

801.1(b)

From: [Redacted]
To: Mike Verne (E-mail) <mverne@ftc.gov>
Date: 3/13/02 7:44PM
Subject: HSR Question

Mike:

I have a convoluted deal that I hope you can help me with:

Six partnerships (4 LP's and 2 GP's) are each selling certain assets to company, Company A.

Sales by the LP's: The 4 LP's all have the same GP, Company Z. Company Z only owns about 1% of each of the LP's, but as the GP controls the management decisions of each of the 4 LPs. Company Z is a subsidiary of Company A (95% owned by Company A). The ownership interests of the the LP's are very widely dispersed with no entity owns more than 10% of the membership interest in any LP. Accordingly, each of these LP's would be its own UPE unless by virtue of the fact that the GP controls management decisions, the GP somehow becomes the control person and therefore the UPE. I note that the definition of control suggests that an entity with contractual power to appoint directors or similar officers may be the "control" person. The LP's don't have directors, but only the GP. So, my first question is whether the LP's are their own UPE's or whether Company Z, as the GP, is the UPE for the LP's. If the GP is the control person of the LPs, would I aggregate the sales of the four LP's which share a common GP? And, if GP is the control person, isn't Company A the UPE then for all of the LP's, since Company A owns Company Z.

Sales by the GP's: 2 GP's are also selling assets they own. Those GPs are also also owned by Company. Each GP has several members. GP-1 has two members -- LP-1 and LP-2, each of which has a right to 50% of the profits. GP-2 has three members, LP-1, LP-2, and LP-3, each of which has a right to 1/3 of the profits of GP-2.

Here, again my question is whether I determine the UPE by right to profits or by control. Is it the case that LP-1 and LP-2 are the UPE of GP-1 since they each have a 50% interest in profits (but that GP-2 would be the UPE of GP-2 since no entity has a right to 50% or more of the profits.) Or, is it the case that Company Z is the UPE since it also controls GP-1 and GP-2.

And, of course, if Company A is the UPE for all of these LPs and GP's, it is effectively selling to itself, so wouldn't the transaction be exempt anyway?

I hope this makes sense! Thanks very much!

Best regards,

[Redacted signature block] LP

B. Michael Verne
3/14/02

EACH PARTNERSHIP IS ITS OWN UPE. THE ALTERNATIVE TEST FOR CONTROL IN 801.1(b)(2) DOES NOT APPLY TO PARTNERSHIPS. (SEE 52 FR AT 20062, 5/29/87).

RE LAST PARAGRAPH - IF A CONTROLLED THE PARTNERSHIPS, AN ACQUISITION OF THEIR ASSETS WOULD STILL BE POTENTIALLY REPUTABLE. (SEE 52 FR 20063, 5/29/87)