

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, April 26, 2023 2:33 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: FX and acquisition price

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Wednesday, April 26, 2023 2:33:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: FX and acquisition price

[REDACTED]
Based upon the facts you have provided, we believe that this falls within 801.10(a)(1)(i). As a result, an FMV will not be necessary.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premier Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, April 26, 2023 7:18:00 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: FX and acquisition price

Dear All:

I have a transaction in which a European SPAC will be making a tender offer to acquire another European Company whose shares are listed on an Australian exchange.

The acquisition price is in euros. As I understand the rules applicable to an acquisition price in foreign currency—based on the HSR Resources page (Converting Foreign Currency)—one applies the following:

If the FX rates are fairly stable, one may estimate the exchange rate at the closing date and use that to determine value.

If one is determining the low market price for the past 45 days, one uses the daily exchange rate for each applicable day.

If the rate is fluctuating too much, one uses fair market value—and the fmV rate used is the applicable one on the date the fmV determination is made.

I just wanted to confirm that this approach, described on the HSR Resources site, still is correct. So, as an example, if one were to determine the value based on the rate of the euro on May 3—for a closing on June 30—and the value is \$100 million, one may proceed without a filing even if the day before the closing, the f/x rate of the euro were to jump to a number that would result in a value above \$111.4 million.

Is that correct?

[REDACTED]

