

From: [REDACTED]
To: [Gillis, Diana L.](#); [Walsh, Kathryn E.](#)
Cc: [REDACTED]
Subject: RE: HSR Reportability Questions
Date: Thursday, April 14, 2016 2:52:42 PM

Great. Thank you, Diana

From: Gillis, Diana L. [mailto:dgillis@ftc.gov]
Sent: Thursday, April 14, 2016 1:54 PM
To: [REDACTED]; Walsh, Kathryn E.
Cc: [REDACTED]
Subject: RE: HSR Reportability Questions

1. The parties may file separate HSRs for each transaction, and may close once the relevant waiting period expires or early termination is granted (even if the other transaction is still under review). However, the HSRs should fully describe the situation regarding both transactions in the transaction description, so that the agencies have a full picture of what is happening.
2. Same analysis applies.

From: [REDACTED]
Sent: Thursday, April 14, 2016 11:57 AM
To: Walsh, Kathryn E.; Gillis, Diana L.
Cc: [REDACTED]
Subject: HSR Reportability Questions

Kate and Diana,

We had two unrelated HSR questions that we were hoping you could provide guidance on:

1. Buyer and Seller are considering entering into two entirely separate, non-contingent asset transactions ("Transaction A" and "Transaction B"). Each transaction meets all relevant thresholds and would be reportable on its own. Can the parties file HSR for each transaction separately (paying two filing fees)? If so, and the relevant waiting period for Transaction A expires or terminates before the relevant waiting period for Transaction B, may the parties close on Transaction A while Transaction B still is being reviewed? We have reviewed guidance that in situations where one of the transactions is not reportable, the parties must file for both transactions and cannot close on either transaction until the applicable waiting period has expired or been terminated. We, however, have not seen guidance where both transactions are reportable (i.e., where the agencies will be in position to review both under the HSR Act).
2. For purposes of determining whether a license is exclusive (i.e., an asset acquisition under the HSR Act), is a sublicense treated in the same manner as a license? We assume the answer is yes but want to confirm that there aren't any additional nuances to consider.

Happy to discuss if helpful.

Thank you in advance,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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