. In those cases, the parties may opt for a waiver limited in scope, such as to allow the agencies to discuss potential remedies that each is considering and the reasons for such remedies, or to discuss specific limited issues such as product market definition or barriers to entry. Parties and agency staff should consider the scope of the waiver that is desired to assist them in their investigation so as to not unnecessarily burden parties or other competition agencies. [↑](#footnote-ref-1)
2. NOTE: “Foreign Agency Y” should provide a letter describing the confidentiality protections provided by that country. (In some cases, the parties and Agency X staff may be satisfied if that letter is directed to that contact person by representatives of the parties, with a written confirmation that Foreign Agency Y agrees to the terms of that letter.) Attached to this model form at Appendix [D] are sample confidentiality letters. [↑](#footnote-ref-2)