

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, July 26, 2022 11:28 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: Item 4(b) - Recently acquired entity

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, July 26, 2022 11:27:57 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Item 4(b) - Recently acquired entity

[REDACTED]
Your understanding is correct.

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

From: [REDACTED]
Sent: Tuesday, July 26, 2022 10:50:28 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Item 4(b) - Recently acquired entity

Good morning!

A natural person previously acquired a US company in the middle of the most recent fiscal year. The financial results for that previously acquired US company were then included in the consolidated annual report for a higher level entity in the natural person, but only for the stub period (after the acquisition of the US company). A separate annual report for the most recent year for the previously acquired US company does not presently exist. The higher level entity (including the previously acquired US company) in the natural person is now being acquired in a new transaction.

In the HSR filing for the new transaction, can the acquired (and natural) person simply submit the consolidated annual report for the higher level entity? Or, does the acquired person need to file a separate annual report for the previously acquired US company?

Based on 174 in the Practice Manual, my understanding is there is no obligation for the acquired person to create a separate annual report for the previously acquired US company because (a) the financial results (albeit for only part of the FY) for the previously acquired US company are consolidated with the higher level entity under the acquired person, and (b) there are not presently separate annual financial statements for the previously acquired US company for the most recent FY, and there is no obligation to create such statements if they don't already exist.

I also understand that revenues for the previously acquired US company will need to be reported in Item 5 for the full year for the previously acquired US company, even though the acquired person in the new transaction did not own the US company for the full year, and even if a separate annual report/financials need not be created and submitted for Item 4(b).

Is my understanding correct?

Thanks!

Best

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]