

Verne, B. Michael

From: [REDACTED]
 Sent: Tuesday, April 20, 2004 4:59 PM
 To: Verne, B. Michael
 Subject: HSR question re aggregation rules

Hi Mike. We have a question about the application of 801.13 and 801.14 to a transaction that I hope you can help us with.

Our client is acquiring 100% of two separate companies that each have the same two UPEs - i.e. both companies are held 50% by UPE A and 50% by UPE B. The purchase prices for the voting securities in each company is less than \$50 million, but together the two transactions exceed \$50 million. Each of UPE A and B will get 50% of each of the purchase prices, so that their respective shares are less than \$50 million in aggregate.

If the UPE of the two companies to be acquired was a single entity, I understand that the two transactions would be aggregated under the reasoning explained in Interpretation 158 of the 2003 Premerger Notification Practice Manual, so that the size-of-transaction would exceed the \$50 million threshold and a filing would be required. I understand that the basis of this reasoning is the PNO's emphasis on the value of the voting securities of the acquired person in 801.2(b) and 801.14, rather than acquired issuer in 801.13. Applying this to the case of two acquired persons, only 50% of the value of voting securities to be acquired can be aggregated for each of them. In this case, the sum of 50% of the purchase price for each company to be acquired would be less than \$50 million, so no HSR filings would be required.

Please let me know if you agree with this reasoning or if I have missed something here. Please give me a call if my explanation of the facts here is unclear in any way.

Many thanks for your assistance.

Kind regards,
 [REDACTED]

ADVISED THAT THE VALUE OF
 THE TRANSACTION WOULD REFLECT
 THE VALUE OF 100% OF THE
 VOTING SECURITIES OF BOTH
 ISSUERS.

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 4/21/04

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