

801.13

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 15, 2008 10:12 AM
To: Verne, B. Michael
Subject: RE: Reportability / 801.13(a) Question

Thanks, Mike. Just to clarify, the 50% interest in JV is just one part of Sub B's business and just one part of the transaction. Does this affect the analysis/outcome?

Many thanks,
Carla

[REDACTED]

[REDACTED]

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Tuesday, April 15, 2008 9:51 AM
To: [REDACTED]
Subject: RE: Reportability / 801.13(a) Question

Hi [REDACTED] Because the two agreements are conditioned on one another, I think it should be treated as one transaction. If the only asset of Sub B is the 50% interest in JV, you can look through it to the underlying 50% JV interest. A would file as the acquiring person and B and C would each file as acquired persons. There would be one filing fee.

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

From: [REDACTED]
Sent: Monday, April 14, 2008 7:08 PM
To: Verne, B. Michael
Subject: Reportability / 801.13(a) Question

Mike,

I hope all is well with you. I have a reportability question I was hoping you could help with regarding two transactions, and whether they would be treated as one for HSR purposes.

(1) Company A proposes to buy from Company B 100% of the voting securities of wholly-owned Sub B, which also holds a 50% interest in a joint venture (the "JV") for approximately \$60 million. The other 50% interest in the JV is held by Company C.

(2) Company A will only proceed with the first transaction if it can buy from Company C the remaining 50% interest in the JV. The proposed purchase price would be approximately \$70 million.

The two transactions, although conditioned on one another, would be negotiated separately and would be subject to separate purchase agreements. The structure of the transaction is simply a function of the current structure of the business, and was not constructed to avoid an HSR filing.

Looking at the transactions separately, the first one would not be reportable because it is below the current size-of-transaction threshold. After the first acquisition, Company A will control the JV (by holding the 50% interest held by Sub B), and as such, any subsequent acquisitions of additional shares (i.e., the second transaction) would seem to be exempt under 802.30 as an intraperson transaction. However, because there are separate purchase agreements for each transaction, would they be treated as separately, or because the transactions are conditioned upon one another, would they be treated as one transaction? If treated separately, it seems that both transactions would not be reportable. If treated as one transaction, though, would there be 3 filings -- one by Company A for the acquisition of Sub B from Company B and the acquisition of the remaining 50% interest in the JV from Company C; one by Company B for the sale of Sub B; and one by Company C for the sale of its 50% interest in the JV?

Any guidance you can provide is much appreciated. Please let me know if I can provide any additional information.

Kind Regards,

[Redacted]

[Redacted]

[Redacted]

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

This message is a PRIVILEGED AND CONFIDENTIAL communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

Please visit [Redacted] for more information about our Firm.

Yes - if the 50% interest in JV was the only thing held by Sub B, I think we would look through to the acquisition of 100% of the JV for \$70 MM. But, if Sub B has other holdings we would look at it as two separate transactions, neither of which is reportable, despite them being conditioned on one another.

BW
4/15/08