

801.40

Verne, B. Michael

From: [Redacted]  
Sent: Monday, January 31, 2005 10:22 PM  
To: Verne, B. Michael  
Subject: HSR Question

Hi Mike. I have a (hopefully quick) HSR interpretation question for you.

The fact pattern is as follows:

A, B and C currently hold 36%, 22% and 10% respectively of the voting securities in X. A, B and C are proposing to contribute their respective shareholdings in X to a new company, D. D will then hold 68% of the voting securities in X. A, B, and C will hold shares in D in the proportions of their contributions, so that A holds 53%, B 32% and C 15%.

Assuming the value of the shares being contributed to D by each party exceeds \$50 million and all parties meet necessary size thresholds, how should this be analyzed under HSR - as a joint venture under 801.40, so that potentially only A, B and C have filings, or as the acquisition of 68% of the voting securities of X by D, so that filings will be made by X and D? Based on other informal interpretations I have seen, I assume the former, but wanted to check for certain.

I am on the road tomorrow, so please respond by email, or leave a voice mail and I will call you back.

Thanks as always for your help.

Kind regards,

[Redacted]

THIS SHOULD BE ANALYZED AS THE FORMATION OF D UNDER 801.40. D IS NOT AN ACQUISITION WITH RESPECT TO THE X VLS BEING CONTRIBUTED BY A, B & C.

B. Michael  
2/1/05

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