

## Sheinberg, Samuel I.

---

**From:** [REDACTED]  
**Sent:** Wednesday, November 14, 2018 1:07 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora  
**Subject:** FW: HSR Question

---

**From:** Jones, Robert L.  
**Sent:** Wednesday, November 14, 2018 1:07:25 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: HSR Question

[REDACTED]

The UPE has an obligation to comply with the Act. Rule 803.4 only applies to acquired persons and 803.3 only applies when the UPE is unable to provide a response, not when the UPE is unwilling to do so. We don't want to get in the way of this deal, but we have an obligation to enforce the rules and if we receive the filing without the UPE's cooperation, we may have to refer the matter to our Compliance shop.

Thanks.

Bob Jones  
AD Premerger Office

---

**From:** [REDACTED]  
**Sent:** Tuesday, November 13, 2018 4:55 PM  
**To:** Carson, Timothy <[tcarson@ftc.gov](mailto:tcarson@ftc.gov)>  
**Cc:** [REDACTED]  
**Subject:** RE: HSR Question

Ultimate Parent is an entity under 801.1(a)(2).

---

**From:** Carson, Timothy <[tcarson@ftc.gov](mailto:tcarson@ftc.gov)>  
**Sent:** Tuesday, November 13, 2018 3:33 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: HSR Question

[REDACTED]: as a preliminary matter, can you confirm whether Ultimate Parent is in fact an "entity" within the meaning of the HSR rules? Thank you.

---

**From:** [REDACTED]  
**Sent:** Tuesday, November 13, 2018 9:35:38 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** HSR Question

We have a question as to how to best make a filing when the UPE refuses to provide certain information required for an HSR filing.

#### Background

Our client (“Acquirer”) is an entity organized in a non-U.S. country (“Country A”). Acquirer is wholly owned indirectly by another company (“Ultimate Parent”) also organized in Country A. Ultimate Parent in turn is wholly owned by an agency of the government of Country A.

Acquirer plans to purchase all of the voting securities of a U.S. company (“Target”) via a wholly-owned U.S.-organized subsidiary (“Acquirer Sub”). Acquirer, through Acquirer Sub, currently controls another U.S. entity (“Overlapping Sub”) that will have a NAICS overlap with Target. Assume that the size of transaction test and size of persons tests are met.

Because Ultimate Parent is controlled by the government of Country A, limited information is available concerning Ultimate Parent’s investments or finances. Indeed, Acquirer has no insight into Ultimate Parent’s investments or finances and we understand that Ultimate Parent likely will not provide Acquirer information concerning its controlled companies or itself, including dollar revenues of entities controlled by Ultimate Parent, the names or headquarters of entities controlled by Ultimate Parent, any minority investors in Ultimate Parent, or any associates of Ultimate Parent. Based on Acquirer’s knowledge of Target’s business, Acquirer does not believe that any other entity that overlaps with Target is controlled by Ultimate Parent except Overlapping Sub. Ultimate Parent generally permits Acquirer to operate independently and has not received any information or documents evaluating or analyzing Acquirer’s proposed acquisition of Target.

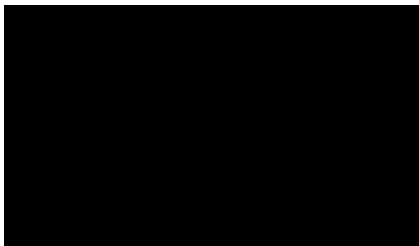
#### Analysis & Questions

Our understanding is that the acquisition is not exempt under 802.52 because, although the acquiring person is controlled by a foreign state, foreign government, or agency, the acquisition is not of voting securities of an entity organized under the laws of Country A. We are unaware of any other applicable exemption. Therefore, we believe that an HSR filing will be required, but please let us know if we have overlooked other possible exemptions.

Assuming that an HSR filing is required, we would like your advice on how to best proceed with the HSR filing. Acquirer believes that Ultimate Parent will authorize it to file HSR on its behalf, but will not provide information responsive to Items 4-8. As a result, Acquirer would only be able to respond to Items 4-8 using information within its control and that of its subsidiaries, including Overlapping Sub. Therefore, we believe that Acquirer may file under 803.2(a), provide all information available to it (including concerning Overlapping Sub), and provide a statement of non-compliance with regard to Items 4(b), 5(a), and 6(a)-(b) explaining that Ultimate Parent will not provide the information and therefore Acquirer can only respond to those items based on information pertaining to it and its controlled entities. Because no documents responsive to Items 4(c) or 4(d) documents have been provided to Ultimate Parent no statement of non-compliance will be required. Similarly, because Acquirer does not believe that Ultimate Parent has any interests in any company competing with Target besides Overlapping Sub, we believe that it may adequately respond to Items 6(c), 7, and 8. To be absolutely clear, however, Acquirer would be reporting overlap information for Overlapping Sub in Items 5(a), 6, 7, and 8. Please let us know if you see any issues with this approach in light of the context.

Alternatively, given that Ultimate Parent likely will not provide Acquirer significant information required for the form, do you suggest Acquirer filing under 803.4 even if Ultimate Parent will give Acquirer authorization to file on its behalf?

Thank you in advance for any help you can provide.



---

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.