

061-10

Verne, B. Michael

From: [REDACTED]
Sent: Friday, May 11, 2012 10:04 AM
To: Verne, B. Michael
Subject: HSR Size-of-Transaction - CONFIDENTIAL

Mike,

Hoping you can confirm some analysis for us:

Our client, Company A, plans to acquire 100% of the interests in Company B and Company C. Company B is 100% owned by Person X and Person Y in equal, 50% shares. Company C is owned by Person X, Person Y and Person Z, also in equal shares (with no Person with the right to 50% or more of profits or assets upon dissolution).

Taking each acquisition separately, it is our understanding that, to the extent the size-of-person and size-of-transaction tests are met, Company A would have to file HSR for acquisition of 100% of Company B, with both Person X and Person Y filing as acquired UPEs (i.e., both "control" Company B). It is also our understanding that, to the extent the size-of-person and size-of-transaction tests are met, Company A would have to file HSR for acquisition of 100% of Company C, with Company C filing as its own UPE.

The issue arises where neither transaction, taken separately, would meet the HSR size-of-transaction test. Our question is whether the fact that Persons X and Y (the UPEs of Company B) are also selling their interests in Company C would somehow require that the value of the interests being sold by X and Y in Company B would need to be aggregated with those being sold by X and Y in Company C. Our reading of Opinion 142 in the Premerger Notification Practice Manual (Fourth Edition) suggests that the common holdings of multiple seller UPEs need not be aggregated, and the acquisitions of Company B and Company C would not be aggregated for the size-of-transaction analysis (i.e., these represent two distinct transaction because they are purchases from distinct UPEs). Do you agree?

Please let us know if you need any clarification or additional information.

Many thanks,



AGREE
BM
5/11/12
K. WALSH CONCURS

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