

802.50

801.2

801.10

From: [Redacted]
To: Mike Verne (E-mail) <mverne@ftc.gov>
Date: 7/9/02 8:45AM
Subject: HSR question

Mike;

Can I run an analysis by you?

① Foreign company, Company A, (which has a US based sub) is acquiring Company B, also a foreign company also having a US based sub; however, Company B's primary assets are overseas and the deal primarily involves Company A's acquisition of Company B assets that are located outside of the US. Under the nexus test, acquisitions of foreign entities are exempt from HSR consideration if the foreign UPE has assets in or sales in or into the US of less than \$50 million. In this case, Company B, including its US based sub, does not have assets in or sales in or into the US in excess of \$50 million. Thus, I would conclude that no filing is necessary with respect to Company A's acquisition of Company B's assets.

② As part of the deal, Company A will acquire stock that Company B owns in Company C. Company C is a US based private company. Company B currently owns 39% of Company C and will transfer that entire interest to Company A, which effectively will change control of Company C from Company B to Company A, although neither company has or will have holdings in excess of the 39% being transferred (i.e. neither will control 50% or more). I'd view this transaction as separate from the asset deal above with Company C as the acquired Company. Company C's assets have a FMV of \$386,000 and the company has negative equity. Its sales in 2001 were approximately \$1 million. This acquisition would not meet the size of transaction test.



Thus, I would conclude that neither Company A's acquisition of Company B assets or Company A's acquisition of Company C stock (from Company B) would require an HSR filing.

Would you agree with this analysis?



② CORRECT - THIS IS A SEPARATE TRANSACTION. A IS ACQUIRING; C IS ACQUIRED. THE APPROPRIATE SIZE-OF-TRANSACTION TEST IS THE VALUE OF THE C VOTING SECURITIES TO BE ACQUIRED, NOT ITS ASSETS.

① ADVISED THAT IF THIS IS AN ASSET DEAL, THE FOREIGN & U.S. ASSETS WOULD BE SEPARATELY ANALYZED. IF THE FOREIGN ASSETS HAVE LESS THAN \$50MM IN SALES INTO THE U.S., THEY ARE EXEMPT UNDER 802.50. IF THE U.S. ASSETS ARE VALUED AT LESS THAN \$50MM, THE SIZE-OF-TRANSACTION TEST IS NOT SATISFIED, SO A'S ACQUISITION OF THE ASSETS OF B IS NOT REPORTABLE.

B. Meluhwa 7/9/02