

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, October 22, 2024 1:35 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Size of Transaction Test

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Tuesday, October 22, 2024 1:34:54 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Size of Transaction Test

We agree.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, October 22, 2024 9:47 AM
To: Walsh, Kathryn E. <kwash@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>
Subject: FW: Size of Transaction Test

From: [REDACTED]
Sent: Tuesday, October 22, 2024 9:46:40 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Size of Transaction Test

[REDACTED]

Hi folks.

We are writing to confirm the size of transaction test would not be satisfied under the facts below.

X will acquire from Y in an asset acquisition a building (the "Building") currently used by Y for warehousing, shipping, receiving, distribution, and light assembly purposes. The purchase price is less than \$119.5 million. X will not assume any liabilities related to the Building (other than possibly stepping into Y's shoes with respect to future performance under existing contracts). In addition, there is nothing that X needs to aggregate with the value of the Building under the HSR aggregation rules.

X will lease the building back to Y at the closing (the "Lease-Back"). The temporal term of the lease will be 11 years. Y will have the option to renew the lease for two periods, five years each. Neither the initial term of the lease nor the possibly additional 10-year extensions would exhaust the useful life of the Building. The terms of the lease are arms-length and reflect market rates for rent. There is no option in the lease for Y to acquire the Building back from X. The lease may be a triple net lease.

Because the terms of the lease-back are arms-length, we do not believe that we need to take them into account when assessing whether the \$119.5 million HSR size of transaction test would be satisfied when X acquires the Building from Y. Because X would pay Y less than \$119.5 million for the Building, and so long as X concludes under the HSR rules that the current fair market value of the Building is also less than \$119.5 million, we understand that the transaction is not HSR reportable. Do you agree?

Thanks for your help.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]