

ITEM 9

From: [Redacted]
To: FTC.SERIOUS("mverne@ftc.gov")
Date: Mon, Jun 26, 2000 2:27 PM
Subject: Item 9 Issue As It Relates To Acquisitions of Partnership Interests

Verne:

This is a question relating to the proper treatment of acquisitions of partnership interests for HSR Item 9 purposes (as opposed to whether or not such acquisitions are themselves reportable under HSR), assuming that one is making a filing for a subsequent reportable acquisition and that there is an Item 7 overlap for which we are supplying the item 9 info in that filing.

For purposes of Item 9, must a filing person list entities in which (a) it has acquired more than 50% but less than 100% of the outstanding partnership interests of a partnership, assuming that the UPE acquired/held the partnership interests either directly, through controlled corporations, or through wholly owned partnerships or LLCs; (b) it has acquired less than 50% of the outstanding partnership interests but that acquisition, together with other holdings, results in the UPE holding 100% of the outstanding interests in the partnership either directly, through controlled corporations, or through wholly owned partnerships or LLCs; or (c) the UPE acquired 100% of the interests in a partnership (or more than 50%, or less than 50% resulting in holdings of 100%) through a controlled partnership or LLC in which the UPE holds 50% or more but less than 100% of the outstanding partnership or LLC interests.?

For the purpose of this question, I have assumed that the entities meet the \$10 million test in Item 9.

It seems to me that the most consistent view with past FTC interpretations regarding partnerships generally is that the scenarios under (a) and (c) need not be listed under Item 9 as prior acquisitions, but scenario (b) should be listed under Item 9 as an asset acquisition.

Thanks for your thoughts.

[Redacted signature]

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AGREE - UNLESS AN ACQUISITION OF PARTNERSHIP INTERESTS RESULTS IN HOLDING 100% OF THE PARTNERSHIP, THERE HAS NOT BEEN AN ACQUISITION OF ASSETS FOR PURPOSES OF ITEM 9.

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Bruchman
6/26/00