

-----Original Message-----

From: [REDACTED]
Sent: Monday, March 20, 2006 6:56 PM
To: Verne, B. Michael
Subject: HSR Question

Mike, I believe this is fairly straight forward under 801.2(d) especially under the new LLC rules and perhaps it just involves one of the anomalies under the HSR Act. LLC A and LLC B are their own UPE and both have over \$100 million in sales and assets. B is going to be merged into A with A as the surviving entity and members of B will obtain membership interests in A. B has been determined to have a value of \$12 million and A \$70 million. Based on these values, the members of B will obtain approximately 15% of A. No one will control A after the merger. Because A is the surviving entity under 801.2(d), it is deemed to be making an acquisition of B and if the size-of-transaction is the \$12 million valuation of B then no notification is required. Because no one controls A after the merger then there is no notification of that part of the merger. Also, 801.50 does not apply because this is a merger/consolidation and is not treated as the formation of a new unincorporated entity.

However if A was merged into B with B surviving and A's members received interests in B totaling 85% then B would be deemed to have acquired A and a filing is likely because A is valued at \$70 million. Likewise if A and B were merged into a new entity with a corresponding 85% and 15% membership interest then B would have deemed to acquire A with a notification as well. In the transaction in the first paragraph no notification is necessary but in the transactions in the second paragraph, notifications are necessary even though all three transactions end up the same substantively.

Verne, B. Michael

To: [REDACTED]
Subject: RE: HSR Question

You have the correct end results. The acquisition of B by A is not reportable. However, the acquisition of A by B would be. Neither is governed by 801.2(d), but rather by 801.2(f). Despite the fact that the parties are characterizing these transactions as mergers, the rules only recognize mergers of corporations. The consolidation of A and B into a Newco is governed by revised 801.2(d) and would result in a reportable acquisition of A by B.

B. Michael
3/20/06

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