

Item 5

From: [Redacted]
To: FTC, SERFD@ftc.gov
Date: Mon, Oct 30, 2000 4:03 PM
Subject: Quick HSR Question

Mike:

Here is a novel little question regarding the content of a Premerger Notification and Report filing on an unusual set of facts.

A is a natural person. B is a newly formed corporation that is its own UPE and does not have a regularly prepared balance sheet. A and B plan to enter into an agreement pursuant to which A will invest more than \$15 million in B corporation in exchange for a minority of B's voting securities in a reportable transaction. A is only willing to invest the money, however, if B agrees that "substantially concurrently" with A's acquisition of B's voting securities, B will purchase several other companies that provide a certain minimum amount of earnings based on year 2000 projections. These other transactions may or may not be independently reportable under HSR.

Assuming that B closes on its other deals before it sells its voting securities to A, B would need to include information about the other entities it has purchased in its HSR filing for A's acquisition of its voting securities. (e.g., Items 4, 5, 6, etc.). Assuming that A purchases the voting securities from B before B closes on its other planned acquisitions, however, must B include in its HSR filing for its sale of voting securities to A information about the other entities that B will acquire immediately after its sale of voting securities to A?

As always, I appreciate your feedback.

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There is no requirement that B provide information on the entities it plans to acquire if A closes on the acquisition of B voting stock first.

B. Michael Verne
10/30/00