

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Friday, July 9, 2021 1:10 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina  
**Subject:** FW: Question on Aggregation of Previously Acquired Subsidiaries

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Friday, July 9, 2021 1:10:22 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Question on Aggregation of Previously Acquired Subsidiaries

[REDACTED]

Prior controlling acquisitions of entities (rather than assets) from the same UPE do not need to be aggregated unless the acquisitions were part of the same transaction (e.g., the acquisitions were negotiated together) or the transactions were structured to avoid filing and would be in violation of Rule 801.90.

Best regards,  
Kristin

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**From:** [REDACTED]  
**Sent:** Friday, July 9, 2021 12:07 AM  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Question on Aggregation of Previously Acquired Subsidiaries

Good Evening,

I would like to confirm that I understand the aggregation rules correctly for prior transactions:

My client is a wholly owned subsidiary of UPE 1 (a foreign person) and plans to acquire two wholly owned subsidiaries from a holding company, which is controlled by UPE 2 (a foreign person). Assume for this example that the size-of-the-person test is met. TargetSub US is a U.S. company and the acquisition price for the voting shares is \$75 million. TargetSub Europe is a European company that has virtually zero assets in the U.S. and virtually zero sales in or into the U.S., so I am confident that the acquisition price of TargetSub Europe does not need to be aggregated into the size of the transaction here.

My question is this: UPE 1 is a large complex family of companies that, based on its business practices, may have purchased 100% of the voting securities of other indirect subsidiaries of UPE 2 (another large, complex family of companies) in the past. The Commission's website [here](#) says that one need "Never Aggregate"

“Controlling interests in corporations or unincorporated entities that were previously acquired from the same acquired person as in the present transaction.” However, I cannot find any language confirming this principle in 16 CFR 801.13, 801.14 and 801.15 or the informal interpretations. Unlike assets, I do not see a 180 day rule for the acquisition of voting securities, so is there a similar required cooling off period before a previously acquired controlling interest need not be aggregated?

Thank you, and I apologize for what must be a basic question.

Best regards,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]