Department of Justice

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PILOT PROGRAM ANNOUNCED TO EXPEDITE BUSINESS REVIEW PROCESS

WASHINGTON, D.C -- The Department of Justice today announced that it has adopted a procedure to expedite the processing of business review requests with respect to joint ventures and information exchange programs.

Under the Department's long-standing business review procedure, persons concerned about the legality under the antitrust laws of proposed business conduct can request the Department's Antitrust Division to state its current enforcement intentions with respect to that conduct.

The pilot program being announced today is intended to expedite the business review process. If persons seeking business review determinations voluntarily provide certain specified information and documents to the Department when the initial request is submitted, the Department will use its best efforts to respond to those requests within sixty to ninety days.

Charles A. James, Acting Assistant Attorney General in charge of the Antitrust Division, said, "This pilot program will increase the value of the business review procedure to the business community by offering more timely guidance as to the Department's enforcement intentions. Due to the voluntary nature of the program, and information sought, the pilot program will

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increase the speed of the business review process without imposing unnecessary burdens."

This program is designed to alter the common practice under which the Department must request additional information after a business review request has been filed, thus delaying consideration of the merits of the request.

At this time, the pilot program extends only to business review requests involving proposals to form joint ventures and to exchange business information.

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BUSINESS REVIEWS

Persons concerned about the legality under the antitrust laws of proposed business conduct may ask the Department of Justice for a statement of its current enforcement intentions with respect to that conduct pursuant to the Department's Business Review Procedure. *See* 28 C.F.R. Section 50.6.

The Department believes that the business review process provides the business community an important opportunity to receive guidance from the Department with respect to the scope, interpretation, and application of the antitrust laws to particular proposed conduct. The Department realizes, however, that if the business review process is not timely, the value of the process, and therefore its utilization, may be diminished.

Two of the most frequent types of business review requests the Department has received have involved proposals to form joint ventures or to collect and disseminate business information. Because of the nature of these requests, the Department often finds it difficult to opine on such matters based solely on the information typically provided with the initial requests. Consequently, the Department must subsequently seek additional information. This inevitably adds time and expense to the business review procedure.

In an effort to expedite the business review process with respect to these two types of requests, the Department will offer parties seeking a business review determination the option of providing certain specified information and documents

contemporaneously with their initial business review submissions. Where the specified information and documents are provided, and where such submissions provide an adequate basis upon which to determine the Department's enforcement intentions, the Department will make its best effort to resolve the business review request within sixty to ninety days.

This program is subject to the following conditions:

1. The request must comply with the procedures for business reviews specified in 28 C.F.R. Section 50.6.

2. Parties invoking this expedited procedure must represent in writing that they have undertaken a good faith search for the documents and information specified herein and, where applicable, have provided all responsive material.

3. The expedited procedure should not be interpreted as a representation by the Department that it will not request additional documents and information where necessary to assess the conduct under review.

4. The Department is unable to commit to a rigid deadline for processing business review requests. The time frames specified herein are targets, not deadlines.

5. This program is being implemented on a pilot basis. The Department reserves the right to alter the expedited review procedure at any time.

Parties seeking review determinations are welcome to submit

such additional information as they deem appropriate to assist the Department in understanding the proposed conduct.

INFORMATION AND DOCUMENTS TO BE SUBMITTED

A. JOINT VENTURES

Information sufficient to show:

1. The name of the venture, the address of its principal place of business, and its legal form and ownership structure;

2. The persons or firms expected to participate in the venture and the nature of their contribution;

3. The purposes and objectives of the venture, together with any limitations on the nature or scope of its activities or operations;

4. The products or services the venture will develop, produce, market or distribute;

5. The extent to which participants in the venture currently develop, produce, market or distribute products or services that will be developed, produced, marketed or distributed by the venture;

6. The identity and competitive significance (described in terms of market shares, capacities, etc.) of all persons or firms that participate in the relevant product and geographic markets in which the venture will operate;

7. Any restrictions on the ability of participants in the venture to compete with the venture, individually or through other entities;

8. Any restrictions on the flow of information from the venture to its owners;

9. The ten largest customers (actual or projected) for any products or services that will be offered by the venture in the relevant geographic market and an estimate of their annual purchases;

10. The requirements for entry into any relevant product or geographic market in which the venture will operate, together with the identity of other persons or firms believed to be positioned to enter within one or two years; and

11. Any business synergies, efficiencies or other benefits likely to flow from the venture.

All documents:

1. Reflecting or effectuating formation of the venture, including charters, by-laws, articles of incorporation, and partnership, joint venture or asset purchase agreements, or the most recent drafts of such documents;

2. Discussing, reflecting or representing the business plans or strategies for the venture;

3. Prepared within two years prior to formation of the venture, discussing, reflecting or representing the business

plans or strategies of any venture participant with respect to any product or service that will be offered by the venture; and

4. Discussing or relating to the legality or illegality under the antitrust laws of the venture, or the impact of the venture on competition or the price of any product or service.

B. INFORMATION EXCHANGES

Information sufficient to show:

1. The persons or firms expected to participate in the information exchange;

2. The purposes and objectives of the information exchange;

3. The nature, type, timeliness, and specificity of the information to be exchanged (a sample of all information to be exchanged should be provided);

4. The method by which the information will be exchanged;

5. The characteristics of the market(s) in which the information will be exchanged, including the product(s) or service(s) related to the information to be exchanged, the homogeneity of the product(s) or service(s), the pricing and marketing practices typically employed by firms in the market(s), and the availability of information concerning market conditions, individual transactions and individual competitors;

6. The identity and competitive significance (described in terms of market shares, capacities, etc.) of persons or firms

that participate in the relevant product and geographic markets, but will not participate in the information exchange;

7. The ten largest customers in the relevant geographic market for any product(s) or service(s) involved in the information exchange and an estimate of their annual purchases;

8. Any safeguards that are planned to prevent disclosure of firm-specific information to competitors; and

9. Any business synergies, efficiencies or other benefits likely to flow from the venture.

All documents:

1. Reflecting or representing the agreement(s) among the parties to exchange information or the most recent drafts of such documents; and

2. Discussing or relating to the legality or illegality under the antitrust laws of the information exchange or the impact of the information exchange on competition or the price of any product or service.

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