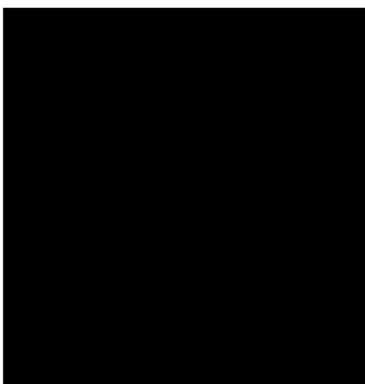


From: Verne, B. Michael
Sent: Tuesday, August 19, 2014 4:16 PM
To: [REDACTED]
Subject: RE: HSR Issue

There would need to be an assignment agreement (can be non-binding) between X and W in order for W to file.

From: [REDACTED]
Sent: Tuesday, August 19, 2014 4:11 PM
To: Verne, B. Michael; Walsh, Kathryn E.
Subject: RE: HSR issue

Mike – Can the assignee file as an Acquiring Person prior to the signing of an agreement re the assignment? In other words, in the fact pattern posed originally must Company X and Company W execute an LOI or an agreement re the assignment in order for Company W to file?



From: Verne, B. Michael [<mailto:MVERNE@ftc.gov>]
Sent: Tuesday, August 19, 2014 1:04 PM
To: [REDACTED] Walsh, Kathryn E.
Subject: RE: HSR Issue

[REDACTED] – Yes - I have been back long enough for the vacation glow to wear off ☺

We think that this is different. In the example you cite, A will actually acquire B at some point, either before or after its acquisition of C. In the current scenario, X is not acquiring W, but rather assigning its right to acquire the target. W will never actually be within the person of X, either before or after the acquisition of the target, so it seems an artificial construct to file as if X has acquired W. Our call

would be that if you want to be covered for both alternatives (X as acquiring person or W as acquiring person), it would require two filings and two fees.

From: [REDACTED]
Sent: Tuesday, August 19, 2014 11:48 AM
To: Verne, B. Michael; Walsh, Kathryn E.
Subject: HSR issue

Mike/Kate:

Hope that you are having a wonderful summer. Mike – not certain n that you are back yet from vacation.

I have a question whether a filing may be made with alternative UPE's on the Acquiring side.

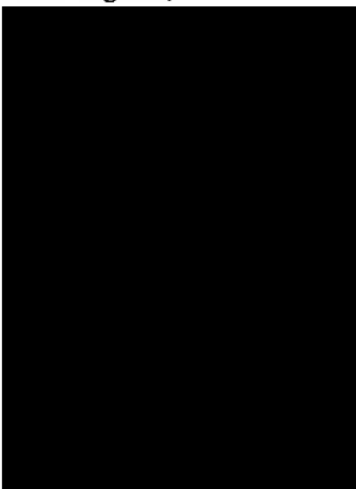
Company X and Company Y have entered into a Purchase and Sale Agreement. An HSR filing is required. Company X may assign its rights under the agreement to Company W which is not controlled or within the person of Company X. Can Company X file as an Acquiring Person and include as an alternative Acquiring Person, Company W. The Form would include the required information as if either company was the ultimate purchaser.

If the answer is YES, would both Company X and company W be required to pay the HSR filing fee?

By way of background, recently, we were involved in a transaction in which Company A had filed to acquire Company B and Company B had filed to acquire Company C. The parties were concerned that if Company A acquired Company B before the Company B and Company C transaction closed, Company A would be required to file HSR to acquire Company C. Mike advised Company B to amend its HSR filing to include Company A as an Acquiring Person. The waiting period which was still running was not affected by the filing of the amendment and Company A was not required to pay an additional filing fee.

Thanks for your advice on this issue.

Kind regards,



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