802.30
802.50
802.51

Verne, B. Michael

From: [redacted]
Sent: Monday, June 07, 2010 3:40 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: 802.51/802.50 Question

Mike,

[redacted] and I are working on a multi-step transaction involving foreign entities and assets, and we're hoping you can confirm our analysis that no HSR filings are required.

The transaction will occur in several steps, which are contingent upon one another and will occur approximately simultaneously. You can assume the size of persons thresholds are met.

1. Buyer (a US entity) will acquire approximately 63% of Target 1 (which is its own ultimate parent), via purchases of voting securities from existing Target 1 shareholders and from Target 1 itself, for a total of approximately $191 million. See HSR Analysis below.

2. Target 1 has several subsidiaries, among them Sub A and (currently being formed) its subsidiary Sub B. Sub A is a foreign corporation and Sub B will be a foreign corporation. Sub A currently holds 50% of Target 2. Sub A will acquire (from Seller, an entity outside the person of Buyer/Target 1) the remaining 50% interest in Target 2. This is an intraperson transaction and therefore exempt from HSR. (Sub B may then acquire substantially all the assets of Target 2; this too would be an intraperson transaction.)

3. Sub B will acquire substantially all the assets of Target 3 (from Seller Sub, a controlled subsidiary of Seller) for a total purchase price of approximately $832 million (a combination of cash purchase price and the assumption of debt). See HSR Analysis below.

HSR ANALYSIS

A. Buyer's acquisition of 63% of Target 1.

We believe Target 1 is a foreign corporation. It was formed and organized under the laws of Bermuda. While it has multiple global offices, we believe its principal offices are not within the US because:
-- It considers its principal offices to be in Bermuda.
-- It has four officers (those whose positions are identified in Target 1's bylaws or articles, or appointed by its board of directors): (i) the CEO/President, who maintains his office in the US, (ii) the VP/CFO/Non-Bermudian Secretary, who maintains his office in the UK, (iii) a VP who maintains his office in the UK, and (iv) a Secretary, who maintains her office in Bermuda.
-- It has no other employees, but more than 50% of the employees of its

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group (including its controlled subsidiaries) are located outside the U.S.
-- It is a holding company and therefore its activities are limited to the election of directors of its controlled subsidiaries and the formation of group policy; these activities are conducted at an annual meeting of shareholders that occurs in Bermuda and quarterly meetings of the board of directors that occur outside the US.
-- The vast majority of Target 1's assets and revenues (on a consolidated basis with its subsidiaries) are located outside the US.

Target 1, on a consolidated basis with its controlled subsidiaries, had less than $1 million in sales to the US in its most recent fiscal year. For these reasons, Buyer's acquisition of 63% of Target 1 is exempt from notification under 802.51(a) of the HSR Rules.

B. Buyer's acquisition (via Sub B, an entity to be controlled by Target 1) of substantially all the assets of Target 3.

The assets are marine cargo shipping containers. We believe they are "foreign" assets because, notwithstanding that some of the containers may be transitorily in the US when leased and being loaded, unloaded or shipped overland:
-- Seller Sub (the entity selling the assets) is a Bermuda entity (formed, organized and principal office in Bermuda).
-- The assets have no "home base"; when not leased they are stored in a depot in whichever global port they landed as a result of their last lease.
-- The assets generated less than 25% of their revenues for the last completed fiscal year from US customers.

Target 3's assets generated less than $5 million in sales to US customers in the most recent fiscal year. For these reasons, Buyer's acquisition of Target 3 is exempt from notification under 802.50(a) of the HSR Rules.

Do you agree with our analysis?

AGREE
B
6/8/10

Thanks very much for your help,

[redacted]

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