

Introduction Hart-Scott-Rodino

OVERVIEW



Purpose of the Act



**Statute supported by regulations, formal
and informal interpretations**

JURISDICTIONAL TESTS IN THE STATUTE

Engaged in commerce - If you got this far - - you are

Size of Person \$100 MM, \$10 MM

When this test is inapplicable

Size of Transaction \$50 MM

THE REGULATIONS

- **Part 801 - Coverage Rules**
- **Part 802 - Exemption Rules**
- **Part 803 - Transmittal Rules**

801.1 DEFINITIONS:

**, Person - an ultimate parent entity and
all entities which it controls**

801.1 DEFINITIONS:

, Entity

- What is an entity?**
- What is not an entity?**

801.1 DEFINITIONS:

, Ultimate Parent Entity

- An entity which is not controlled by any other entity**

801.1 DEFINITIONS:

, Control and Hold

- A person holds the assets of all entities it controls**
- Control tests**
 - 50% of voting securities**
 - 50% of directors (or equivalent)**
 - 50% of profits or assets upon dissolution**

801.1 DEFINITIONS:

, Engaged in manufacturing

- NAICS codes 31-33

- \$1 MM in revenues anywhere in world

- How this applies to the size-of-person test

801.1 DEFINITIONS:

, U.S. and Foreign Persons and Issuers

- Organized under U.S. law**
- Incorporated in U.S.**
- Principal offices in U.S.**
- Natural person is citizen of or resides in U.S.**
- Foreign is expressed in the negative of the above**

801.1 DEFINITIONS:

, Voting Securities and Convertible Voting Securities

- Present right to vote for election of directors**
- Convertible securities are voting securities**

801.2 ACQUIRING AND ACQUIRED PERSONS

- , Mergers and Consolidations**
- , Holding assets not previously held**
- , 801.2(e)**

801.4 SECONDARY ACQUISITIONS

, Separately subjected to reportability analysis

801.10 VALUATION - SIZE OF TRANSACTION

-Sandy Pfunder

, Three concepts:

Acquisition Price

Market Price

Fair Market Value

801.11 SIZE OF PERSON

, Annual Net Sales

, Total Assets

, 801.11(e)

801.12 PERCENTAGE OF VOTING SECURITIES

$$\frac{\text{Number of votes you have in a class}}{\text{Total votes in class}} \times \frac{\text{Number of directors elected by class}}{\text{Total Number of directors}}$$

- Determine for each class and add together

AGGREGATION

- **801.14: Add voting securities and assets in the same deal**
- **801.13: Voting securities previously acquired are always held**
 - Assets filed for are not held in later acquisition**
 - If not filed aggregate within 180 days**
- **801.15: You may not hold assets or voting securities even if 801.13 and 801.14 say you do**

801.21 CASH AND SECURITIES NOT CONSIDERED ASSETS

- Cash consideration is not assets acquisition
by acquired person**
- Minority voting securities are not assets of
acquired person**

801.30 TENDER OFFERS AND ACQUISITIONS FROM THIRD PARTIES

- Tender offers**
- Conversions**
- Secondary acquisitions**
- Special treatment for 801.30 transactions**

801.90 AVOIDANCE

- Structure introduced for no purpose other than avoidance**
- FTC looks through to substance of deal**

End

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