

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Tuesday, February 1, 2022 9:54 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora  
**Subject:** FW: Question regarding Size of Transaction

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Tuesday, February 1, 2022 9:54:24 AM (UTC-05:00) Eastern Time (US & Canada)

**To:** [REDACTED]  
**Cc:** [REDACTED]

**Subject:** RE: Question regarding Size of Transaction

[REDACTED]

We disagree. The description below contemplates the acquisition of 100% of two entities; the fact that there are multiple sellers does not factor into the analysis here (other than potentially with regards to Rule 801.30).

- If A, Inc., is just a holding company for the interests in C, LLC, Buyer should look at the transaction as the acquisition of 100% of C, LLC.
- If A, Inc., holds additional assets, Buyer should look at the transaction as two acquisitions: one for the acquisition of 100% of A, Inc., and one for the secondary acquisition of 100% of C, LLC.

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

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**From:** [REDACTED]  
**Sent:** Monday, January 31, 2022 2:50 PM  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]

**Subject:** Question regarding Size of Transaction

Dear PNO,

I'm writing to confirm the proper calculation of size of transaction for HSR purposes. Please note that the total price to be paid by the buyer has been determined.

Relevant companies and their ownership structure at the time of acquisition:

A, Inc., which holds 60% of C, LLC

C, LLC – 60% owned by A and 40% owned by minority investors B, C, D, E, F, and G

- A-G all have different UPEs; approx. 10% of A's voting securities are held by a different UPE (H) than the holder of the majority of A's voting securities.

In the proposed transaction, buyer will directly acquire:

- (1) 100% of the securities (voting and non-voting) of A; and
- (2) the 40% of C held by B-G via a merger by a merger sub with C

The acquisitions will occur simultaneously. C holds additional subsidiaries that will be acquired indirectly.

Because control of C will be obtained indirectly through the buyer's acquisition of A, the size of transaction for HSR purposes is the acquisition price for the voting securities of A. The acquisition price for the separate acquisition of 40% of C from minority holders B-G would not be added to the size of transaction, as the value of the controlling interest in C is reflected in the purchase price for the voting securities of A, and the acquisition of a non-controlling interest in a non-

corporate entity is not reportable under HSR. Additionally, the acquisition price for the 10% of voting securities of A sold by H is below the HSR reporting threshold and would therefore not be added to the size of transaction.

Please advise if you agree. Thank you.

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]