

Haynes, Lanea

From: Walsh, Kathryn E.
Sent: Thursday, June 01, 2017 9:05 AM
To: [REDACTED] Berg, Karen E.
Cc: [REDACTED] Gillis, Diana L.; Shaffer, Kristin
Subject: RE: [REDACTED]

[REDACTED]

The issue here is the intent to acquire 100%. It is a long-standing PNO position that when that is the intent, even if it occurs in two steps, you must file for the value of 100%.

Kate

From: [REDACTED]
Sent: Wednesday, May 31, 2017 4:31 PM
To: Berg, Karen E.
Cc: [REDACTED] Walsh, Kathryn E.; Gillis, Diana L.; Shaffer, Kristin
Subject: RE: [REDACTED]

Karen: Thanks. In the cited interpretation, the writer indicates that both pieces of the LLC are to be acquired at the "same time" (meaning, as I understand the policy, that one must look at the HSR implications of both possible orders) – so if buyer were to first acquire, indirectly, the 25% piece, the acquisition of the remaining 75% interest becomes reportable.

Our deal is slightly different in fact pattern, as the acquisition of the controlling interest MUST happen as a first step. Isn't that a material distinction that would allow us to just file for the first piece, and treat the second step as "intraperson?"

[REDACTED]

From: Berg, Karen E. [<mailto:KBERG@ftc.gov>]
Sent: Wednesday, May 31, 2017 4:19 PM
To: [REDACTED] Walsh, Kathryn E. <kwalsh@ftc.gov>; Gillis, Diana L. <dgillis@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>
Subject: RE: [REDACTED]

I understand, but our position is that if you intend to hold 100% at the end of the day, you need to value and file for 100%.

Here is a recent interpretation on this point

<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1703005>

If amending the filing to 100% takes you into another fee threshold, we will still send the transaction to merger screening while we wait for the additional monies.

Thanks,
Karen

From: [REDACTED]
Sent: Wednesday, May 31, 2017 3:50 PM
To: Berg, Karen E.
Cc: [REDACTED]
Subject: RE: [REDACTED]

Hi Karen. There is surely an expectation to acquire the additional 31.2% percent, but that will occur in a second step. The deal is specifically structured as a two-step process for tax reasons (and wholly unrelated to HSR considerations), and on the basis, [REDACTED] (target's counsel) and I concluded that the reportable event was the first step acquisition of the 68.8% stake (which could in fact be a lower, but controlling stake that would still be valued in excess of the minimum threshold); the acquisition of the remainder of the [REDACTED] shares in the second step would be exempt under Rule 802.9.

Hope that clarifies our thinking.

Best,
[REDACTED]

[REDACTED]

From: Berg, Karen E. [<mailto:KBERG@ftc.gov>]
Sent: Wednesday, May 31, 2017 3:41 PM
[REDACTED]
Subject: [REDACTED]

Hi [REDACTED],
I'm not sure why you didn't file for 100% here, given that the intention clearly seems to be to acquire all the shares of [REDACTED], the exempt nature of the acquisition of [REDACTED] notwithstanding. Is there some doubt that the acquisition of the remaining 31.2% will happen?

Karen

[REDACTED]