

802.1(c)

From: [REDACTED]
 To: 'mverne@ftc.gov'; [REDACTED]
 Date: Thu, Oct 12, 2000 1:47 PM
 Subject: FW: HSR Interpretation

One last follow-up. The parties have restructured the transaction so that now A will be merged with and into B. Since neither A nor B is a \$100 person, there is no filing obligation for the underlying merger. Z, a shareholder of A will get in excess of \$15 million of B's shares as a consequence of the merger. Z is a \$100 million person and will have a board seat in the merged company. Another shareholder X, holds shares of both A and B, and as a consequence of the Merger will hold shares of B valued in excess of \$15 million. (Premerger X's shares of B were worth about \$3 million) Shareholder X is also a \$100 million person and will have a board seat in the merged company.

If thus appears that both X and Z will be required to file as acquiring persons and B will file as the acquired person. As discussed on Tuesday, if this were a consolidation, B's filing would need to include information from both A and B. Is the rationale the same even though this is now structured as a merger?

(**There will be no filing for the underlying merger**)

Also - Do you have any intelligence on when the new thresholds and filing fees will be passed? I heard a rumor yesterday that it could happen as soon as next week. Thanks.

> -----Original Message-----

> From: [REDACTED]
 > Sent: Wednesday, October 11, 2000 9:13 AM
 > To: 'mverne@ftc.gov'
 > Cc: [REDACTED]
 > Subject: FW: HSR Interpretation

> Thanks for your response. As a follow-up, it appears that shareholders of
 > both A and B will have a filing obligation as they will acquire in excess
 > of \$15 million of C's voting securities, and will not be able to take
 > advantage of the investment only exemption. Would C have to file as an
 > acquired person (since 802.41 would not be applicable) and if so how would
 > that work since it is not yet in existence? Thanks.

> -----Original Message-----

> From: [REDACTED]
 > Sent: Monday, October 09, 2000 11:23 AM
 > To: 'mverne@ftc.gov'
 > Cc: [REDACTED]
 > Subject: HSR Interpretation

> Hi Mike - I would appreciate your guidance on the following fact pattern:

> Facts: A and B wish to engage in a business combination. A will be
 > merged with and into B and shareholders of A and B will be given shares of
 > C - the consolidated entity. Neither A nor B are \$100 million persons, but
 > C will have in excess of \$100 after the consolidation.

ADVISED THE WRITER THAT
 IN A MERGER, B
 WOULD FILE ONLY WITH
 RESPECT TO ITS OPERATIONS
 AND WOULD NOT INCLUDE
 A.

B. Michael Verne
 10/13/00

- > Issue: I believe there would be no filing obligation for the
- > consolidation as there is no \$100 person. Assuming however, that
- > shareholders of A and B are \$10 million persons, and the investment only
- > exemption is not available, would shareholders of A and or B have a filing
- > obligation in their acquisition of shares of C?
- >
- > Thanks.
- >

[REDACTED]

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CC:

[REDACTED]