

802.4

April 11, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: Confirmation of Advice Regarding 16 C.F.R. 802.4

Dear Mr. Verne:

In our conversation last Friday, April 8, 2005, a transaction on the facts set forth below were described. We are writing to confirm the analysis and verbal advice we received from you during that conversation.

Facts

Company A and Company B are currently 50-50 owners of a number of entities, some of which are corporations and some of which are unincorporated entities (collectively, the "JV Entities"). Company A will acquire the 50% interest of some of the JV Entities from Company B, and vice versa, Company B will acquire the 50% interest of some of the JV Entities from Company A. In addition, Company A will also acquire from Company B a group of assets with an aggregate fair market value of less than \$53.1 million (the "Business Assets"). The Business Assets are currently wholly-owned by Company B.

Prior to the acquisition, Company B plans to form two new wholly-owned LLCs. One of these LLCs will hold Company B's 50% interests in the JV Entities that Company A is acquiring, and the other LLC will hold the Business Assets. Company B then plans to transfer 100% of the interests in both of the newly formed, wholly-owned LLCs to Company A. The new LLCs will have no assets other than Company B's 50% interests in the JV Entities being transferred to Company A, in the case of one of the LLCs, and the Business Assets, in the case of the other LLC.

Discussion and Analysis

We wanted to confirm that the proposed acquisition by Company A of 100% of the interests of the two newly formed LLCs from Company B is exempt from HSR Act (notification) requirements. We understand that the exemption available under Rule

Mr. B. Michael Verne
April 11, 2005
Page 2

802.4 (as amended effective April 7, 2005) has broadened. At the time of the acquisition by Company A, the assets of one of the newly formed LLCs by Company B will consist only of LLC interests of the JV Entities, the acquisition of which (both the LLC interests of the JV Entities, themselves, as well as the assets of the JV Entities themselves) by Company A would be exempt under Rule 802.30 (the intra-person exemption), since Company A already owns 50% of the JV Entities that Company A is acquiring. As for the other LLC to be newly formed by Company B, that LLC will hold only the Business Assets, which have a fair market value of less than \$53.1 million.

Conclusion

Accordingly, the acquisition by Company A of the 100% interests of both of the new, wholly-owned LLCs of Company B would be exempt. With respect to one of the LLCs being acquired by Company A, Rule 802.4 has now been broadened such that the acquisition of an entity whose assets would be exempt under any of Part 802 (in this case, as a result of 802.30) would be exempt. Here, Company A's acquisition of the assets of the underlying JV Entities would be covered by Rule 802.30 (intra-person), and therefore the acquisition of the non-corporate interests of an entity which ultimately holds those assets would be exempt under Rule 802.4 and thus would not be required to be reported. With respect to the second of the LLCs being acquired by Company A, the value of the assets being acquired in that case does not meet the size-of-the-transaction test, and therefore the acquisition of the non-corporate interests holding those assets would not be required to be reported.

Thank you again for your assistance. It would be deeply appreciated if you would telephone to confirm that this letter and the conclusions set forth herein have correctly stated your advice.

cc:

AGAE 2 -
B. Michael Verne
4/18/05