

802.50 (a)
802.51 (b)
802.30

CONTINUUM

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FAX COVER LETTER

To B. Michael Verne
Company Federal Trade Commission - Premerger Office
Fax number (202) 326-2624
Phone number (202) 326-3167

From [REDACTED]

Re Application of "Continuum Theory"

Note

As per our discussion, I am enclosing a step-by-step chart of the proposed transaction. We are counsel to "Foreign Buyer".

The basis for the requested use of the "continuum theory" is that the transaction in Step 1, although perhaps technically reportable, serves no policy objective and, therefore, should not require a filing. Step 1 would be exempted under Rule 802.51(b), but for the fact that it would result in control of Corp B and Corp D. However, in Step 4 control over Corp B and Corp D is acquired by "U.S. Buyer" (which WILL require an HSR filing); in Step 5 U.S. Buyer buys the remaining piece of Corp D.

Thus, after Step 5, Foreign Buyer will have acquired only Corp A (a foreign issuer which is a shell holding company) and Corp C, a foreign issuer which we have been told has no assets in the U.S. and no sales within or to the U.S. There will be a "master" contract assuring that all 5 steps occur, in the order outlined, at the "closing".

Assuming you concur in the use of the "continuum theory", one additional, technical question: in the HSR filing as to Step 4, should the UPE of the acquired person be Corp A (which today is its own UPE) or should it be Foreign Buyer (on the theory that it will be the technical "parent" at the time of Step 4)?

Thanks for your help.

STEP 1 IS NON-REPORTABLE UNDER THE CONTINUUM THEORY. STEP 4 SHOULD BE REPORTED WITH CORP B AS ITS OWN UPE.

If transmission is incomplete, call (212) 704-8350

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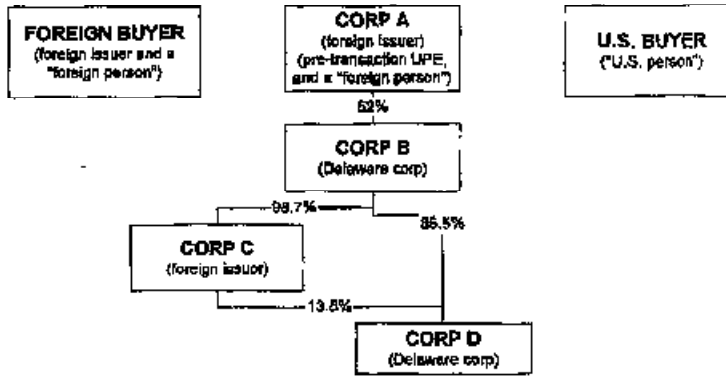
N. OUBKA / T. HANCOCK ADALL

B. Michael Verne
5/22/00

APPLICABLE STEP

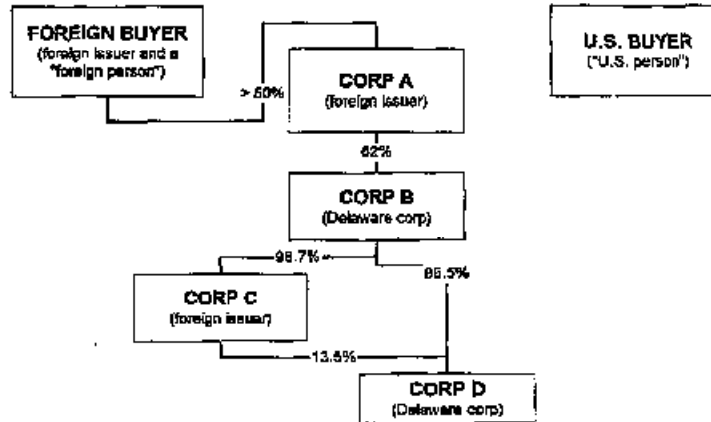
STRUCTURE IMMEDIATELY UPON COMPLETION OF APPLICABLE STEP

PRESENT STRUCTURE



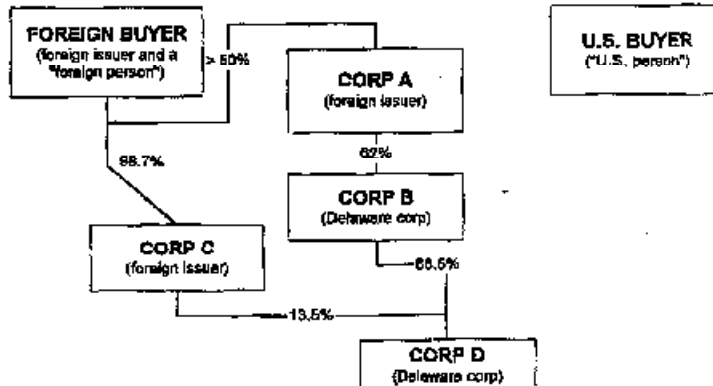
STEP 1:
Foreign Buyer buys > 50% of voting stock of CORP A.

HSR ANALYSIS: Potentially reportable absent use of "Continuum Theory"



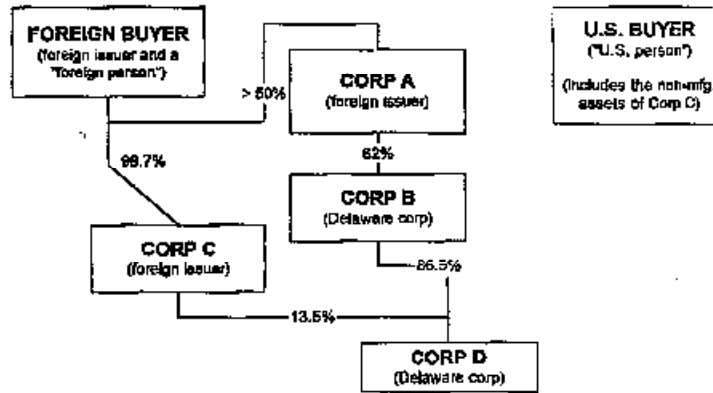
STEP 2:
Foreign Buyer buys 99.7% of voting stock of CORP C from CORP B.

HSR ANALYSIS:
Exempt under Rule 802.51(b).
Also exempt under Rule 802.3D.



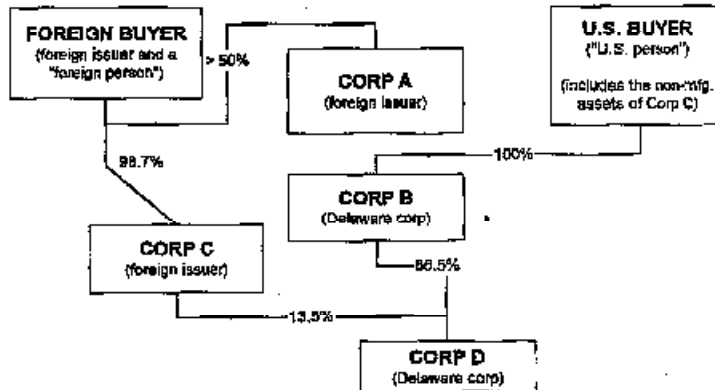
STEP 3:
U.S. Buyer buys the non-manufacturing assets of CORP C for \$2MM.

HSR ANALYSIS:
Potentially exempt under Rule 802.60(a); if not, then would be included as part of the HSR filing under Step 4.



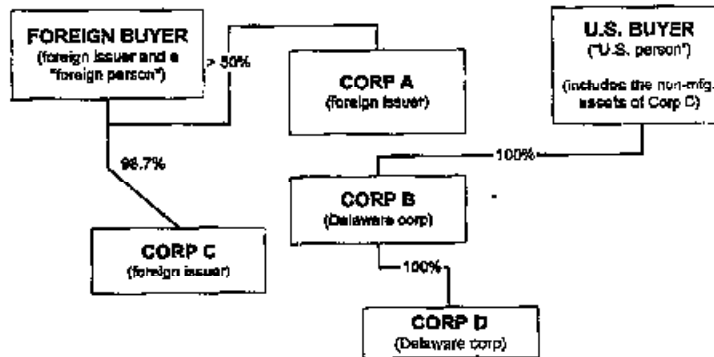
STEP 4:
U.S. Buyer buys 100% of the voting stock of CORP B for > \$30MM.

HSR ANALYSIS:
Reportable acquisition, with no available exemption.



STEP 5:
U.S. Buyer buys 13.5% of the voting stock of CORP D for \$4MM.

HSR ANALYSIS:
Exempt under Rule 802.30.



CONTINUUM

From: [REDACTED]
To: FTC.SERIOUS("mverne@ftc.gov")
Date: Wed, May 24, 2000 3:30 PM
Subject: HSR Reportability Question

Dear Mike:

We have a quick question regarding the applicability of a "continuum" theory to limit the number of HSR filings in a series of transactions that will be consummated at a single closing. For purposes of this question, please assume all of the persons satisfy the size-of-person test and all of the proposed transactions satisfy the size-of-transaction test.

A presently holds a convertible note given to it by B. A and C want to enter into a transaction in which A will acquire C's voting securities. As part of the consideration, C will acquire A's interest (the note) in B. For business reasons, however, A must convert B's note into voting securities immediately prior to the transfer to C. The conversion would be a reportable event between A and B. A and C must make an HSR filing for A's acquisition of C's voting securities, and B and C must also make an HSR filing for C's acquisition from A of B's voting securities.

Please let us know whether A and B could rely on a "continuum" theory to not make an HSR filing for A's conversion of B's note, given that the transactions will occur at the same time and that C and B will make a filing for C's acquisition of B's voting securities.

We thank you in advance for your assistance in this matter. If you have any questions, please feel free to call me at the number below, my supervisor, [REDACTED] or e-mail either of us.

Best regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IF ALL OF THE EVENTS ARE OCCURRING AT THE SAME TIME, AND THE AGREEMENTS MAKE THE EVENTS CONTINGENT ON ONE ANOTHER, THEN A'S CONVERSION OF THE NOTE INTO B VOTING STOCK CAN BE SUBSUMED IN THE REPORTABLE ACQUISITION OF B VOTING STOCK BY C UNDER CONTINUUM THEORY. N. OVUKA AGREES.

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CC: [REDACTED]

Michael Verne
5/25/00