

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, August 5, 2021 10:26 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina  
**Subject:** FW: Request for Informal Interpretation

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Thursday, August 5, 2021 10:26:25 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Request for Informal Interpretation

[REDACTED]

As you know, acquisitions that are part of the same transaction must be aggregated. While we do not have all of the facts, memorializing the acquisitions into a single document indicates that they were part of an overall discussion or negotiation between the Acquiring and Acquired Persons, and thus should be aggregated. Based on what you've told us, aggregation would be required here even if separate agreements are now drafted. You are welcome to provide more facts and it would be important to know if there is a clean break in negotiations that decouples the acquisitions. If the parties do not view the acquisitions as part of the same transaction or negotiations and decide not to aggregate, they should be prepared to defend the position, should there be an investigation.

Best regards,

Kristin

**Kristin Shaffer**

Attorney  
Premerger Notification Office  
Federal Trade Commission  
202-326-2388 | kshaffer@ftc.gov

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**From:** [REDACTED]  
**Sent:** Wednesday, August 4, 2021 2:40 PM  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Request for Informal Interpretation  
To Whom It May Concern:

We write to seek clarification with respect to the aggregation rules under the HSR Act.

Our client is considering the acquisition of three LLCs from the same Acquired Person. While memorialized in a single document, these three acquisitions are not contingent on one another. In addition, a separate transaction price is assigned to each transaction, and each transaction has separate closing conditions such that it is possible that only one of the three proposed transactions would ever close.

Under the above scenario, should the purchase price for each of the three facilities be aggregated for purposes of determining whether the HSR size-of-transaction test is satisfied?

Alternatively, if separate agreements are drafted and executed for each acquisition of an LLC—assuming there is a commercially reasonable basis for doing so, and this transaction structure is not selected solely to avoid a filing obligation under the HSR Act (and therefore does not implicate 16 CFR 801.90)—and each transaction remains not contingent on the closing of any other transaction, would aggregation of the purchases prices be required for purposes of determining whether the HSR size-of-transaction test is satisfied?

Thank you for your assistance.

Best regards,  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]