

Verne, B. Michael

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From: [REDACTED]  
Sent: Tuesday, September 13, 2005 3:18 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: FW: HSR Question

Hi, Mike –

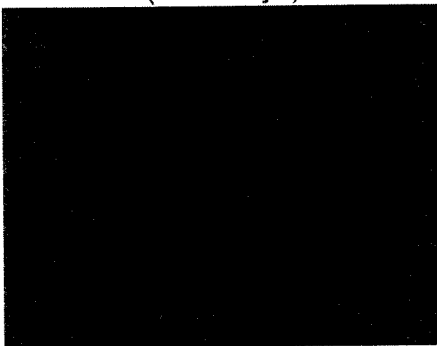
I am hoping to get your thoughts on the following situation:

Company A proposes to acquire assets of Company B (“Transaction 1”) and has made an HSR filing and received early termination of the waiting period. Before Transaction 1 will close, Company A is likely to acquire 100% of the stock of Company C (“Transaction 2”), an entity unrelated to Company A or B, via a separate purchase agreement. Company A and C will each make HSR filings in connection with Transaction 2. As a result of Transaction 2, Company C will become included within the person of Company A.

Accordingly, at the time of the closing of Transaction 1, Company A will include an entity (Company C) it did not hold at the time of its HSR notification for Transaction 1. After reviewing the applicable regulations, it seems that Company A should disclose in its Item 3(a) description for Transaction 2 that, subsequent to the closing of Transaction 2, Company A may acquire assets of Company B, for which a separate HSR filing has been made and for which the waiting period has been terminated (and supply the transaction number). But assuming that Transaction 1 closes within a year of the termination of the HSR waiting period and assuming that Company A is still the UPE of the acquiring person at the time of the closing of Transaction 1, it doesn’t seem that Company A needs to make any further filing in connection with Transaction 1. Do you agree?

I can follow up to discuss if that is easiest.

Thanks (as always)!



AGREE -  
B. Michael  
9/13/05

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