

Verne, B. Michael

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**From:** [REDACTED]  
**Sent:** Wednesday, August 31, 2005 9:55 AM  
**To:** Verne, B. Michael  
**Subject:** Antitrust Issue Involving International Acquisition

Mike, thank you for returning my call. Below is our basic fact pattern/analysis. I will call you momentarily.

**Facts:** We represent a U.S. corporation that is acquiring all of the shares of another U.S. corporation (the "Target") for a purchase price in excess of \$50 million. Target is a holding company. Its operations are conducted primarily through three Mexican subsidiaries. The subsidiaries provide services for clients throughout the world, including U.S. clients. However, the operations and the assets of the Target and its Mexican subsidiaries are located primarily in Mexico (the assets located in the U.S. do not exceed \$50 million). Further, the operations of the Target and its Mexican subsidiaries do not result in "sales in or into" the U.S. in excess of \$50 million.

**Question:** Even if the transaction exceeds the HSR size-of-party and size-of-transaction thresholds, is the transaction nevertheless exempt from the HSR pre-merger notification requirements based on HSR Sections 802.4 and 802.50?

**Analysis:** Sections 802.50(a) provides that:

The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$ 50 million (as adjusted) during the acquired person's most recent fiscal year.

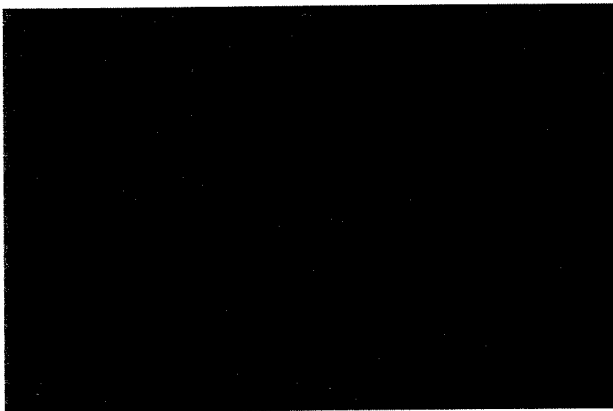
Further, Section 802.4(a), which provides:

An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to Section 7A(c) of the Act, this part 802, or pursuant to § 801.21 of this chapter, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than \$ 50 million (as adjusted).

Thus, if our client were acquiring the Mexican assets of Target and its Mexican subsidiaries, the transaction would be exempt under Section 802.50(a) since the "foreign assets" would not generate "sales in or into the U.S." in excess of \$50 million. Furthermore, since Section 802.50(a) exempts the acquisition of the assets and since Target and its Mexican subsidiaries do not have assets in the U.S. with a value in excess of \$50 million, it appears our acquisition, as currently structured, is also exempt even though it is an acquisition of securities of a U.S. entity. We note that Section 802.4 is "based on the concept of providing consistent treatment for exemptions regardless of the form of the transaction for acquisitions which are unlikely to raise anticompetitive concerns." Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act, Revised Edition, Law Journal Seminars-Press.

Any guidance or confirmation you can provide would be appreciated. We thank you in advance for your prompt attention to this email.

AGREE THIS IS  
EXEMPT.  
B. [Signature]  
9/31/05



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Internal Revenue Service Circular 230 Statement Applicable

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New Treasury Regulations require us to inform you that neither you nor any other recipient may use any tax advice in this communication to avoid any penalty that may be imposed under federal tax law. To obtain penalty protection, the new Regulations require attorneys, accountants and other tax advisors to perform increased due diligence to verify all relevant facts and to format the written tax advice in a lengthy number of separately enumerated sections with numerous disclosures. If you