

801.2

Verne, B. Michael

From: [REDACTED]  
Sent: Tuesday, July 15, 2008 2:58 PM  
To: Verne, B. Michael  
Subject: Confirming question

Hi Mike:

I am providing advice on the formation of a joint venture in the form of an LLC. The control issues are pretty clear and the result under Rule 801.50 is pretty straight forward, unless the key assets being contributed aren't "assets" under the HSR rules.

One party to the joint venture is a creator of content for television, cable and satellite TV. Its contribution to the JV would consist of (1) programming of a particular kind (the joint venturer creates many kinds of content, but this JV will concentrate on content for a particular audience segment), and (2) "pass-through" of certain distribution arrangements (i.e., the JV partner would not assign a distribution agreement to which it is a party to the JV, but would enter into an agreement with the JV to pass through to the JV the distribution payments, renewal rights, etc., under the distribution agreement).

I have notes of a phone call you and I had a couple of years ago about programming and whether it would be deemed to be an asset, and the particular example I used at the time was whether, when [REDACTED] received the rights to broadcast the [REDACTED] that would be deemed to be the acquisition of an asset. Your answer was no, it would not -- though neither you nor I could find a letter or interpretation that said that explicitly. I think my question today is sort of a derivative of the earlier analysis -- if [REDACTED] obtained the right to broadcast the [REDACTED] but subsequently re-sold the right to broadcast the swimming competitions, would that secondary transaction be the acquisition of an asset? Does the result depend on the exclusivity or non-exclusivity of the arrangement? Does it depend on whether one is broadcasting only live events, as opposed to prepared programming?

Your thoughts would be appreciated.

Thanks,

[REDACTED]

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Thank you very much.  
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If [redacted] obtained the right to broadcast the [redacted] but subsequently re-sold the right to broadcast the swimming competitions, would that secondary transaction be the acquisition of an asset? No

Does the result depend on the exclusivity or non-exclusivity of the arrangement? No

Does it depend on whether one is broadcasting only live events, as opposed to prepared programming? No

BW  
7/17/08

K. WALSH } K. BERG CONCUR