From: Berg, Karen E.
Sent: Thursday, July 14, 2016 10:27 AM
To: [redacted]
Cc: Gillis, Diana L.; Walsh, Kathryn E.; Whitehead, Nora
Subject: RE: HSR Notification and Report Form

[redacted], our responses are in red below.

From: [redacted]
Sent: Monday, July 11, 2016 11:55 PM
To: Berg, Karen E.
Subject: HSR Notification and Report Form

Karen,

Thank you for returning my call. The following sets forth the items I wanted to confirm.

The following is the background of our transaction -

- We represent a corporation ("Operating Company").
- Operating Company is forming a new wholly-owned subsidiary ("Newco") for purposes of acquiring substantially all of the assets of another corporation ("Target").
- All of the outstanding stock of Operating Company is owned by another corporation ("Holding Company").
- 58% of the outstanding voting stock of Holding Company is owned by a private equity fund organized as a limited partnership ("LP 1").
- LP 1 is the ultimate parent entity of Newco and will be the entity filing the Notification Form.
- The general partner of LP 1 ("GP") is a limited liability company owned by individual persons. None of those individuals has authority by contract to manage investment decisions.
- GP is also the general partner of three other limited partnerships, LP 2, LP 3 and LP 4.
- LP 1, LP 2, LP 3 and LP 4 are each a party to an agreement with Management Company pursuant to which Management Company provides the following services to each of them:

  Investment Management Services. The Management Company will furnish to the General Partner investment management services relating to portfolio analysis, including: (a) advising the Partnership regarding investments of the type contemplated by the Partnership Agreement, locating, securing information with respect to, and evaluating prospective investment opportunities of such type and making recommendations regarding the purchase of investments; (b) structuring and negotiating investments on behalf of the Partnership, reviewing and assisting in the preparation of all documentation, and assisting in the consummation of investments that the Partnership has determined to pursue; and (c) monitoring investments and making recommendations to the Partnership regarding the disposition of investments.

Could you confirm the following based upon the above background –

(1) GP, LP 2, LP 3 and LP 4 are each considered Associates of LP 1. Correct

(2) The Management Company would not be considered an Associate of LP 1 based upon the services described above, since the services do not include the management of investment decisions, but rather are advisory type services, which appears consistent with the FTC's informal interpretations. Agree

- Can you confirm that it does not matter whether the individual shareholders of the Management Company are the same individuals that are the members of the GP. Agree

(3) The individual members of the GP are not Associates since they are individuals and are not provided with authority to manage investment decisions by contract. Agree

(4) I was a bit confused by the reference to "acquiring entity" in paragraph (A) of the definition of "Associate" in the HSR regulations and was not completely certain as to whether this was just intended to refer to (in my set of facts above) only Newco or whether it was intended to refer to any entity within the acquiring person. Can you confirm.
Just Newco.

(5) For purposes of any disclosures required to be made in the Form with respect to Associates, can you confirm that we should be making the disclosures with respect to every entity included within the person that includes the Associate (i.e., its ultimate parent entity and every entity that the ultimate parent entity of the Associate directly and indirectly controls)? Yes, but only if they overlap with Target. Overlapping minority interests of Associates are reported in 6(c)(ii) and overlapping interests of entities controlled by Associates are reported in 7(b)(ii)/7(d).

- Can you confirm that the "top level associate" is a reference to the ultimate parent entity of the associate. See our Tip Sheets on Item 6 and Item 7 for definitions of Top Level Associate. https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources

- Can you confirm that there is no requirement to make disclosure regarding the associate's associates. Correct. (Or as one of my colleagues put it, "I sure hope not!")

(6) With regard to Item 6(b) and the requirement to disclose 5% shareholders of ultimate parent entity and acquiring entity, can you confirm that:

(i) with respect to the acquiring entity, we would only disclose that Operating Company owns 100% of the stock of Newco and that we would not be required to disclose the 5% stockholders of Holding Company. This only calls for holders of 5-49.99% of the acquiring entity and its UPE. Because OpCo owns 100% of Newco, it would not be reported.

(ii) with respect to the ultimate parent entity, LP 1, we only are required to disclose the name of the GP of LP 1 and not the percentage of noncorporate interests held. Correct

(7) With respect to the reporting of dollar revenues:

(a) Is the following definition for "dollar revenues" still relevant (which was a definition included in the instructions prior to the revisions made to the Form in 2011) – I cannot find a reference to this definition in the revised Form, instructions or regulations. Yes, that's still good.

The term **"Dollar Revenues"** means the (i) value of shipments for manufacturing operations, and (ii) sales, receipts, revenues, or other appropriate dollar value measure for operations other than manufacturing; f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be supplied if delivery is an integral part of the sales price. Dollar revenues include interplant transfers (i.e., interplant transfers must be accounted for in dollar revenues reported)

(b) Are interplant transfers between U.S. plants required to be reported? The guidance describes reporting requirements for the sale of foreign manufactured products to a controlled U.S. entity. Does the same rule apply to interplant transfers where both plants are in the U.S.? Yes, if they are manufacturing revenues.

Thank you for your consideration.

[redacted]