

Verne, B. Michael

F.I. 15

From: [REDACTED]
Sent: Wednesday, May 26, 2004 11:52 AM
To: Verne, B. Michael
Subject: HSR question

Mike:

This is to confirm our conversation in which you stated that the following transaction does not require an HSR filing.

Description of the acquisition:

Corporation A, a non-manufacturing company, is the parent of Apple LLC. Apple LLC holds a 49% interest in ABC LLC. Corporation B or one of its controlled entities holds the remaining 51% of the member interests in ABC LLC. Corporation B intend to sell certain of its assets to a third party and these assets include its 51% interest in ABC LLC. Apple LLC has a right of first refusal (ROFR) to acquire from Corporation B, its 51% member interest in ABC LLC.

For various reasons, not in the control of Corporation A or Apple LLC, Apple LLC cannot assign its rights under the ROFR to a third party. Although Corporation A and Apple LLC have decided to exercise the ROFR, they do not intend to own or hold the 51% interest in ABC LLC that is currently held by Corporation B. For this reason, the acquisition will be accomplished through a newly formed LLC, Apple 2 LLC. Apple LLC will own 99% of Apple 2 LLC's member interests and C, an investment fund, will own the other 1%. C will provide all of the funds used to make the acquisition through a bridge loan to Apple LLC for 99% of the purchase price and 1% through its equity investment in Apple 2 LLC. At closing, Apple 2 LLC will acquire from Corproation B its 51% member interest in ABC LLC for approximately \$30 million and the bridge loan that C made to Apple LLC will be forgiven in return for Apple LLC's 99% interest in Apple 2 LLC. The end result will be that C will hold 100% of the member interests of Apple 2 LLC which holds 51% of the member interests in ABC LLC.

Please confirm that this accurately reflects your advice.

[REDACTED]
[REDACTED]
Phone: [REDACTED]

AGREE.
N. OVOKA CONCURS.
B. Michael
5/26/04