
From: Berg, Karen E.

Sent: Thursday, August 31, 2017 4:21 PM

To: [REDACTED] Carson, Timothy; Walsh, Kathryn E.; Gillis, Diana L.; Shaffer, Kristin; Storm, Evan; Whitehead, Nora

Subject: RE: HSR Item 5(a) Question

[REDACTED]
We agree with you on #1; on #2, a note about additional anticipated acquisitions are always welcome, but especially important when the acquisitions are in the same or related industries.

Karen

From: [REDACTED]

Sent: Thursday, August 31, 2017 11:07 AM

To: Carson, Timothy; Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.; Shaffer, Kristin; Storm, Evan; Whitehead, Nora

Subject: HSR Item 5(a) Question

All,

I was hoping for your guidance on two questions concerning Item 5(a).

Background

Our client is a newly formed PE fund ("Fund") that plans to submit an HSR filing for its planned acquisition of Company A from UPE A. Unrelatedly, the Fund recently signed an LOI to acquire Company B from UPE B. The acquisition of Company B is also reportable and will require the Fund to submit an HSR filing. The Fund's acquisition of Company A is expected to close in advance of the acquisition of Company B, but the Fund will notify the planned acquisition of Company B before the planned acquisition of Company A could close. We do not anticipate that the NAICS codes of Company A and Company B to overlap as they are in entirely different businesses.

Analysis

In reporting item 5 revenues in the HSR filing for the planned acquisition of Company B, we do not believe the Fund is required to include the revenues associated with Company A because the Fund does not currently control Company A. First, the instructions state that the "[p]erson filing notification should include the total dollar revenues for all entities included within the person filing notification *at the time the Form is prepared.*" Second, in informal interpretation 0609002, you advised that when there is a pending *non-reportable* transaction, it would not be necessary to report revenues associated with the company planned to be acquired. You also advised that it would be helpful if the filer mentioned the pending acquisition in Item 3(a), especially if the acquisitions would create overlaps.

Questions

1. Do you agree that in notifying the planned acquisition of Company B, the Fund is not required to report revenues associated with the uncompleted acquisition of Company A?

2. Would you like the notification of the planned acquisition of Company B to mention the pending acquisition of Company A even if no overlap would be created?

Thanks,

[Redacted]

[Redacted]

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