

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, March 17, 2021 10:08 AM
To: Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Question Regarding HSR Filings for Multiple UPEs in Single Transaction

From: Walsh, Kathryn E.
Sent: Wednesday, March 17, 2021 10:08:25 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Question Regarding HSR Filings for Multiple UPEs in Single Transaction

We agree that there are two filings here and that you should describe all three transactions in Item 3(a). You cannot combine the two filings.

From: [REDACTED].
Sent: Tuesday, March 16, 2021 4:10:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Question Regarding HSR Filings for Multiple UPEs in Single Transaction

Hello,

I am hoping to get some guidance from the Pre-Merger Notification Office regarding a hypothetical merger scenario laid out below, specifically whether, in a transaction governed by one Asset Purchase Agreement, but with three UPEs and two reportable transactions, individual HSR filings for each UPE is necessary, or all UPEs can be combined into one filing.

Hypothetical Scenario:

Buyer enters into an Asset Purchase Agreement with three Sellers—A, B and C. While they share many of the same shareholders, each Seller entity is its own UPE because no-one “controls” them for purposes of the HSR regs. The total purchase price is \$850 million, with \$400 million allocated to the assets being purchased from each of Seller A and Seller B, and the remaining \$50 million allocated to the assets being purchased from Seller C.

In my view of the HSR rules, it appears that we have two reportable transactions from the above scenario: (1) the asset sale of Seller A for \$400 million and (2) the asset sale of Seller B for \$400 million, since they both exceed the “size of transaction” test’s upper threshold. The asset sale of Seller C is only \$50 million, so it would fall below the “size of transaction” test’s lower threshold and wouldn’t be reportable.

I assume that there would need to be two HSR filings—one for each of the two reportable transactions with Seller A and Seller B. I assume further that we would mention the other two Sellers’ asset sales in Section 3 of each HSR Form, where you’re describing the “transaction” and providing a copy of the Asset Purchase Agreement—i.e., Section 3 would describe all three transactions memorialized in the Asset Purchase Agreement, even though each HSR form is really focused on Seller A’s or Seller B’s constituent \$400 million transaction that is reportable under HSR.

Is the above understanding correct? Are two HSR filings necessary in this scenario with two reportable transactions and three UPEs, or can they be combined into one filing?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]