

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, September 06, 2018 11:29 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Item 6c

From: Shaffer, Kristin
Sent: Thursday, September 6, 2018 11:29:09 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Item 6c

[REDACTED]

If the acquisitions are not consummated prior to filing, we agree that X may say none. However, we do find it helpful if there is an endnote explaining the situation.

Best regards,
Kristin

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From: [REDACTED]
Sent: Wednesday, September 5, 2018 3:28:40 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Item 6c

Hi folks.

We need your advice on how to answer Item 6c in connection with the following transaction.

Y is selling to X under a single purchase agreement Y's holdings in about 20-30 entities. We do not yet know whether there will be one closing or multiple closings. None of these entities are under common HSR control with another of these entities and Y holds minority interests in all such entities.

We believe that with 2 exceptions, X would not have to report its acquisition of voting shares of these entities because threshold tests would not be satisfied or HSR exemptions would apply. X is working on HSR filings to report its acquisition of certain voting shares of two of these entities -- A and B. Assume that A and B do not compete with each other but both report revenues in the software publishing code. Also assume that X is a newly formed entity that is its own UPE and at the time it makes its filings will not hold interests in any entities.

How should X answer item 6c in its HSR filing? May X say none since at the time that it files its HSR forms it will not hold any interests in any entities? (Note that X does not have sufficient data to determine whether it would acquire and hold at least 5% of the voting shares of the entities in which it is acquiring interests from Y (other than A and B) because Section 801.12 likely applies to such entities and X does not have the information necessary to run that formula.)

Thanks for your help.

[REDACTED]

[REDACTED]

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