

Verne, B. Michael

802.21

From: [REDACTED]
Sent: Monday, February 07, 2005 4:17 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: acquiring voting securities of a sub after clearance with respect to parent



Mike,

Thanks for speaking with us this morning.

Again, our facts are as follows:

1. Our client has already filed an HSR at the \$500 million threshold for buying the voting securities of the acquired person of which P is the ultimate parent entity. The waiting period has expired so that our client is free to buy up to one share less than 25% of P. Although item 3(c) of our clients HSR form describes a purchase of voting securities of the issuer P, in our view the form covers the entire acquired person of which P is the ultimate parent entity and in particular covers S, a 55% sub of P (the 45% of S not held by P trades publicly). After all, S's revenues were included in the consolidated revenues the acquired person reported in its filing.
2. Our client is now interested in possibly acquiring more than \$50 million of voting securities of S. Example 2 of the attached interpretation that we found on the FTC website seems to be on point and would seem to allow our client to buy voting securities of S since we are clear to buy up to one share less than 25% of the acquired person of which S is a part.

We think that the way to run the math in applying the 25% threshold is to say we need to file before crossing the point where the combined percentage ownership interests in P and S hits 25% (or 50% if the value of the securities is less than \$1 billion). For example, if our client owns 4.9% of P it would be able to buy another 20% of S (or 45% if the value is less than \$1 billion) before triggering another filing. This makes sense to us because S and P are, for HSR purposes, synonymous given that P controls S (and for that reason a 4.9% interest in P is the same for HSR purposes as a 4.9% interest in S so that our client would only have room for another 20% or 45% of S).

Hope this email helps as you think this through.

Regards.

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NOTWITHSTANDING THE POSITION TAKEN IN 2001, THE PNO WILL TREAT SUBSIDIARIES AS DIFFERENT ISSUES FROM THE PARENT FOR PURPOSES OF 802.21. ANY ACQUISITION OF A SUBSIDIARY V/S IS POTENTIALLY REPORTABLE IF THE VALUE EXCEEDS \$50M. THE OBVIOUS EXCEPTION IS IF THE FILING FOR THE PARENT WAS FOR A CONTROLLING INTEREST. N. OUYER & M. BAUNO CONCUR. B. Michael 2/8/05