

KnowledgeVision | Q & A Session 1- Aggregation in the Notice of Proposed Rulemaking - HSR Rulemaking Initiative Share

TARA KOSLOV: Good afternoon and welcome to our first Q&A session for the FTC's rulemaking initiative related to Hart-Scott-Rodino Premerger Notification. My name is Tara Koslov. And I am a deputy director in the FTC's Bureau of Competition.

On behalf of the FTC's HSR Rulemaking team, I want to welcome you to the first of three question and answer sessions. Our goal is to provide a forum to answer questions in hopes that the Commission will receive a robust set of comments on its proposed changes to the HSR rules.

By way of background, on September 21, the Commission announced that it would seek public comments on proposed changes to the rules and interpretations that implement the HSR Act. That initiative has two parts.

The first is a Notice of Proposed Rulemaking that would if adopted make two changes to existing rules. The first proposed change, which is our topic for today would require filers to disclose additional information about their associates and to aggregate acquisitions in the same issuer across those entities.

The second change, which we will discuss tomorrow in another Q&A session starting at 1:00 PM Eastern, is a new proposed rule that would exempt the acquisition of 10% or less of an issuer's voting securities unless the acquiring person already has a competitively significant relationship with the issuer.

Next Monday, November 16, we will be hosting our third and final Q&A session to discuss topics in the Commission's Advance Notice of Proposed Rulemaking. Before I introduce our panelists, I will quickly review a few administrative details.

First, a video recording of today's session and our later sessions will be available on the FTC's website shortly after each event. Second, as with any virtual event, we may experience technical issues. If these occur, we ask for your patience as we work to address them as quickly as possible. We will also try to keep you informed of any significant delays.

Finally, we will be accepting questions during this event. So please send your questions to hsrrulereview@ftc.gov. You can also submit questions related to our

next two Q&A sessions to the same address.

Due to time constraints, we may not be able to address all questions. But we will review every question we receive and make them part of the record for this rulemaking. And now let me introduce our panelists.

First is Kate Walsh, the deputy assistant director of the bureau's Premerger Notification Office. Kate has been with the FTC for over 13 years and in private practice for many years before that. After 20 years of focusing on HSR, she is a specialist in HSR rules.

Kate will be providing a brief overview of the proposed Aggregation rule to give some context for our discussion today. Our other panelist is Ken Libby. Ken is an attorney in the Bureau's Compliance division. And he has been involved in enforcing the HSR rules for over 30 years. With that, let me turn it over to Kate.

KATE WALSH: Thank you, Tara. Welcome, everyone. We're glad you're here today. The NPRM lays out a proposed aggregation concept and a proposed exemption.

Today, we'll be answering questions, as Tara said, related to the aggregation concept. And tomorrow, my colleague Ken Levy, will review proposed rule 80215-- the new de minimis exemption.

Next week, we'll turn to the topics in the ANPRM. First, I want to caveat my remarks in this session by noting that the Commission has issued a proposed rule. And we are now in the public comment phase of this proposed rulemaking.

The NPRM contains the basis for our proposed approach. But we are hopeful that we will get robust comments that help inform whether or how this approach should be different in the final rule. As in past rulemakings, we will take the comments we receive very seriously and encourage all stakeholders to submit comments.

In the NPRM, the Commission has proposed to pair a new approach to aggregation with a de minimis exemption for acquisitions of 10% or less of an issue as voting securities. Because we think they are both parts of right-sizing HSR.

The proposed approach to aggregation fixes a known problem that occurs all the time-- the acquisition of voting securities in the same issuer by numerous entities,

typically within a fund structure. By the way, I'll likely speak mostly in terms of funds today.

But we purposely included master limited partnerships in the NPRM. Because we see the same issues arise in the context of master limited partnerships.

Under the current rules, each fund is its own UPE or Ultimate Parent Entity. And so each fund would assess whether it needed to make an HSR filing independent of whether any other entity within the fund structure had to file.

When shares are acquired across entities that are each separate UPEs, sometimes, we don't get a filing at all. If we do get a filing, it rarely includes information that reveals the entire stake held across all UPEs in the investment structure. As a result, even if we get an HSR filing, we can't adequately evaluate the real competitive impact of what's being acquired in the same issuer.

The proposed aggregation concept aims to address this problem by changing the definition of person in the rules. Under the current rules, the person is the entity at the top of the chain of control. In the case of a fund structure, the person is typically the fund making the acquisition plus everything it controls.

So under the current rules, you're only looking at the person and down to every entity it controls. But under the proposed rule, you'd be looking at the person and down but also sideways to associates that are related to the person but not under common control.

As explained in the NPRM, the Commission proposes to use the concept of "associates." Because that's already a defined term in the rules. And filing parties are familiar with it. But as stated in the NPRM, if there's a better way to accomplish aggregation, we welcome comments on that topic. So I'd like to talk in specifics for just a minute. And if I could please have my slide.

So I wanted to walk through a simple fact pattern that'll illustrate exactly what we're talking about in terms of aggregation and how it would work. Under the new definition of person, Fund 1 and its associate, Fund 2, will be part of the same person headed by the entity that manages the investments of both Fund 1 and Fund 2. We'll call it the managing Entity.

Let's say that the managing entity, Fund 1 and Fund 2 are on the buy-side of an HSR filing. Under the new definition of person, the managing entity would file. And the HSR form would include information about that managing entity as well as Fund 1 and Fund 2.

Now, I understand that fund structures can be much more complicated than this and typically are. The reason this is so simple is, first of all, to make it easy during this presentation. But secondly, to illustrate that right now, what we look at in fund structures is where the investment management lies.

So in this very simple structure, the investment management of Fund 1 and Fund 2 is directly above in the managing entity. We don't expect that approach to change under the new proposed path that we're on. Indeed, we envision treating associates very similar to what we are currently doing.

So we've laid out in the NPRM the way these new rules would change information required in the HSR form. But let's go through it briefly with this very, as I said, simple hypo.

So if we look at items 4A and 4B, the HSR form would include financials from the managing entity-- Fund 1, Fund 2, and each portfolio company held by Fund 1 and Fund 2. For items 4C and 4D, the HSR form would include responsive documents from the managing entity-- Fund 1, Fund 2, and each portfolio company held by Fund 1 and Fund 2.

Now of course, typically, you're only going to find responsive documents with the relevant portfolio company-- its fund and the managing entity above that. For item 5, the HSR form will now require revenues from the managing entity-- Fund 1, Fund 2, and each portfolio company held by Fund 1 and Fund 2.

So if any entity reports in the same NAICS code as the target, that will be indicated across the portfolio companies held by Fund 1 and Fund 2. For item 6A, starting with the managing entity, the HSR form will require filers to list responsive subsidiaries through Fund 1 and Fund 2 down to the subsidiaries of each portfolio company.

For item 6B, minority shareholders will acquire minority shareholders of the

managing entity Fund 1, Fund 2, and the acquiring entity or the portfolio company.

For item 6C, you'll have to provide information that's different. Because the person will now include associates. But really it's getting at the same point-- provide information on Fund 1 and Fund 2's minority holdings in the same industry as the target. To be clear, this item will continue to be limited to NAICS code overlaps with the target.

For item 7, this item will also include new information if the proposed rule is adopted as final. But it will be familiar for frequent filers. You will provide information on Fund 1 and Fund 2's controlled holdings in the same industry as the target.

Here too, this item will continue to be limited to NAICS code overlaps with the target. For item 8, here you will report all prior acquisitions within the specified parameters in overlap NAICS codes from the portfolio companies held by Fund 1 and Fund 2.

All right, if you could please take down my slide. I will give the floor to Tara so that we can look and see what questions we have.

TARA KOSLOV: Great, thank you so much, Kate. And thank you so much to everybody who sent in questions. We did receive many questions over the last few days.

And we've done our best to get through those. And we'll be presenting those. And we are also monitoring the email box for people who are sending in questions now during the event.

So let me turn to the first question. And, Ken, I believe you're going to cover this one. So, Ken, "would the 80230 intra-person exemption apply to transfers between funds that are associates?"

KEN LIBBY: Thank you, Tara. First, I would note that we don't need to get to the 80230 analysis. Under the proposed rule, the UPE entities whose investments are managed by the same managing entity are part of the same person.

So any transfer from one UPE entity to one of its associates would not be reportable. Because all of the entities are within the same person. And there's no change in the holdings.

To answer the specific question about 80230-- no, 80230 would not apply. The new definition of person in the proposed rule includes not only the managing entity but all of the entities for which it is the investment manager. In contrast, the exemption contained in 80230 requires holding at least 50% of the voting securities.

So unless the managing entity controls the entities for which it is the investment manager, 80230 by its terms does not apply.

TARA KOSLOV: Great, thanks, Ken for that explanation. So here's the question that relates to the potential expansion in the number of filings that may be coming in. So the change in the definition of person doesn't expand the information that's required to be submitted in transactions that are reportable today. But due to the aggregation across associates, it could result in many more filings.

And so a question we received was, "has the FTC considered the impact of creating a filing requirement in situations that currently do not require filing including changes in investment risk and management costs for investors?" Kate, I believe you're going to take this one.

KATE WALSH: I'll be happy to, Tara, thank you. As we stated in the NPRM, the Commission is concerned that we are not receiving notice of potentially problematic investments that it would otherwise subject to Premerger review. The Commission believes that merger enforcement will be more effective if the agencies receive information that will provide a more complete picture of an entire investment structure through aggregation.

Again, we use the concept of associates as the basis for aggregation. Because that concept is already defined in the rules. And people are comfortable applying the associate's analysis.

That said, the Commission has encouraged comments on whether there is a better way to accomplish the goals of aggregation that would result in less burden. We acknowledge in the NPRM that there might be more filings due to aggregation. But we are also aware that aggregation may reduce the number of filings.

For example, under the current rules if three funds who are associates would each acquire reportable stakes in an issuer. Then there would be three separate filings.

Under the proposed rule with aggregation, there would be one filing.

We don't yet know the net impact on filings but believe that the filings we do get will provide the right amount of information to do our initial competition analysis. As for the impact on investment risk and management costs, we welcome comments on these points.

TARA KOSLOV: Great, thanks, Kate. And yes, we'll be on the lookout for comments on that. So here's a question we received that relates to potential exemptions.

So the question was, "in the NPRM, you raised the question of whether it is appropriate to apply the new definition of person to index funds, ETFs, and the like. What potential exemptions are under consideration? And would they apply to other institutional investors such as mutual funds?" And, Ken, I believe you're going to take this one.

KEN LIBBY: Yes, thank you, Tara. We understand that certain investment vehicles such as index funds and ETFs engage in automatic trading, meaning that the decision to buy or sell is truly passive. That could provide a basis for treating these investment vehicles differently for the purposes of aggregation.

And we are interested in receiving comments on how we could do that. In other words, we welcome comments on the contours of these types of investment vehicles and ways to exempt them from aggregation.

As in another example, mutual funds can be different in their investment activity relying on trading that is not necessarily passive. We welcome comments on ways to distinguish different types of mutual funds.

On the basis of institutional investors, I'll note that the AMPRM asks questions about whether the current rules are up-to-date given changes in investments since the late 1970s. For instance, index funds did not exist when the HSR program was implemented.

For parties who have experience with institutional investors, we welcome comments on how the proposed rule would impact our operations and are interested in receiving comments of what entities should be covered by 80264 in response to

questions posed in the AMPRM.

TARA KOSLOV: Thanks, Ken.

KATE WALSH: Tara, can I jump in on that real quick?

TARA KOSLOV: Sure, go right ahead.

KATE WALSH: I wanted to add it's really important that we get input on the AMPRM and 80264, in particular. I mean, obviously, we're looking for comments on all questions laid out in the AMPRM. But 80264 hasn't been touched in decades.

And we really would value the chance to hear from folks in comments about how valid 80264 is, how it might need to change the entities involved, how they've evolved. We would value all of that. So please, highlighting what Kenneth said that we would be very grateful for input on that particular topic.

TARA KOSLOV: It's a really important point. Thanks for emphasizing that. Kate, I'm going to throw a question to you that also relates to institutional investors. So here's the question we received.

Many asset managers manage both funds that qualify as institutional investors under 80264 and funds that do not. So doesn't this mean that under the proposed rules, the exemption may no longer be available to institutional investors in many cases?"

KATE WALSH: Thanks, Tara. We certainly understand the question and understand the tension there. The first thing I'll say is that aggregation will apply to all types of managing entities. And the proposed rule would require aggregation of all holdings of the same issuer, regardless of how each fund is organized.

As we've said in the NPRM, this is necessary so that we understand the total stake that the person has in the issuer. We want a full picture of an investment structure in order to conduct the most efficient, competitive analysis.

Of course, we welcome comments on the particular issues raised by this proposal and suggestions on how to resolve them. We would be grateful for specifics on how entities are structured to have both institutional investors and non-institutional

investors and how we might be able to differentiate, and how we would be able to move forward understanding the importance of the institutional investor exemption.

TARA KOSLOV: OK, switching gears a little bit. Here's a question that relates to the foreign person analysis. So here's the question.

"Under the proposed rules, how would one determine whether an acquiring person is a foreign person if its associates include both US and foreign entities? Would the foreign person analysis under 8011E2 still be conducted on the UPE of the acquiring entity or on the managing entity?"

KATE WALSH: Thanks, Tara. That's a really important set of questions. And let me take a moment to provide an update that we are, in fact, working on the draft of the final rule for the determination of whether an entity is a US or a foreign person or issuer.

We would welcome comments on how to best address what these questions have identified as issues. We're in the process, as I said, of drafting that final rule, reviewing comments received in response to that rulemaking.

And obviously, if a Commission finalizes a rule on whether a person or issuer is a US or foreign person, we'll need to reconcile that with the one adopted-- by the one that we're currently facing with the proposed rule. We'll need to work that out. And this question that we've gotten raises several issues that will be crucial there. And again, we welcome input on how to do that.

TARA KOSLOV: I'm sure people will be happy to know that we're thinking through all those different steps. Ken, I'm going to pose a process question to you that we received.

So the question is, "will there be a significant time period between the publication of the final rules and the date on which they take effect so that investors can analyze their portfolios, make the applicable filings, await responsive filings by the issuers, and obtain termination or expiration of the waiting periods so that ordinary course trading can continue when the rules take effect without disruption to the securities markets?"

KEN LIBBY: Yes, of course, there's going to be some period. There's typically a delay in implementing the rule changes. And we welcome comments on how long the transition period should be.

However, we don't want the period to be so long that it would enable filers to evade the purpose of the new rule by substantially increasing their holdings before the effective date.

TARA KOSLOV: And I'm sure if potential commenters have some thoughts about what the right period would be, we would welcome comments on that point.

KATE WALSH: Yeah, and if I could add, Tara, we understand the importance in giving people plenty of time to get used to things and get things in order for filings that would be affected. We have every interest in making sure that folks have enough time. It's useful for us too, believe me.

And it's important to note the tension there. We want to give people enough time to make the transition. But again, we don't want it to be so long that the purpose of the rule is not forefront.

TARA KOSLOV: An important balance to be reached there. So along similar lines relating to potential burden, Kate, let me pose another question to you that we received.

"Given the burden on investors in collecting and providing this information for each associate, has the FTC considered limiting the requirement to provide information on associates to overlapping or competing entities consistent with the current rules? And could an approach that asks investors to identify whether they hold interest in competitors or firms with a vendor/vendee relationship better balance the benefits and burdens of new information that would be required for items 4 through 8?"

KATE WALSH: That's a great question. This is essentially asking if the approach currently used in the form in item 6C, 7C, and 8C that require a more limited response based on NAICS overlaps could also be used for items 4, 5, 6A, and 6B if aggregation of associates is required.

So this speaks to whether NAICS codes are an accurate way to capture competitive overlaps or vertical relationships among the entities in an investment structure. The proposed rule offers two ways to identify competitive relationships, NAICS codes, or through an assessment of whether the parties are competitors.

In the MPRM, the Commission, of course, acknowledges that this proposed two-

pronged definition of competitor is broad. The Commission stated that the agencies and the public will benefit from such a broad definition. Because the agencies in fulfilling their obligations to enforce the antitrust laws have a strong interest in receiving HSR filings that reveal any indicia of competition between the filing parties so that the agencies can fully evaluate the competitive impact of the proposed acquisition.

Nevertheless, the Commission invites comments on other ways to define competitor that would still provide the agencies with thorough information on the competition that exists between filing parties. So we encourage comments on this important topic. And in addition, we want to make sure you're thinking also about the AMPRM, which asks for input on whether item 8's limitation to overlapping NAICS codes should be reconsidered. And we welcome comments on that as well.

And just to take a little bit of a step back, we do very much, as stated in both the NPRM and AMPRM intend to look at comments received from both to inform both processes. In terms of the vendor/vendee relationship point, we welcome comments on whether identifying that kind of relationship would provide a better approach.

We're really open to all ideas here. We welcome other ways to think this through-- other ways of any kind that would get us the information we need and provide a more streamlined approach.

TARA KOSLOV: So I do want to remind everybody who's joining us today that if you do have any questions, we are monitoring the incoming email box. Again, that's hrrulereview@ftc.gov. And we'll be on the lookout for any additional questions. While we wait to see if we get any of those, Ken, I'm going to pose a hypothetical to you that we received I believe over the weekend.

So here's our hypothetical. A, B, and C are each their own UPE but are associates of each other. Each holds voting securities below the \$50 million threshold of issuer X. But the cumulative stake is above the threshold. Will the managing entity need to file under the new rule to cover the current holdings?

KEN LIBBY: That's an important question. No, the rule does not apply retroactively to shares bought before the implementation of any file rule. And if no additional voting

securities are acquired, there's no need to file an HSR report form.

But if any of the associates-- A, B, or C acquires additional shares of issuer X, a filing will be required. And the filer must observe the waiting period before acquiring the additional securities unless an exemption applies.

TARA KOSLOV: OK, and thank you to the person who submitted that hypothetical. Kate, here's another question we received. "Could the staff explain the research that was undertaken in order to estimate the increased burdens of the new rules, specifically did staff consider the impact on affected filers, namely private equity and asset management firms separate from filers that are unlikely to be affected such as publicly-traded corporations?"

KATE WALSH: Thank you, Tara. This question relates actually to the calculations that we have to do for every rule-making under the Paperwork Reduction Act. I was involved in that process. And I can tell you that we did specifically consider the impact of the proposed rule on those who will be affected, namely funds and master limited partnerships.

And we described that in the Paperwork Reduction Act section of the NPRM. We also described the fact that we've had to make some approximative calls and that, in fact, people should weigh in on the numbers that we've generated. As we say in the NPRM, we welcome comments on whether we've done the calculations correctly.

And it's really important. We did our best estimates based on our own internal requirements on the Paperwork Reduction Act side. But we really would value additional input on those points so that we can make sure we've properly evaluated the impact here.

TARA KOSLOV: Kate, we received several questions related to the different types of investment managers and whether they should be treated as associates. So maybe you could elaborate on that point a little bit.

KATE WALSH: Sure, and we did receive an enormous number of questions on this. And we get it. There are so many different complicated structures involved in funds and how they're managed-- how their investments are managed. We understand that there can be unaffiliated third-parties involved, that there can be multiple investment

advisors at issue.

We even got someone who pointed out that sometimes managers are under common control with affiliated broker/dealers. We understand how many complicated scenarios exist out there. And we really would ask for your help in understanding all of those.

We understand that it might be difficult to determine whether the associate's analysis applies to all those scenarios. And we would really appreciate input on helping us think that through. Comments on how these investment managers, advisors, and other managers should be treated would be very much appreciated and very helpful as we determine what actually applies in terms of associates with these very complicated structures.

TARA KOSLOV: OK, while Kate and I take a look at a couple of questions that have come in while we've been talking via email, Ken, I am going to pose another question to you.

So here is one of the questions we received. "Can acquiring persons continue relying on the exemption in 80221 for acquisitions in voting securities not meeting or exceeding a higher notification threshold even though the prior filing was made under the narrower definition of the person? If so, would the new acquisitions have to be made only by the original UPE in order to qualify if the different UPE within the person already holds voting securities in the issuer, will such shares be counted towards the threshold for purposes of the exemption?"

KEN LIBBY: So yes, 80221 would still apply and any UPE could acquire more shares and be covered by the exemption, that is, any UPC within the same person as now defined to include associates. But all shares that are held within that person would need to be aggregated in order to determine the level of holding and whether or not additional shares could be acquired without making a new filing.

TARA KOSLOV: OK, thank you, Ken. So Kate, I'm going to pose a question that we have received during this session. So let me look on a different screen over here.

OK, so this was a question that was a follow-up from your introductory remarks. The questioner said, "you mentioned that all are familiar with associates. But that's in the context of information to put on the form for a reportable transaction for a

specific single fund. Associate is not currently used to determine reportability."

So the question is, "if multiple funds are involved, can filers choose which fund to start with to assess associates and ignore other permutations that may require different filing possibilities?"

KATE WALSH: Yeah, a lot of people have raised the idea that associates is a complicated topic. And it's complicated to apply the analysis. Some entities that are out there are not commonly applying that right now.

And that's a really good thing to note. This question highlights that associate is not currently used to determine reportability-- absolutely right. And I think the question you've raised is a really good one.

If multiple funds are involved, how would we determine how to guide people on which fund to choose? And how would we balance that if, for instance, choosing another fund within that same structure resulted in different potential filing obligations?

And I will note that under current HSR informal interpretation, we've said that if any structure results in a potential filing, obviously, we want that to be the end result. But I think we've got some special considerations here. And we'll have to think those through.

I can't really give a definitive answer at the moment. We welcome input on this. Details would be extremely helpful. Anything folks want to offer in terms of how that would look, we'll be thinking about it.

But it would be even better if we got comments that showed other perspectives on how to think about it. So thank you for the question. And another thing to add to the list for our consideration.

TARA KOSLOV: Great, thanks, Kate. And I'm delighted to see that our live Q&A process is working. So here is another question that we've received. And I think I'm going to throw this one to Ken.

So the question we received is, "has the Commission considered the implications for section 8 of the proposed expansive definition of acquiring person to include

associates?" In other words, associate entities, which may each have a director on the board of corporations could be competitors.

KEN LIBBY: So I would note that we deal with this in connection with the proposed 80215, which we'll talk about tomorrow. But this change in the rules is not designed to change the substantive law of section 8 analysis. And that would continue as it has and would not be impacted by this.

We did not use section 8 in devising the exceptions to the de minimis rule in the 80215. But it does raise an issue that people will have to think about. But that would be thought of under section 8 terms. And I can't give you a specific answer as to how that section 8 analysis would be done.

TARA KOSLOV: Thanks, Ken. So here's a question that we just received in the chat that is a question we've also been batting around ourselves. And I think Kate can give us a little bit more details here.

"So people are wondering when this NPRM will be officially published in the Federal Register, which will then trigger the comment filing deadline. And so for those of you who are observing, you are correct. It has not yet been published in the Federal Register. So we do not yet have a date." Kate, do you want to elaborate on that a little bit?

KATE WALSH: Sure, I can tell you that it's in process. And let me try and provide a little bit of clarity on what that process actually involves. I think unless you've had to do this, you might be under the impression that once you send the drafts off to the Office of the Federal Register that everything falls into place, right? And that it's a very streamlined process. And it's within a couple of days. And something gets published.

Well, that's actually true for non-substantive things, probably. We certainly see other rules that we do-- like our yearly updates to the thresholds-- get published fairly quickly. But we've got something really, really substantive with this rulemaking and, of course, also with ANPRM.

And what happens is, it takes the Office of the Federal Register time to go through those things. Because they are so substantive. They are extremely backed up right now. So that's added to the delay.

And even when they do finally get to your materials at the Office of the Federal Register, there is a very normal back and forth that goes on in terms of them needing clarification, them needing certain edits made, and it often relates to very technical parts of things. For instance, how the 803 changes get laid out.

It's very, very technical, as I said. So we are in that process. And we are making progress. We are doing everything we can to move things forward as fast as we can on the FTC side. Of course, it's largely out of our control once we've provided our input on the edits made-- whatever edits we need to. We put it back into the Federal Register's hand. And we're really out of the process at that point.

But keep watching the web page. We do make an effort. As I think most know, the Premerger Notifications Office's home page provides very quick updates on this kind of thing. So just keep watching. We'll get it we'll get that information to you as soon as we can.

TARA KOSLOV: So short answer-- watch this space. But yes, we'll get that up as soon as we have some final information. I do want to remind everyone, as we come to the end of this event that again, we will be doing this same Bat-time, same Bat-channel tomorrow at 1:00 where we'll be discussing the second change in the Notice of Proposed Rulemaking.

So as I mentioned earlier, we'll discuss a new proposed rule that would exempt the acquisition of 10% or less of an issuer's voting securities unless the acquiring person already has a competitively significant relationship with the issuer. And we really hope that you'll submit additional questions on that. So that same email box-- we'll be on the lookout for those questions. And we'll follow a similar format to what we did today.

But as you can tell, we're trying to take a really thoughtful approach to these questions. And so to the extent that you all can send them in advance, and that will give us today and tomorrow morning to ponder them and give the clearest possible answer. That would be great. Ken or Kate, do you have anything else that you want to add to today's session?

KATE WALSH: I'll add that the comment process is, as we said at the beginning-- as I said at the

beginning-- something we take very seriously. And we really do want input from all stakeholders involved in this proposed rulemaking.

We'd be very grateful to hear from folks that don't normally file with us-- don't normally make comments in our rulemaking process. We want to be better informed. We want to hear the pros and the cons of what we've proposed. And we very much look forward to taking those comments and thinking about them as seriously as we always do in a notice and comment process.

KEN LIBBY: And I want to add thanks to the people who submitted questions for this session. It was very helpful for us to have those and have them in advance so that we could think through our responses and give better responses. And frankly, some of them raised issues that we hadn't considered before and we'll need to take into account in any proposed rulemaking.

So it's incredibly helpful to get them. And we hope to receive additional questions for the upcoming sessions. Thank you.

TARA KOSLOV: All right, let's see. We did get one additional question, I believe. Kate and Ken, if you can take a look at the chat.

So while you're taking a look at it, I'll go ahead and read the question. So the question is, "can you clarify whether, in the situation where multiple funds form a new co-buyer, none of which control the buyer, do we need to aggregate those fund's holdings in Newco for purposes of assessing size of person or control of a Newco LLC?"

KATE WALSH: That is a very interesting question. And I'm not sure that we've had that exact question before. And I will take it under advisement. I need to think about it. Ken, do you have anything to add?

KEN LIBBY: So I think yes, we need to take it under advisement. But if all or a number of the funds are all associates with each other, such that they are part of the same person, those holdings in the Newco probably need to be aggregated to determine whether they control the Newco.

KATE WALSH: I think that's probably right. But we do need to think about it before we give a definitive answer on that.

TARA KOSLOV: Yeah, and we can certainly clarify that tomorrow.

KATE WALSH: That's a good idea.

TARA KOSLOV: All right, well, we're so glad that everybody was able to join us today. It's unfortunate that we couldn't all be together to discuss our beloved HSR topics. But this virtual format, I think, worked really well. And we're glad you were all able to be with us.

And thank you very much to Kate and Ken for your wisdom and expertise and for shepherding this process. And we will see you all back here again tomorrow at 1:00 for our next session. Thanks so much.