

801.2(d)
801.50

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, December 17, 2009 3:32 PM
To: Verne, B. Michael
Subject: Informal HSR Request

Mike,

I have a situation in which entities A and B, which are non-corporate entities for purposes of the HSR Act, will be consolidated into a newly formed LLC ("NewLLC"). A is wholly owned by Individual X. B is controlled by Individual Y but there are significant minority shareholders.

The parties have not determined exactly how the consolidation will occur. A and B may contribute their assets directly to NewLLC in exchange for the LLC interests to be distributed to their respective interest holders. Another possibility is that the interests of A and B will be contributed to NewLLC such that A and B would become a wholly owned subsidiaries of New LLC. Finally, A and B may be merged into NewLLC. In any event, after the contribution of assets, the contribution of non-corporate interests or the mergers, Individual X and Individual Y will be substantial holders of the interests in NewLLC and the value of their interests will exceed the current minimum of \$65.2 million, but neither will hold 50% or more. The remaining LLC interests will be distributed to the other current interest holders of B.

I do not believe that the acquisition of the interests in NewLLC is reportable under the HSR Act by anyone. Section 801.50 of the FTC Premerger Notification Rules ("Rules") provides that in order for an acquisition of interests in a non-corporate entity to be reportable, someone must acquire control of the newly formed non-corporate entity--50 percent or more of the rights to current profits or to the assets on dissolution. However, the Rule indicates that it does not apply "in connection with a consolidation." Since neither A nor B is its own Ultimate Parent Entity, I don't believe that the proposed transaction constitutes a "consolidation" under Section 801.2(d)(2)(iii) since neither individual X nor Y will lose his pre-acquisition identify become a wholly-owned subsidiary of the newly formed entity. A second reason I believe indicates that the transaction does not require a filing is that neither Individual X nor Y will meet the criteria of Section 801.10(d), which values the interests to be acquired in an unincorporated entity, since neither Individual X nor Y will receive control of an existing or newly formed unincorporated entity.

Please let me know if you agree with my conclusions that a) the transaction is not reportable, and b) the method by which the Individuals X and Y receive their interests in NewLLC is not material.

I look forward to hearing from you.

AGREE WITH (a) & (b)
BM
12/24/09



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