

801.10
802.71
801.90

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, June 01, 2005 11:00 AM
To: Verne, B. Michael
Subject: Confirming discussion of earlier today

B. Michael Verne
Premerger Notification Office

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 303

Washington, DC 20580

Re: Hypothetical

Dear Mr. Verne,

This confirms our conversation of today concerning the following hypothetical.

Corporations A and B intend to exchange certain operating units in an asset transaction. A would like to achieve substantial tax savings and provide funds to non-profit corporation C (to whom it has made donations from time to time), which is not controlled by A or B. A could accomplish that by donating one of its operating units (operating unit D) to C. It is anticipated that C in turn would offer to sell D to B, and that B would purchase D. A selected D for the gift over the other operating units to be exchanged because it most closely approximates the value of A's desired contribution to the non-profit corporation. The fair market value of D is less than \$53.1 million, and the consideration B would pay for D would be below \$53.1 million. A's transfer of the other operating units to B would require an HSR filing.

You agreed that:

1. A's gift of its operating unit D to C would be exempt from HSR under Rule 802.71 as a gift; but even if not exempt, it would not be reportable because the fair market value of D is less than \$53.1 million.
2. C's sale of the operating unit to B would not trigger an HSR filing, because the consideration to be paid for the operating unit would be below \$53.1 million (and the operating unit's fair market value is below \$53.1 million).
3. B's acquisition of operating unit D from C should not be aggregated with B's acquisitions from A, because A and C are not within the same person.
4. There would be no HSR filing for B's acquisition of operating unit D.
5. The above results would not be deemed an avoidance device under Rule 801.90, because A has legitimate business reasons for the proposed structure-- tax savings, and funding the non-profit corporation.

I would appreciate your confirming that the above is accurate, as my client will be relying on it.
Sincerely,

Agree -
B. Michael Verne
6/1/05