

Ovuka, Nancy M

From: [REDACTED]
Sent: Friday, July 18, 2003 2:08 PM
To: Ovuka, Nancy M
Subject: HSR question

> Nancy,
>

I have an HSR question for you. I've outlined the transaction below. [REDACTED] at [REDACTED] is representing one of the parties. I think she has spoken to you about this transaction previously, so you may find the facts somewhat familiar. If you are available, we would both like to talk to you this afternoon after you've had a chance to do the analysis.

> Company A and LLC B are each their own UPEs. They form LLC C, each contributing \$70 million and taking back 45% of the membership interests. The other 10% will go to management employees. Neither will have a controlling position on the board. On the same day that LLC C is formed, it forms a sub LLC that purchases the assets of Company D for \$240 million (\$150 million comes from financing). The natural person who controls Company D also has an interest in LLC B, but does not control it. The sub of

> LLC C would also purchase the assets of two other companies for approx. \$20 million. Would the acquisition of the assets of D be seen as part of the formation of LLC C, or as an acquisition of assets by LLC C? If it is part of the formation, would the transaction be reportable where neither A nor LLC B control LLC C?

>
> Also, it is unclear at this time whether the 10% that will go to the management employees will be distributed on the day of closing, or a few days later. If it is not distributed on the day of closing, will Company A and LLC B be considered 50% owners of LLC C?

>
> Thanks,

[REDACTED]

7/18
Advised writer that this appears to be an acquisition by LLC C of assets of Company D from natural person rather than part of the formation of LLC C because natural person will not directly receive interests of LLC C & all money of LLC C flows out to natural person for the assets of D.

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NMO