

801.1(c)(4)

Verne, B. Michael

From: [Redacted]
Sent: Thursday, June 30, 2005 2:34 PM
To: Verne, B. Michael
Subject: HSR question

Mike,
As mentioned in my prior e-mail, an unrelated HSR question has crossed my desk that I would appreciate some input on.

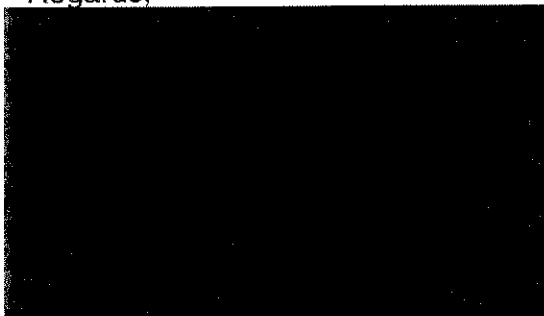
We have a transaction where the principal shareholders of the acquired person are two brothers (Person A and Person B) and a Trust. Person A, Person B and the Trust each have approximately 1/3 interest in the acquired person. The Trust, in turn, is revocable and has three grantors/beneficiaries: Person A, Person B and the sister of Persons A and B. The trust agreement does not specifically indicate what interests each of the grantors has in the Trust, but income of the Trust is to be paid in equal amounts to the grantors, suggesting that each has 1/3 interest in the Trust. Person A serves as trustee for the Trust, and neither the grantors nor anyone else has the ability to control the actions of the trustee. The Trust is revocable upon written agreement of the three grantors.

Since the Trust is revocable, 801.1(c)(4) should apply, meaning that the holdings of the Trust are the holdings of the three grantors/beneficiaries (such interests being held, presumably, on a 1/3 basis for each grantor). Thus, each of Person A and Person B would control 4/9 of the acquired person (1/3 individual interest plus 1/9 interest by virtue of their interests in the Trust). Consequently, there would not appear to be a single entity that holds 50% or more of the voting securities of the acquired person, thereby making the acquired person its own UPE.

Practically speaking, Person A can direct the business activities of the acquired person through his 1/3 individual interest, along with his position as trustee for the Trust, which also has 1/3 interest in the acquired person. However, because Person A has only 1/3 interest in the Trust (and therefore an additional 1/9 interest in the acquired person), his collective holdings would not constitute 50% or more of the voting securities of the acquired person. Is this analysis sound?

If there is additional relevant information that I need to provide, please let me know.

Regards,



AGREE -
B. Michael
6/30/05

