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FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC is seeking public comments on its proposal to extend for an additional three years the current PRA clearance for information collection requirements in its Antitrust Improvements Act Rules (“HSR Rules”) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”). That clearance expires on December 31, 2016.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “HSR PRA Clearance Extension, P169300” on your comment and file your comment online at <https://ftcpublishcommentworks.com/ftc/hsrrulespra>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Room CC-5301, 600 Pennsylvania Ave., NW, Washington, DC 20580, or by telephone to (202) 326-2740.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the HSR Rules and Notification and Report Form, 16 CFR Part 801 – 803 (OMB Control Number 3084-0005).

Pursuant to Section 3506(c)(2)(A), the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

Background Information:

Section 7A of the Clayton Act (“Act”), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the

Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require “that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate” to enable the agencies “to determine whether such acquisitions may, if consummated, violate the antitrust laws.” 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, *inter alia*, “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.” *Id.*

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form. The following discussion presents the FTC’s PRA burden analysis regarding completion of the Notification and Report Form.

Burden statement:

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and staff’s informal consultations with leading HSR counsel.

Estimated total annual hours

In fiscal year 2015, there were 3,585 non-index filings and just one index filing.¹ Based on an average annual increase of 27% in fiscal years 2013 – 2015, FTC staff projects a total of

¹ “Index” filings pertain to banking transactions, and thus would not be affected by the amendments. Index filings are incorporated, however, into the FTC’s currently cleared burden estimates (the FTC has jurisdiction over the administration of index filings). They are mentioned here to distinguish them from and to further explain a “non-index” filing. Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the Agencies. Thus, parties must submit copies of these “index” filings, but completing the task requires significantly less time than non-exempt transactions (which require “non-index” filings).

4,553 non-index filings in fiscal year 2016. With index filings not having demonstrated a singular direction over the same span, however, staff instead bases its estimate on a rough average of the number of such filings over that same interval (fiscal years 2013 – 2015) to project a total of 10 index filings for fiscal year 2016.² Retaining prior assumptions, FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of 2 hours per filing.

Calculating the burden for auto-withdrawal of filings pursuant to §803.12(b) of the HSR Rules requires an analysis of two potential scenarios. In one scenario, a filing is automatically withdrawn and the acquiring person utilizes the two-day resubmission process under §803.12(c). In that case, no additional transaction is generated as the acquiring person simply restarts the waiting period on the same transaction. In the second scenario, the parties to a terminated transaction for which the filing is automatically withdrawn do not utilize the two-day resubmission process under §803.12(c) but later decide to move forward with the transaction. In that case, a new filing is required. Both of these scenarios are rare, as it is very unlikely that a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' SEC filing indicating that the transaction has been terminated) would be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, i.e., a historical frequency of .067 transactions per year. FTC staff believes that this new filing would require the same work and diligence as any new non-index filing.

² Based on the current rate of such filings this year, as well as the actual number of such filings, respectively, in fiscal years 2014 and 2015, the above estimate likely well exceeds the eventual actual results for fiscal year 2016.

Assuming, then, an average of 37 hours for one transaction, when applied to a historical frequency of .067, this amounts to an annual average of 3 hours, rounded up, for a withdrawn transaction later restarted.

Thus, the total estimated hours burden before adjustments is 168,484 hours [(4,553 non-index filings x 37 hours/each) + (10 index filings x 2 hours/each) + (1 withdrawn transaction later restarted x 3 hours)].

Estimated total annual labor cost

Using the burden hours (168,484) estimated above and applying an estimated average of \$460/hour for executive and/or attorney compensation, staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately \$77,502,640.

Estimated total annual non-labor cost

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

Request for Comment: Pursuant to Section 3506(c)(2)(A), the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity

of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. Write “HSR PRA Clearance Extension, P169300” on your comment. Your comment – including your name and your state - will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential” as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure

explained in FTC Rule 4.9(c).³ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/hsrrulespra> by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

If you file your comment on paper, write “HSR PRA Clearance Extension, P169300” on your comment and on the envelope, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days from FEDERAL REGISTER date of publication]. For information on the Commission’s

³ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

privacy policy, including routine uses permitted by the Privacy Act, see
<http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka
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