

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, April 28, 2023 2:16 PM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: H.S.R. and earnout

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Friday, April 28, 2023 2:16:16 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: H.S.R. and earnout

If you can estimate the value of the earnout now, you have a determined acquisition price. If you can't, you have to do a fair market value.

From: [REDACTED]
Sent: Friday, April 28, 2023 10:08:08 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: H.S.R. and earnout

Dear Sir or Madam,

We are hoping to assess whether a certain corporate transaction is subject to H.S.R. filing requirements. This would depend on how the transaction size is determined – in this case it could end up above or below the USD 445.5 million threshold as the parties are negotiating an earnout:

- The consideration payable in the transaction consists of:
 - a “Base Consideration” of USD 300-340 million payable upon closing, depending on certain adjustments
 - an “Earn-Out Consideration of up to USD 350 million payable after 2025 on the basis of certain financial KPIs (the Earn-Out Consideration may also end up being 0 EUR)

The entire consideration is therefore USD 300-690 million (*so could end up above or below USD 445.5 million*). Where within this corridor the deal will end up will only be seen in 2026.

We would be most grateful for any guidance.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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