
From: Walsh, Kathryn E.
Sent: Tuesday, December 01, 2015 12:35 PM
To: [REDACTED]; Gillis, Diana L.; Whitehead, Nora; Berg, Karen E.
Subject: RE: Application of Continuum Theory

[REDACTED]:

We apply continuum in a limited set of circumstances. A typical scenario is a reorganization followed by an acquisition where there are a number of steps in the reorganization that each trigger a filing, but we only ask for one filing at the end of the process to capture the acquisition.

We do also see this circumstance a great deal: A is buying B, and B is buying C. We have permitted A to file for the C acquisition as if it already holds B, *as long as* A has also filed to acquire B. This is not continuum.

So, we don't think your scenario fits into continuum, and we need two filings.

Kate

From: [REDACTED]
Sent: Tuesday, November 24, 2015 4:37 PM
To: Gillis, Diana L.; Whitehead, Nora; Walsh, Kathryn E.; Berg, Karen E.
Subject: Application of Continuum Theory

Nora, Diana, Kate, and Karen,

Through two agreements, A will acquire a controlling stake in B (Agreement 1) and B will acquire D from C (Agreement 2), with the acquisition of D by B funded in part with funds invested by A as consideration for A acquiring its controlling stake in B. Each of the A acquisition of B and the B acquisition of D separately trigger HSR. Both transactions are expected to close same day. Agreement 1 is conditional upon the simultaneous close of the acquisition contemplated by Agreement 2. Although Agreement 2 is not explicitly conditional on Agreement 1, in fact if A does not invest cash in B as contemplated in Agreement 1 then the close contemplated in Agreement 2 likely will not take place, unless B receives sufficient funds to cover the purchase price for D from other sources. Under the continuum theory I understand that we can make one acquiring person filing with A as the UPE of B and B as the acquiring entity in the acquisition of D, and one acquired person filing with C filing as the acquired UPE selling D to B (whose UPE is A). Do you agree?

Many thanks,

[REDACTED]