

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, October 7, 2021 2:37 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Request for HSR Guidance

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, October 7, 2021 2:37:14 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]; HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Request for HSR Guidance

[REDACTED]
Thank you for checking. We agree that Individuals I and F are the UPEs. Since each of those individuals control the entity that holds 75% of the target, we advise listing 75% in Item 1(f). You may provide further explanation in an endnote.

Best regards,
Kristin
Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, October 6, 2021 3:53 PM
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Request for HSR Guidance

Hello,

We write to request informal guidance regarding identification of the UPE(s) of an acquired entity, and how to state the UPEs' holdings for purposes of Item 1(f). The facts are as follows (given the complexity, I am also enclosing a blinded organizational chart for ease of reference):

1. The acquired entity is a corporation (A Inc.).
2. B LLC holds 75% of A Inc.'s voting securities and has the current contractual power to designate 50% or more of A Inc.'s board of directors.
3. C LLC has the right to 50% or more of B LLC's profits or assets after dissolution.
4. C LLC is held as follows:
 - a. D Trust has the right to 25% of C LLC's profits or assets after dissolution.

The UPE of D Trust is F Individual.

- b. E LLC has the right to 25% of C LLC's profits or assets after dissolution.

E LLC is a sole member LLC. F Individual has the right to 100% of E LLC's profits or assets on dissolution.

- c. G LLC has the right to the remaining 50% of C LLC's profits or assets after dissolution.

H Trust has the right to 50% of G LLC's profits or assets after dissolution.

1. The UPE of H Trust is I Individual.

I Individual has the right to 50% of G LLC's profits or assets after dissolution.

- d. Accordingly, F Individual and I Individual each indirectly hold 50% of C LLC.

Based on the foregoing facts, and applying the HSR control test up the various chains until reaching the individuals or entities that are not controlled by any other individual or entity (§ 801.1(a)(3)), we believe that A Inc. has two UPEs: (1) F Individual, and (2) I Individual, each of whom indirectly holds 37.5% of A Inc.

Can you please:

1. Advise if you agree, based on the foregoing facts, that the UPEs of A Inc. are F Individual and I Individual; and
2. If so, for purposes of Item 1(f) (“percent of voting securities or non-corporate interests that the UPE holds directly or indirectly in the acquiring or acquired entity”), advise whether we should state that each UPE holds 37.5% of the acquired entity, or whether we should combine the two UPEs’ holdings and state that they collectively hold 75% of the acquired entity. We have not found anything in the rules or guidance suggesting whether to provide, for purposes of Item 1(f), a separate percentage for each UPE or a combined percentage for both UPEs where there are multiple UPEs.

Thank you in advance.

[REDACTED]

* * *

[REDACTED]