

Michael Verne

From: [REDACTED]
Sent: Tuesday, November 12, 2002 3:15 PM
To: Michael Verne
Subject: RE: HSR Question

As I think about it, my case for non-reportability could rest on either of two theories:

1. Because the transactions are simultaneous, Company X never parts with beneficial ownership of the 40% interest in Subsidiary Y and therefore doesn't re-acquire it.
2. Even if Company X were viewed as acquiring a 40% interest in Subsidiary Y, that acquisition is covered by its earlier HSR filing for its acquisition of all of Company Y.

[REDACTED]

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

> From: [REDACTED]
> Sent: Tuesday, November 12, 2002 2:54 PM
> To: 'mverne@ftc.gov'
> Subject: HSR Question

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> Company X will acquire all of the voting securities of Company Y in a reportable transaction for which the waiting period has recently expired.

>
> Thereafter, Company X will sell to Company Z a 60% interest in an existing corporate subsidiary of Company Y (called Subsidiary Y). Company X will retain the remaining 40% interest in Subsidiary Y.

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> Company Z's acquisition of 60% of the stock of Subsidiary Y will be reportable. Company X will file as an acquired person, supplying revenue data for Subsidiary Y along with a separate certification of same by Company Y. Because Company X has already filed for its acquisition of Company Y, it presumably has no additional HSR Act requirements with respect to its retention of the 40% interest in Subsidiary Y.

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> But for tax reasons, the parties want to structure this transaction slightly differently. Company Z will form a wholly-owned acquisition vehicle (Subsidiary Z), which will initially acquire from Company X all of the outstanding voting securities of Subsidiary Y. Simultaneously, Company Z will convey back to Company X 40% of the stock of Subsidiary Z. Company Z will retain 60% of the stock of Subsidiary Z. So the parties are in the same position they would have been in under the earlier scenario, except that Company X and Company Z share interests in the acquisition vehicle, Subsidiary Z, rather than directly in the target company, Subsidiary Y.

>
> Again, the Company Z acquisition of the interest in Company Y is reportable. My question is whether the Company X "acquisition" of the 40% interest in Subsidiary Z remains non-reportable, on the theory that, in substance, it is simply retaining a 40% interest in a subsidiary of the parent

company (Company Y) that it just acquired (and filed for).



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