

801.50
802.30
801.11(e)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 27, 2005 10:45 AM
To: Verne, B. Michael
Subject: HSR size-of- person analysis for newly formed LLC acquisition vehicle

Mike,

Could you confirm my conclusion of no HSR filing for the following transaction?

Seven entities ("Forming Parties") are going to form a new LLC which will in turn form various direct and indirect wholly-owned subsidiaries. None of the Forming Parties "controls" the new LLC, i.e. no one Forming Party will be entitled to 50% or more of the profits or 50% or more of the assets on dissolution of the new LLC. The seven entities combined will contribute \$18 million in cash to the new LLC and the LLC, or one or more of the newly formed subsidiaries of the new LLC, will borrow \$43 million from unaffiliated third parties. The LLC will take the \$61 million and buy assets from the target company.

Pursuant to 801.50(b), the formation of the new LLC is not reportable because no entity will acquire control of the new LLC. Pursuant to 802.30, the formation of various direct and indirect wholly-owned subsidiaries of the new LLC is not reportable.

Finally, the acquisition by the LLC of \$61 million of assets from the target is not reportable because the LLC does not meet the HSR size-of-person jurisdictional threshold. The LLC is newly formed and has no regularly prepared balance sheet. At the time of the acquisition, the only assets held by the LLC will be the \$61 million of cash that it will use to buy the assets from the target. Rule 801.11(e) says that in calculating "total assets" for a newly formed acquiring person that does not have a regularly prepared balance sheet, you don't count cash that will be used as consideration in the acquisition of assets from the acquired person. Thus, here, the "total assets" of the acquiring person LLC would be zero, and the LLC would not meet the size-of-person threshold.

Please let me know if you agree with my analysis and conclusion.

Thanks very much,

Regards,

AGNES - NOTHING REPORTABLE.
B. Michael
6/27/05