

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, September 13, 2022 2:20 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: Question about determining size of the transaction

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, September 13, 2022 2:20:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question about determining size of the transaction

[REDACTED]
No, the acquisition price is not determined. Therefore the ~~acq~~ person will need to determine the fair market value pursuant to Rule 801.10(c)(3).

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 kshaffer@ftc.gov

From: [REDACTED]
Sent: Tuesday, September 13, 2022 10:43:26 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question about determining size of the transaction

Hello,

I have a question about determining the size of the transaction when there is an earnout.

Assume Company A will acquire 100% of the voting securities of Company B, a corporation, for \$40 million of cash at closing, plus up to \$60 million of earnout payments. The earnout, if any, will be based on the post-closing financial performance of Company B, and could theoretically range from \$0 to \$60 million (it is capped at \$60 million per the acquisition agreement). Also assume the lowest size of the transaction threshold at the

Per the Premerger Notification Practice I <https://www.ftc.gov/legal-library/browse/hes-inform>
using a r
range will not affect whether a filing is required or the amount of the filing fee). By similar logic, can the parties
above hypothet
ranging from \$40 million to \$100 million, a
a fair market value determination under S tions 801.10(a)(2)(ii) and 801.10(c)(2) ?

[Redacted]

[Redacted]