

801.1(h)

From: [REDACTED]  
To: FTC.SERIOUS(mverne@ftc.gov")  
Date: 7/19/02 2:48PM  
Subject: HSR Advice

Mike - I would be most grateful for your advice in connection with the following fact pattern. Thank you

- > Facts:
- >
- > Company A and Company B have entered into an agreement whereby Company B
- > will commence a tender offer to acquire all of the outstanding shares of
- > Company A and following the consummation of the tender offer, Company A
- > will be merged with and into Company B by way of a reverse triangular
- > merger. Company X is the ultimate parent of Company A. The HSR filing in
- > connection with the tender offer and merger is being filed by Company A
- > pursuant to 16 CFR Section 803.2(a).
- >
- > As part of the tender offer, Company X will tender all of its shares of
- > Company A to Company B. The value of these shares, and the consideration
- > to be received by Company A, is less than \$50 million.
- >
- > Issue:
- >
- > May Company X tender its shares to Company B before HSR approval is
- > received?

[REDACTED]

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[REDACTED]

ADVISED THAT B CAN ACQUIRE SHARES  
VALUED AT \$50 MM OR LESS AS LONG  
AS IT DOES NOT ACQUIRE 50% DURING  
THE WAITING PERIOD.

B. Michael Verne  
7/19/02