

From: [Storm, Evan](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question on filing (0115728-0000001)
Date: Tuesday, April 12, 2016 1:09:00 PM

[REDACTED]

There would be 2 filings here:

1. B1 acquiring X from T
2. B2 acquiring Y from T based on a continuum theory

Regards
Evan

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HSR filing questions? Check the [PNO Blog](#) and [HSR Tips](#).

From: [REDACTED]
Sent: Tuesday, April 12, 2016 9:46 AM
To: Walsh, Kathryn E.
Cc: [REDACTED]
Subject: Question on filing (0115728-0000001)

Kate,

We are inquiring about a reportable transaction we are working on. Target, T, intends to sell business X to Buyer 1, B1, and business Y to Buyer 2, B2. The transaction is structured as follows:

- T will sell both business X and business Y to B1 ("Transaction 1"). B1 will immediately after sell business Y to B2 ("Transaction 2").
- The transactions are cross-conditional upon one another. Thus, Transaction 1 will not close if there is anything preventing Transaction 2 from closing. Likewise, Transaction 2 is conditional upon the closing of Transaction 1.
- The agreements will be executed simultaneously.
- Closing of Transaction 2 will take place on the same date at the same time and the same place as the closing of Transaction 1.
- B2 is a third-party beneficiary to the agreement between T and B1 and can assert any rights against T that B1 can assert against T.

Based on these facts, we would view these transactions as two separate and simultaneous transactions, rather than as two sequential transactions. Thus, for HSR purposes, T (assuming it is its own UPE) will be the acquired person to Transaction 1 and also the acquired person to Transaction 2. B1 (assuming it is its own UPE) will be the acquiring person to Transaction 1 and B2 (assuming it is its own UPE) will be

the acquiring person to Transaction 2. Please could you confirm that we are correct in our understanding?

Many thanks,

[Redacted]

[Redacted]

[Redacted]
