

801.2

October 10, 2000

Mike Vern
Federal Trade Commission
Washington, D.C. 20580

Re: HSR Question

Dear Mike:

As a follow up to our telephone conversation earlier today, the following is a summary of the transaction in question and your answer to the question posed.

In the transaction in question, Company A and Company B will consolidate by forming a Holding Company with two subsidiaries, Sub-1 and Sub-2. At the effective time: (i) Sub-1 will merge into Company A, (ii) Sub-2 will merge into Company B; (iii) stockholders of Company A will exchange all of their shares of Company A for shares of Holding Company; and (iv) stockholders of Company B will exchange all of their shares of Company B for shares of Holding Company. The result will be that Company A and Company B will become wholly owned subsidiaries of Holding Company, which will be owned by the former stockholders of Company A and Company B.

One set of filings to be made in connection with this transaction will be by shareholders of Company A and Company B for their acquisition of Holding Company voting securities (the "Stock Acquisition"). Under 16 C.F.R. § 801.2(e), this transaction is separate from the consolidation itself, with Holding Company as the "acquired person." As stated in 15 U.S.C. § 18a(a), "no person shall acquire" voting securities "unless both persons file notification" pursuant to the HSR Act. Our interpretation of these provisions is that, under the circumstances described above, it is the acquiring person's responsibility to determine whether they need to file, and that the acquired person (Holding Company) will not be liable for violation of the HSR Act for issuing shares to an acquiring person if that person fails to file as required by the HSR Act.

In our phone conversation today, you indicated that although the above position is not explicitly stated in the HSR Act or the regulations, it is the position that the FTC would take under the limited circumstances described above.

[Redacted signature block]

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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[REDACTED]
Mike Vern
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If I have misstated our conversation, or you do not agree with the position as stated,
please call me at your earliest convenience.

Sincerely,

[REDACTED]
ADVISED THE WRITER THAT IT WAS UNLIKELY THAT THE
FTC WOULD SEEK CIVIL PENALTIES AGAINST HOLDING COMPANY
IF A SHAREHOLDER ACQUIRED ITS VOTING STOCK IN VIOLATION
OF THE ACT.

B. Michael Vern
10/11/00

[REDACTED]