

Haynes, Lanea

From: Shaffer, Kristin
Sent: Tuesday, April 25, 2017 3:26 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Gillis, Diana L.; Storm, Evan; Whitehead, Nora
Subject: RE: 4(c) question

[REDACTED],

We agree that documents related to the negotiation and entering into of options are not responsive. However, documents evaluating or analyzing the exercise of the options, whenever they were created, are responsive. Therefore, A's documents that analyze the potential exercise of the options for C would be responsive, even if they were created in conjunction with the 2016 transaction.

Best regards,
Kristin

Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-3434 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Tuesday, April 25, 2017 12:47 PM
To: Walsh, Kathryn E.
Subject: 4(c) question

Kate –

I have what I hope is a quick question re: 4(c) documents – specifically, does [this informal guidance](#) from 2006 reflect the current thinking of the PNO?

The facts I am reviewing are very similar to those described in that request for informal guidance. Company A and Company B negotiated a transaction over a year ago, in early 2016, whereby A acquired a business from B, as well as an option to acquire an additional entity controlled by B (the “C” entity). The acquisition of the B business was subject to the requirements of the HSR Act, and those requirements were satisfied. The option to acquire the C entity was not exercised at the time, however, and because the acquisition of an option is not itself subject to the Act that aspect of the transaction was not reportable. Thus, documents that would have been responsive to Items 4(c) or 4(d) that concerned only the option to acquire C were not produced, although documents that concerned both the option to acquire C and the acquisition of the B business, if responsive with respect to the latter, were produced.

The acquisition of the B business has since closed. A has now determined to exercise the option to acquire C from B, in an acquisition that will be subject to the Act. My question is the same as that asked in the above-linked informal guidance: must A produce documents with 4(c) or 4(d) subject matter regarding the option that were created in 2016 to analyze the transaction at that time, or may it limit its search and production of responsive documents to those related to the exercise of the option in 2017? Assuming the 2006 informal guidance stands, I have concluded that we can limit

our document search/production to those documents related to the acquisition that is to be reported – that is, the exercise of the option – but I would appreciate confirmation that I have that right.

Thanks, Kate.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]