
From: [REDACTED]
Sent: Wednesday, May 18, 2016 9:38 AM
To: Gillis, Diana L.
Cc: Walsh, Kathryn E.; Whitehead, Nora
Subject: RE: Aggregating profits in accordance with Section 801.1(b)(1)(ii)

Thank you, Diana!

From: Gillis, Diana L. [<mailto:dgillis@ftc.gov>]
Sent: Wednesday, May 18, 2016 8:55 AM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Whitehead, Nora
Subject: RE: Aggregating profits in accordance with Section 801.1(b)(1)(ii)

[REDACTED]

We have advised in the past that the indirect profits should be included in the calculation.

-Diana

From: [REDACTED]
Sent: Tuesday, May 17, 2016 1:15 PM
To: Walsh, Kathryn E.
Cc: [REDACTED]
Subject: Aggregating profits in accordance with Section 801.1(b)(1)(ii)

Kate,

Can you please confirm that we do not aggregate "profits" earned through non-controlled entities with profits earned directly in a partnership to determine if there is control of a partnership in accordance with Section 801.1(b)(1)(ii)?

Please assume that one company (Company A) is entitled to the profits of a partnership (Partnership B) through 1) its direct holdings of shares in Partnership B and 2) its non-controlling interest in another company (Company C) that holds shares in Partnership B and therefore has a right to profits from Partnership B. Thus, A has rights directly in Partnership B and indirectly (through Company C) in Partnership B. For the purpose of determining control of Partnership B as outlined in Section 801.1(b)(1)(ii), should we aggregate Company A's direct profits from Partnership B with the profits it earns from Partnership B through its non-controlling interest in Company C? We believe we can ignore Company A's indirect profits it earns from Partnership B through Company C because Company A does not control Company C. While we believe this is the case, we have not found authority supporting this proposition.

Thank you in advance for your time,

