

801.30

Verne, B. Michael

From: [REDACTED]  
Sent: Friday, August 06, 2004 10:10 AM  
To: Verne, B. Michael  
Subject: HSR Question

I know you're on vacation until the 11th, but when you return, could we talk about the following hypothetical:

Company A has a contract giving it the option to purchase certain assets from Company B..

Company A wishes to transfer this option to Company C, so that Company C can exercise the option and acquire the assets from Company B. Acquisition of the assets that are subject to the option would require HSR Act filings.

Company C anticipates that Company B may be hostile to acquisition of its assets by Company C.

Company C therefore does not want to inform Company B in advance concerning its intention to acquire and exercise the option.

Assuming that Company C is able to acquire the option and intends to exercise it, can Company C make its own HSR filing under 801.30(a)(7), notwithstanding the facts that (a) the acquisition is of assets rather than voting securities and (b) the option that it seeks to exercise is not registered with the SEC?

If Company C is permitted to file notification under 801.30(a)(7), what would the PNO staff's position likely be in case Company C refused to file (presumably contending that 801.30(a)(7) by its terms doesn't apply)?

Assuming that sufficient facts were provided to the staff to allay any possible antitrust concern, would the grant of early termination sua sponte under 803.11(c) be potentially available in such a situation, even if Company C didn't file notification?

Let's chat. Thanks.

ADVISED THAT 801.30 IS NOT APPLICABLE TO ASSET TRANSACTIONS. N. OVERA CONCURS.

B. Michael  
8/11/04

Reply to [REDACTED]  
[REDACTED]  
[REDACTED]  
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