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Verne, B. Michael

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From: [REDACTED]  
Sent: Thursday, March 23, 2006 7:27 PM  
To: Verne, B. Michael  
Cc: Ovuka, Nancy M.  
Subject: HSR Question

We have a situation where two companies are contemplating a merger ("Merger 1") and that transaction has already been granted HSR approval. Those two companies now expect to acquire a third company via merger ("Merger 2"), with such transaction to close immediately after Merger 1 is effected. Merger 2 will require a filing under the HSR Act. The question is who needs to file:

1. Option A: The expected UPE of the ultimate survivor of Merger 1 files a "pro forma" filing containing all relevant information of the two companies that are part of Merger 1. Since at the time of Merger 2, there will only be one combined company acquiring via merger the third company, a single filing is appropriate.
2. Option B: Each of the two pre-Merger 1 companies file separately for the acquisition that will occur under Merger 2.

Let me know your thoughts. Thank you.

[REDACTED]

OPTION A IS CORRECT.  
N. OVUKA CONCERN.

*B. Michael*  
3/23/06

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