

801.90

September 27, 2001

Mr. Michael B. Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Michael:

As we discussed briefly this afternoon, I am writing to describe a hypothetical transaction so that we can discuss whether a decision to adopt a particular structure and sequence would be deemed by the staff to create a filing obligation under Rule 801.90.

My client "A", a foreign person, has been negotiating to acquire "B", another foreign person. The transaction would be reportable.

A has the opportunity to acquire a subsidiary of B, a foreign issuer we will call "C", prior to any acquisition of B. A's acquisition of C would be exempt under Rule 802.51 (b). If A acquired the subsidiary C it would still seek to acquire B and if it did so the subsequent acquisition of B would still be reportable. It is not clear, however, whether or when the subsequent acquisition of B would take place. You should assume in this connection that A sees benefits from acquiring C quickly and recognizes that the lack of a Hart-Scott filing is advantageous in that respect.

My question is whether any existing staff positions would deem the acquisition of C reportable because of the decision to make the transaction a two-step transaction. I understand that in some situations the staff has taken the position that breaking a transaction into steps will be deemed to violate Rule 801.90. In each of those, however, my understanding is that the multi-step structure resulted in no filing being required for any aspect of the transaction. The

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situation I raise is different because a filing would still be made for the second step. It is, in this respect, analogous to a decision to: (i) acquire \$49 million of voting securities of an issuer, and then (ii) file to exceed the \$50 million threshold.

As always, I thank you for your cooperation.

Very truly yours,

THERE IS NO 801.90 ISSUE IN THIS
STRUCTURE. N. OVUWA CONCURS.

Michael Verne

9/28/01